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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**Form 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended **December 31, 2003**

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 001-16383

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**CHENIERE ENERGY, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**95-4352386**  
(I.R.S. Employer Identification No.)

**717 Texas Avenue, Suite 3100**  
**Houston, Texas**  
(Address of principal executive offices)

**77002**  
(Zip code)

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Registrant's telephone number, including area code: **(713) 659-1361**

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

**None**

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

**Common Stock, \$ 0.003 par value**  
(Title of Class)

**American Stock Exchange**  
(Name of each exchange on which registered)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the registrant's Common Stock held by non-affiliates of the registrant was approximately \$66,180,000 as of June 30, 2003.

18,659,994 shares of the registrant's Common Stock were outstanding as of February 29, 2004.

**Documents incorporated by reference: The definitive proxy statement for the registrant's Annual Meeting of Stockholders (to be filed within 120 days of the close of the registrant's fiscal year) is incorporated by reference into Part III.**

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**CAUTIONARY STATEMENT  
REGARDING FORWARD-LOOKING STATEMENTS**

*This annual report contains certain statements that may include “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements, other than statements of historical facts, included herein or incorporated herein by reference are “forward-looking statements.” Included among “forward-looking statements” are, among other things: statements regarding our business strategy, plans and objectives; statements expressing beliefs and expectations regarding the development of our LNG receiving terminal business; statements expressing beliefs and expectations regarding our ability to successfully raise the additional capital necessary to meet our obligations under our current exploration agreements; statements expressing beliefs and expectations regarding our ability to secure the leases necessary to facilitate anticipated drilling activities; statements expressing beliefs and expectations regarding our ability to attract additional working interest owners to participate in the exploration and development of our exploration areas; and statements about non-historical information, are forward-looking statements. These forward-looking statements are often identified by the use of terms and phrases such as “expect,” “estimate,” “project,” “plan,” “believe,” “achievable,” “anticipate” and similar terms and phrases. Although we believe that the expectations reflected in these forward-looking statements are reasonable, they do involve assumptions, risks and uncertainties, and these expectations may prove to be incorrect. You should not place undue reliance on these forward-looking statements, which speak only as of the date of this annual report.*

Our actual results could differ materially from those anticipated in these forward-looking statements as a result of a variety of factors, including those discussed in “Risk Factors” beginning on page 16. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these factors. Other than as required under the securities laws, we do not assume a duty to update these forward-looking statements.

**PART I**

**ITEMS 1. AND 2. BUSINESS AND PROPERTIES**

**General**

Cheniere Energy, Inc., a Delaware corporation, is a Houston-based company engaged primarily in the development of a liquefied natural gas, or LNG, receiving terminal business and related LNG business opportunities centered on the U.S. Gulf Coast. The LNG receiving terminal business consists of receiving deliveries of LNG from LNG ships, processing such LNG to return it to a gaseous state and delivering it to pipelines for transportation to purchasers. We are also engaged in oil and gas exploration, development and exploitation activities in the Gulf of Mexico.

We have been publicly traded since July 3, 1996 under the name Cheniere Energy, Inc. Our principal executive offices are located at 717 Texas Avenue, Suite 3100, Houston, Texas 77002, and our telephone number is (713) 659-1361.

On October 16, 2000, our stockholders approved a one-for-four reverse stock split. The reverse stock split became effective on October 18, 2000 and reduced our issued and outstanding shares from 43,989,572 shares to 10,997,393 shares. All historical share and per share data appearing in this document reflect the reverse stock split.

As used in this annual report, certain terms have the following meanings:

- “we” and “our” refer to Cheniere Energy, Inc. and its subsidiaries
- “Bbl” means barrel or 42 U.S. gallons liquid volume

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- “Bcf” means billion cubic feet
- “Bcfe” means billion cubic feet of natural gas equivalent using the ratio of six Mcf of natural gas to one Bbl of crude oil, condensate and natural gas liquids
- “cm” means cubic meter
- “liquefaction plant” means all or most of the equipment needed to remove impurities from natural gas, refrigerate the treated natural gas so that it becomes LNG, and transport the LNG to storage
- “LNG” means liquefied natural gas
- “Mcf” means thousand cubic feet
- “Mcfte” means thousand cubic feet of natural gas equivalent using the ratio of six Mcf of natural gas to one Bbl of crude oil, condensate and natural gas liquids
- “Mmcf” means million cubic feet
- “Mmcf/d” means million cubic feet per day
- “Mmbtu” means million British thermal units
- “regas” means the process by which LNG is heated to convert it back into its gaseous phase
- “Tcfe” means trillion cubic feet of natural gas equivalent using the ratio of six Mcf of natural gas to one Bbl of crude oil, condensate and natural gas liquids

### **Access to Public Filings**

We provide public access to our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to these reports as soon as reasonably practicable after we electronically file those materials with, or furnish those materials to, the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These reports may be accessed free of charge through our internet website (located at [www.cheniere.com](http://www.cheniere.com)), where we provide a link to the SEC’s website (at [www.sec.gov](http://www.sec.gov)). We make our website content available for informational purposes only. The website should not be relied upon for investment purposes.

### **General Development of Business**

Cheniere Energy Operating Co., Inc. (“Cheniere Operating”) was incorporated in Delaware in February 1996 for the purpose of engaging in the oil and gas exploration business, initially on the Louisiana Gulf Coast. On July 3, 1996, Cheniere Operating underwent a reorganization whereby Bexy Communications, Inc., a publicly-held Delaware corporation (“Bexy”), received 100% of the outstanding shares of Cheniere Operating, and the former stockholders of Cheniere Operating received approximately 93% of the issued and outstanding Bexy shares. As a result of the share exchange, a change in control occurred. The transaction was accounted for as a recapitalization of Cheniere Operating. Bexy spun off its existing assets and liabilities to its original stockholders and changed its name to Cheniere Energy, Inc. Cheniere Operating became a wholly-owned subsidiary of Cheniere.

We have two reporting segments: one segment is the LNG Receiving Terminal Development business and the other is the Oil and Gas Exploration and Development business.

### **LNG Receiving Terminal Development**

LNG is natural gas that has been reduced to a fraction of its volume through a sophisticated refrigeration process. The liquefaction of natural gas (into LNG) allows it to be shipped long distances comparatively safely and economically. Outside the U.S., utilization of LNG has grown dramatically. As of February 15, 2004, there

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were 70 liquefaction plants in 12 countries capable of producing 6.5 Tcfe of LNG per year and 43 terminals in 12 countries capable of importing and regasifying LNG. Yet in the U.S., due mainly to a historically abundant supply of natural gas, LNG has not been a major energy source. However, U.S. natural gas producers have recently had limited ability to increase supply, and costs of domestic natural gas exploration and production have increased. As a result, we believe that LNG will become a competitive supply alternative to domestic natural gas and other import alternatives. Assuming current construction costs of LNG-related facilities and tankers, we believe that LNG can be economically produced and delivered as natural gas into U.S. pipelines at a cost lower than \$3.00 per Mmbtu.

In 2000, we undertook a feasibility study to assess the long-term natural gas markets in the U.S. and, in particular, the potential role of LNG in meeting a portion of the gas supply deficit anticipated to develop later in this decade. Based on that analysis, our management concluded that LNG would become an economically viable source of natural gas supply in the U.S. In 2001, we assembled an experienced LNG project development team and began a study to determine viable locations for LNG receiving terminals in the U.S. We have chosen sites along the Gulf Coast at which we may develop LNG receiving terminals. The Gulf Coast area offers several important advantages, including the following:

- Texas and Louisiana are the first and third largest natural gas-consuming states in the U.S.,
- the local governments and communities are familiar with and supportive of the energy industry,
- with the expected declines in local production, the Gulf Coast states will have under-utilized intrastate and interstate pipelines with access to Midwest, Northeast, Mid-Atlantic and Southeast U.S. markets, and
- the Gulf Coast states have extended coastlines, providing a number of ports with adequate facilities for such terminals.

### ***LNG Receiving Terminal Sites***

#### *Freeport LNG*

An LNG receiving facility will be developed on Quintana Island near Freeport, Texas on a 233-acre tract of land and will be designed with regas capacity of 1.5 Bcf per day, one dock, and two storage tanks with an aggregate storage capacity of 6.7 Bcfe. The unloading dock will be able to handle 75,000 cm to greater than 200,000 cm LNG shipping vessels. From the terminal, natural gas will be transported through a 9.3-mile pipeline to Stratton Ridge, Texas, which is a major point of interconnection with the Texas intrastate gas pipeline system. The cost to construct the facility is currently estimated to be in excess of \$500 million.

In June 2001, we acquired an option to lease acreage suitable for an LNG receiving terminal site near Freeport and funded the initial permitting expenses of the project. In connection with the acquisition of our option, we issued 500,000 shares of common stock valued at \$1,150,000, or \$2.30 per share, the closing price of our common stock on the date of the transaction, to the seller of the lease option. We also committed to issue an additional 750,000 shares of our common stock to the seller of the lease option at a later date, for which we received no additional consideration. These shares were issued in April 2003 at a value of \$1,312,500, or \$1.75 per share, the closing price of our common stock on the date of issuance. The seller of the lease option also obtained the right to receive a royalty payment on the gross quantities of gas processed through LNG terminals owned by Cheniere LNG, Inc., our wholly-owned subsidiary. The royalty is calculated based on \$0.03 per Mcf on the quantities of gas processed through LNG terminals we own, subject to a maximum royalty of approximately \$10,950,000 per year. In 2002, a long-term lease was secured, and at the closing of the sale of our interests in the site and project to Freeport LNG Development, L.P. ("Freeport LNG"), Freeport LNG assumed the obligation to pay the royalty with respect to gas processed and produced at the Freeport LNG facility.

In August 2002, we entered into an agreement with entities controlled by Michael S. Smith ("Smith") to sell a 60% interest in the Freeport site and project. On February 27, 2003, we consummated the transaction by selling

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our interest in the site and project to Freeport LNG, in which we held a 40% limited partner interest. Smith holds a 60% limited partner interest in Freeport LNG. We recovered \$1,740,426, in costs we had incurred on the project and received an additional \$5,000,000 from Freeport LNG. For the funding of Freeport LNG project development costs, Smith also committed to contribute up to \$9,000,000 and to allocate available proceeds from any sales of options or capacity reservations and/or proceeds from loans related to capacity reservations to these costs. In connection with the closing, we issued warrants to Smith to purchase 700,000 shares of Cheniere common stock at a price of \$2.50 per share, exercisable for a period of 10 years.

Effective March 1, 2003, we sold a 10% limited partner interest in Freeport LNG to an affiliate of Contango Oil & Gas Company ("Contango") for \$2,333,333 payable over time, including the cancellation of our \$750,000 short-term note payable. We also issued warrants to Contango to purchase 300,000 shares of Cheniere common stock at a price of \$2.50 per share, exercisable for a period of 10 years. As a result of the sale, we now hold a 30% limited partner interest in Freeport LNG.

In June 2003, The Dow Chemical Company ("Dow") signed an agreement with Freeport LNG for the potential long-term use of the facility. Under the agreement, Dow will have regas rights to as much as 500 Mmcf/d beginning with commercial start-up of the facility in 2007. On February 26, 2004, Freeport LNG and Dow entered into a twenty-year terminal use agreement ("TUA"). Under the terms of the TUA, Dow made a firm commitment to reserve regas capacity of 250 Mmcf/d and has until August 31, 2004 to exercise its option on the remaining 250 Mmcf/d.

On December 21, 2003, ConocoPhillips signed an agreement with Freeport LNG under which ConocoPhillips will participate in Freeport LNG's receiving terminal. Pursuant to the agreement, ConocoPhillips will reserve one Bcf per day of regas capacity in the terminal for its use, obtain a 50% interest in the general partner of Freeport LNG, and provide a substantial majority of the financing to construct the facility, which is currently estimated to cost in excess of \$500 million. The management of Freeport LNG will remain in place and will be responsible for all commercial activities and interfacing with customers for the remaining capacity in the facility. ConocoPhillips will be primarily responsible for managing the construction and operation of the facility. ConocoPhillips, as a user of the facility, will be required to pay its proportionate share of operating expenses and fuel costs, a throughput fee of \$0.05 per Mcf, and all amounts necessary to amortize the construction funding. ConocoPhillips paid a nonrefundable capacity reservation fee of \$10,000,000 to Freeport LNG in January 2004. The transaction is expected to close in the spring of 2004, subject to completion of remaining documentation and satisfaction of closing conditions.

In the event the funding provided by ConocoPhillips is insufficient to meet the capital expenditures or working capital requirements of Freeport LNG, the general partner of Freeport LNG may obtain such additional funding from any of the following sources:

- cash reserves of Freeport LNG;
- loans from banks and other non-affiliate independent sources;
- additional capital contributions made to Freeport LNG by the partners;
- loans made to Freeport LNG by the partners or their affiliates;
- a lender-of-last resort facility available from ConocoPhillips; or
- any other funding source determined by the general partner of Freeport LNG.

We believe that it is unlikely that we will have to contribute any additional capital funds.

The general partner of Freeport LNG is authorized to do all things necessary to obtain debt and/or equity financing in connection with any expansion of the facility. Any equity financing obtained for such expansion will dilute the ownership interests of the limited partners on a pro rata basis. However, each limited partner that is an accredited investor has the right to participate in any such equity financing to the extent that enables such limited partner to maintain its percentage ownership interest in Freeport LNG.

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Approval of the Freeport LNG project from the Federal Energy Regulatory Commission (“FERC”) is expected in March or April of 2004, with all other necessary federal, state and local approvals shortly thereafter. The front-end engineering and design study for the Freeport LNG project was completed in January 2004. Construction is scheduled to begin in the second half of 2004, with commercial start-up expected in the second half of 2007.

### *Corpus Christi LNG and Sabine Pass LNG*

We are currently developing two additional LNG receiving terminals: one near Corpus Christi, Texas and one near Sabine Pass, Louisiana. Each of these terminals will be designed with regas capacity of 2.6 Bcf per day, two docks, and three storage tanks with an aggregate storage capacity of 10.1 Bcfe. Each of these facilities will have two unloading docks that can handle 87,000 cm to 250,000 cm LNG shipping vessels. Each location will also have three dedicated tugboats. The cost to construct the Corpus Christi facility is currently estimated at approximately \$450-\$550 million, and the cost to construct the Sabine Pass facility is currently estimated at approximately \$500-\$600 million.

We formed Corpus Christi LNG, L.P. (“Corpus LNG”) in May 2003 to develop an LNG receiving terminal near Corpus Christi, Texas. Under the terms of the limited partnership agreement, we contributed our technical expertise and know-how, and all of the work in progress related to the Corpus Christi project, in exchange for a 66.7% limited partner interest in Corpus LNG. BPU LNG committed to contribute its approximately 210-acre tract of land plus related easements and additional rights to an additional 400 acres, and cash to fund the first \$4,500,000 of Corpus LNG project expenses in exchange for its 33.3% limited partner interest. In January 2004, BPU LNG entered into an option agreement with Corpus LNG to acquire 100 Mmcf of natural gas per day regas capacity through the receiving terminal. We will manage the project through the general partner interest held by our wholly-owned subsidiary.

We recently formed Sabine Pass LNG, L.P. (“Sabine Pass LNG”) to develop an LNG receiving terminal near Sabine Pass, Louisiana. We currently plan to retain 100% of the ownership interest in Sabine Pass LNG. We intend to fund some of the development costs but plan to obtain additional equity or debt financing for this project. We have options on three tracts of land comprising 568 acres in Cameron Parish, Louisiana which collectively are suitable for the project site.

On December 22, 2003, we submitted to FERC applications for permits to build these LNG receiving facilities, as well as separate but concurrent permit applications for their related pipelines. See “Other Developments.” We have selected Bechtel Corporation to perform the engineering, procurement and construction for the facilities under a fixed price contract to be negotiated. The front end engineering design work for the terminals was completed by Black & Veatch Pritchard, Inc.

### ***Other Developments***

In addition to the sites discussed above for which we have submitted FERC applications, we are also evaluating other sites that we believe may be commercially feasible for developing LNG receiving terminals. These potential sites include locations in Brownsville, Texas and Mobile, Alabama for which we currently have lease options in place.

We have also begun to market natural gas pipeline capacity from the site of our proposed Sabine Pass and Corpus LNG receiving terminals. We plan to construct a 16-mile, 42-inch diameter natural gas pipeline from the site of our proposed Sabine Pass LNG receiving terminal, running easterly along a corridor that will allow for interconnection points with interstate and intrastate natural gas pipelines in Southwest Louisiana. We also plan to construct a 24-mile, 48-inch diameter natural gas pipeline from the site of our proposed Corpus LNG receiving terminal, running northwesterly along a corridor that will allow for interconnection points with interstate and

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intrastate natural gas transmission pipelines in South Texas. The feasibility of constructing such pipelines will depend on market demand for natural gas from the respective terminals.

### ***J & S Cheniere***

Cheniere LNG Services, Inc. (“Cheniere LNG Services”), one of our wholly-owned subsidiaries, holds a minority interest in J & S Cheniere S.A. (“J&S Cheniere”), a Switzerland joint-stock company. The majority interest in J&S Cheniere is held by J & S Group S.A. (“J&S Group”), a Luxembourg corporation affiliated with J & S Trading Company, Ltd., an international petroleum trading and marketing company. Under a shareholders agreement, Cheniere LNG Services identifies and assists with LNG-related business opportunities that it determines are appropriate for J&S Cheniere. Cheniere LNG Services is not required to offer any particular business opportunities nor funding to J&S Cheniere. All financing of the business opportunities will be provided by J&S Group should it determine that a business opportunity is appropriate for J&S Cheniere. However, J&S Group is not required to fund any particular business opportunity. The shareholders agreement gives Cheniere LNG Services the right to purchase additional shares up to a maximum of 50% of the outstanding shares of J&S Cheniere. The shareholders agreement also provides J&S Group the right to acquire all J&S Cheniere shares owned by us in the event we experience a change in control (defined in the shareholders agreement to include a change in a majority of our board, the acquisition of more than 40% of our outstanding common stock other than as approved by our board, and a merger or consolidation that results in 50% or less of the surviving entity’s voting securities being owned by the holders of our voting securities immediately prior to such transaction).

As its initial LNG business opportunity, J&S Cheniere has contracted to charter an LNG ship upon completion of its refurbishment in February 2004 for an 18-month period. In January 2004, J&S Cheniere signed a transportation agreement with Sonatrach, the national oil company of Algeria, to optimize the use of this LNG ship. During the six-month term of the agreement, the two companies will jointly operate the vessel and endeavor to find the most profitable routes for the vessel. The ship is anticipated to be used primarily as a trading vessel and not in connection with a specific project.

Cheniere LNG, Inc., one of our wholly-owned subsidiaries, and J&S Cheniere entered into an option agreement on December 23, 2003 under which J&S Cheniere has an option to purchase LNG storage tank capacity and regas capacity of up to 200 Mmcf/d in each of the Sabine Pass and Corpus Christi facilities. Following execution of the option agreement, \$1,000,000 was paid by J&S Cheniere to Cheniere LNG, Inc. in January 2004. At December 31, 2003, we included the \$1,000,000 in accounts receivable and the offset was recorded as deferred revenue, as the option fee is refundable if we do not receive FERC approval for at least one of the terminals or we do not proceed with the development of at least one of the terminals. Upon FERC approval and other related approvals and receipt of permits for each terminal, J&S Cheniere has 60 days to exercise its option at each terminal. The option agreement contemplates negotiation of a definitive TUA for each of the facilities, which will specify the terms and conditions of the purchase and sale of the capacity and related services.

### ***Business Strategy***

We believe that the long-term outlook for natural gas prices in the U.S. is one that will sustain prices at or above \$3.00 per Mcf. We believe that such an environment will favor not only domestic exploration and production, but also LNG imports into the U.S. Our primary objective is to develop our LNG receiving terminal development business.

We have assembled a team of professionals with extensive experience in the LNG industry. We have researched the LNG opportunity, developed a plan to exploit the opportunity and initiated the process of identifying and securing sites for LNG receiving terminals as well as undertaking necessary regulatory and permitting work to advance these projects. In addition, we are marketing natural gas pipelines from the proposed



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sites of our Corpus LNG and Sabine Pass LNG receiving terminals. Most of our resources and most of the time and attention of our employees are focused on our LNG receiving terminal development business.

### ***Competition and Markets***

In the United States, due mainly to a historically abundant supply of natural gas, LNG has not been a major energy source. Furthermore, LNG may not become a competitive factor in the U.S. oil and gas industry. Although the LNG receiving business is in its developmental stages, companies in the U.S. are, nonetheless, exploring the possibility of engaging or developing an LNG business.

In the event that we complete LNG receiving facilities, the profitability of our operations and the price of our gas will be dependent on the availability of liquefied natural gas, the volume and price of domestic production of natural gas, the marketing of competitive fuels, the proximity and capacity of natural gas pipelines, the availability of transportation and other market facilities, the demand for hydrocarbons, the political conditions in international oil-producing regions, taxation and the domestic demand for natural gas.

### ***Government Regulation***

Our LNG operations are subject to extensive regulation under federal, state and local statutes, rules, regulations and other laws. Among other matters, these laws require the acquisition of certain permits and other authorizations before commencement of construction and operation of our LNG receiving terminals.

Failure to comply with such laws can result in substantial penalties. This regulatory burden increases the cost of constructing and operating the LNG receiving terminals, but we do not expect such regulatory compliance matters to have a material adverse effect on our financial position or results of operations.

#### *FERC*

In order to site, construct and operate our proposed LNG receiving terminals, we must receive authorization from FERC, under Section 3 of the Natural Gas Act of 1938, or "NGA." The FERC permitting process includes detailed engineering and design work, preparation of an Environmental Impact Statement under the National Environmental Policy Act, and public notices and opportunities for public hearings.

#### *Department of Transportation/Coast Guard Regulations*

Our LNG receiving terminals will also be subject to Department of Transportation and Coast Guard regulations relating to:

- siting requirements
- design standards
- construction standards
- equipment
- operations
- maintenance
- personnel qualifications and training
- fire protection
- security

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### *Environmental Matters*

Our LNG operations are subject to various federal, state and local laws and regulations relating to the protection of the environment. In some cases, these laws and regulations require us to obtain governmental authorizations before we may conduct certain activities or may require us to limit certain activities in order to protect endangered or threatened species or sensitive areas. These environmental laws may impose substantial penalties for noncompliance and substantial liabilities for pollution. As with the industry generally, compliance with these laws increases our overall cost of business. While these laws affect our capital expenditures and earnings, we believe that these regulations do not affect our competitive position in the industry because our competitors are similarly affected by these laws. Environmental regulations have historically been subject to frequent change. Consequently, we are unable to predict the future costs or other future impacts of environmental regulations on our future operations. Environmental laws that may affect our operations include:

*CERCLA.* The federal Comprehensive Environmental Response, Compensation and Liability Act, or “CERCLA,” also known as the “Superfund” law, imposes liability, without regard to fault, on certain classes of persons who are considered to be responsible for the spill or release of a hazardous substance into the environment. Potentially liable persons include the owner or operator of the site where the release occurred, and persons who disposed or arranged for the disposal of hazardous substances at the site. Under CERCLA, responsible persons may be subject to joint and several liability for:

- the costs of cleaning up the hazardous substances that have been released into the environment;
- damages to natural resources; and
- the costs of certain health studies.

In addition, it is not uncommon for neighboring landowners and other third parties to file claims for personal injury and property damage allegedly caused by the release of hazardous substances. Although CERCLA currently excludes petroleum, natural gas, natural gas liquids, and liquefied natural gas from its definition of “hazardous substances,” this exemption may be limited or modified by Congress in the future.

*Clean Air Act.* Our operations may be subject to the federal Clean Air Act, or “CAA,” and comparable state and local laws. Amendments to the CAA were adopted in 1990 and contain provisions that may result in the gradual imposition of certain pollution control requirements with respect to air emissions from our operations. The EPA and states have been developing regulations to implement these requirements. We may be required to incur certain capital expenditures in the next several years for air pollution control equipment in connection with maintaining or obtaining permits and approvals addressing other air emission-related issues. We do not believe, however, that our operations will be materially adversely affected by any such requirements.

*Clean Water Act.* Our operations are also subject to the federal Clean Water Act, or “CWA,” and analogous state and local laws. Pursuant to certain requirements of the CWA, the EPA has adopted regulations concerning discharges of storm water runoff. This program requires covered facilities to obtain individual permits, participate in a group permit or seek coverage under an EPA general permit. In addition, our operations, including construction of LNG receiving terminals, in areas deemed to be wetlands, or which otherwise involve discharges of dredged or fill material into navigable waters of the United States, may be subject to Army Corps of Engineers permitting requirements.

*Solid Waste.* The federal Resource Conservation and Recovery Act, or “RCRA,” and comparable state statutes govern the disposal of “hazardous wastes.” In the event any hazardous wastes are generated in connection with our LNG operations, we may be subject to regulatory requirements affecting the handling, transportation, storage and disposal of such wastes.

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*Endangered Species.* Our operations may be restricted by requirements under the Environmental Species Act, or “ESA,” which seeks to ensure that human activities do not jeopardize endangered or threatened animal, fish and plant species nor destroy or modify their critical habitats.

### **Oil and Gas Exploration and Development**

Although our current focus is primarily on the development of an LNG receiving terminal business, we continue to be involved in oil and gas exploration, development and exploitation, and in exploitation of our existing 3D seismic database through prospect generation. We have historically focused on evaluating and generating drilling prospects using a regional and integrated approach with a large seismic database as a platform. We expect that our oil and gas exploration activities will continue in the Gulf of Mexico, through active interpretation of our seismic data and generation of prospects, through participation in the drilling of wells, and through farm-out arrangements and back-in interests (a reversionary interest in oil and gas leases reserved by us) whereby the capital costs of such activities are borne by industry partners. Our current oil and gas exploration and development activities are focused on two areas:

- the Cameron Project, which covers an area of approximately 230 square miles extending roughly three to five miles on either side of the westernmost 28 miles of Louisiana coastline; and
- the Offshore Texas Project Area, which covers approximately 6,800 square miles in the shallow waters offshore Texas and the West Cameron Area of offshore Louisiana.

Our officers and technical staff have extensive experience both onshore and offshore in the Gulf Coast and believe that we are well-positioned to evaluate, explore and develop properties in these areas.

#### ***Cameron Project Seismic Exploration Program***

We were formed in 1996 to fund the acquisition of a proprietary seismic database along the transition zone (the area approximately 3 to 5 miles on either side of the Gulf of Mexico shore line) in Cameron Parish, Louisiana. Under the terms of an exploration agreement with an industry partner, we paid for certain seismic costs in the amount of approximately \$16,500,000 and acquired a 50% ownership interest in the seismic data covering the Cameron project, among other interests that have subsequently expired or terminated. After the termination of the exploration agreement, we purchased our partner’s 50% interest in the seismic data for \$500,000 and sold all of the seismic data to a seismic marketing company for \$3,325,000. We now retain a license to all of the seismic data for use in our exploration program. We are also entitled to receive at no additional cost any subsequent reprocessing of the data, which may be performed by the seismic marketing company.

In 1999, we licensed 8,800 square miles of seismic data from Fairfield Industries (the “Offshore Louisiana Area”) and made a commitment to fund the reprocessing of the entire 8,800-square-mile seismic database. In 2000, we entered into an agreement with Warburg, Pincus Equity Partners, L.P., a global private equity fund based in New York, to fund exploration and development in the Offshore Louisiana Area through a then newly formed private corporation, Gryphon Exploration Company (“Gryphon”). See “Investment in Gryphon Exploration Company.”

#### ***Seismic Exploration Program in Offshore Texas Project Area***

In 2000, we acquired two licenses to an aggregate of approximately 1,900 square miles of seismic data from Seitel Data Ltd., a division of Seitel Inc. In October 2000, we exercised our option to expand the agreement with Seitel Data Ltd. to cover an additional 1,900 square miles of seismic data. Together, the licenses acquired from Seitel represent coverage of over 433 Outer Continental Shelf blocks in the shallow waters offshore Texas and Louisiana in the Gulf of Mexico. In 2001, we sold to Gryphon for \$3,500,000 one of our two licenses to the Seitel 3D seismic data. We retain one license to the Seitel 3D seismic data.

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In 2000, we also negotiated a Master Data Users Agreement with the Houston-based firm, Jebco Seismic L.P., to acquire 3,000 square miles (333 blocks) of seismic data in both state and federal waters offshore Texas, bringing our total data set in the shallow waters offshore Texas and Louisiana to approximately 6,800 square miles of seismic coverage. As of December 31, 2003, we had received reprocessed data for the 3,000 square miles of seismic data in the Jebco data set and the 3,800 square miles of seismic data in the Seitel data set, representing all of the reprocessing to be done in the Offshore Texas Project Area.

In 2001, we sold to Gryphon for \$3,500,000 one of our two licenses to the Jebco 3D seismic data covering an additional 3,000 square miles. We retain one license to the Jebco 3D seismic data.

Our exploration team generated and captured 21 prospects during 2001, 2002 and 2003 and sold interests in 19 of the prospects to industry partners, retaining various overriding royalty interests and working interests ranging from an overriding royalty interest (a share of the hydrocarbons produced from an oil and gas property, free of the expense of production) of less than 1% to a carried working interest (an agreement whereby we retain an interest in a well but bear none or only a portion of the cost of drilling the initial well) of approximately 24%. Fifteen of the prospects sold during 2001, 2002 and 2003 have been drilled by our industry partners, and we expect that the remaining prospects sold during those years will be drilled by our industry partners during 2004, but we do not serve as operator of the wells and do not control the timing of such drilling activities.

### ***Drilling Activities***

During 2001, 2002 and 2003, we did not participate in the drilling of any wells. Eight wells, however, were drilled during 2002 and nine wells were drilled in 2003 by our industry partners on prospects that we generated. During 2002, six of the eight wells were productive, and during 2003, seven of the nine wells were productive. We currently do not have a cost-bearing interest in the wells; we hold overriding royalty interests (ranging from 0.7% to 3.7%), some of which are convertible into working interests ranging from 12.5% to 20% at payout.

### ***Investment in Gryphon Exploration Company***

Cheniere owns 100% of the outstanding common stock of Gryphon. However, after giving effect to the potential conversion of all shares of Gryphon's convertible preferred stock to shares of Gryphon common stock, we effectively had a 9.3% ownership interest in Gryphon as of December 31, 2003. Although historically we had the ability to exercise significant influence over Gryphon because of our participation on the Gryphon board of directors, we lost the ability to exercise such influence when our representation on Gryphon's board was reduced to one director in December 2002. As a result, effective January 1, 2003, we began accounting for our investment in Gryphon using the cost method of accounting (see Note 6 in the Notes to the Consolidated Financial Statements). Accordingly, no disclosures concerning Gryphon's 2003 activity are included in this Form 10-K.

In 2000, we contributed to Gryphon the license to 8,800 square miles of seismic data that we had originally licensed from Fairfield Industries. The data covered more than 1,100 outer continental shelf blocks in the shallow waters of the Gulf of Mexico (the Offshore Louisiana Area). We also assigned our rights in our Joint Exploration Agreement with Samson, which ran from March 2000 through August 2001. For a description of licenses sold to Gryphon in 2001, see "Seismic Exploration Program in Offshore Texas Project Area."

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### Production and Sales

The following table presents certain information with respect to our oil and natural gas production, average sales prices received and average production costs during 2001, 2002 and 2003. In April 2002, we sold our interests in the Redfish and Stingray wells on West Cameron Block 49, representing all of our directly-owned producing properties at the time.

	Year Ended December 31,		
	2003	2002	2001
Production:			
Oil (Bbl)	17	495	2,608
Gas (Mcf)	123,392	91,470	542,774
Gas equivalents (Mcf <sup>e</sup> )	123,494	94,441	558,422
Average sales prices:			
Oil (per Bbl)	\$ 20.66	\$ 20.03	\$ 27.43
Gas (per Mcf)	\$ 5.33	\$ 2.58	\$ 4.48
Selected data per mcf <sup>e</sup> :			
Average sales price	\$ 5.32	\$ 2.53	\$ 4.25
Production costs <sup>(1)</sup>	—	\$ 0.95	\$ 0.75
Oil and gas depreciation, depletion and amortization excluding impairments	\$ 0.98	\$ 0.79	\$ 1.84

- (1) No production costs were recorded in 2003, as we owned non-cost bearing overriding royalty interests in wells located in offshore federal waters not subject to state production taxes.

### Acreage and Wells

The following table sets forth certain information with respect to our developed and undeveloped leased acreage as of December 31, 2003.

	Developed Acres		Undeveloped Acres <sup>(1)</sup>	
	Gross	Net	Gross	Net
Louisiana	4,995	—	5,000	5,000
Texas	12,160	—	12,240	4,779
Total	17,155	—	17,240	9,779

- (1) We have no leases which expire in 2004.

At December 31, 2003, we had no working interest in any producing wells; we had overriding royalty interests in eleven wells.

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### *Oil and Gas Reserves*

All of the information herein regarding estimates of our proved reserves, related future net revenues and PV-10 as of December 31, 2003 is taken from reports generated by Sharp Petroleum Engineering, Inc., our independent petroleum engineers, in accordance with the rules and regulations of the SEC. The independent engineers' estimates were based upon a review of production histories and other geologic, economic, ownership and engineering data that we provided.

	December 31, 2003 Proved Reserves			
	Oil (Bbl)	Gas (Mcf)	Mcf	PV-10(1)
Offshore Texas	2,159	423,044	435,998	\$ 1,734,797
Offshore Louisiana	2,964	489,735	507,519	\$ 2,542,938
Proved Reserves	5,123	912,779	943,517	\$ 4,277,735
Proved Developed Reserves	3,024	759,095	777,239	\$ 3,543,042

- (1) The PV-10 amount (present value of estimated pre-tax future net revenues discounted at 10%) is calculated using year-end prices of \$31.00 per barrel of oil and \$5.63 per Mcf of gas.

There are numerous uncertainties inherent in estimating quantities of proved reserves and in projecting future rates of production and future amounts and timing of development expenditures, including many factors beyond our control. Reserve engineering is a subjective process of estimating underground accumulations of crude oil and natural gas that cannot be measured in an exact manner, and the accuracy of any reserve estimate is a function of the quality of available data and of engineering and geological interpretation and judgment. Estimates of proved undeveloped reserves are inherently less certain than estimates of proved developed reserves. The quantities of oil and gas that are ultimately recovered, production and operating costs, the amount and timing of future development expenditures, geologic success and future oil and gas sales prices may all differ from those assumed in these estimates. In addition, our reserves may be subject to downward or upward revision based upon production history, purchases or sales of properties, results of future development, prevailing oil and gas prices and other factors. Therefore, the present value shown above should not be construed as the current market value of the estimated oil and gas reserves attributable to our properties.

In accordance with SEC guidelines, the estimates of future net revenues from our proved reserves and the present value thereof are made using oil and gas sales prices in effect as of the dates of such estimates and are held constant throughout the life of the properties except where such guidelines permit alternate treatment, including, in the case of gas contracts, the use of fixed and determinable contractual price escalations. We may receive amounts different than the estimates for a number of reasons, including changes in prices. See Supplemental Information to Consolidated Financial Statements. Estimates of our proved oil and gas reserves were not filed with or included in reports to any other federal authority or agency other than the SEC during the fiscal year ended December 31, 2003.

### *Business Strategy*

Our objective in the Exploration and Development business is to expand the net value of our assets by building an oil and gas reserve base in a cost-efficient manner, through exploitation of our seismic database to facilitate identifying drilling prospects.

### *Seismic Data*

We have acquired the following two significant seismic database assets:

- a license to a 228-square-mile seismic program covering the transition zone in Cameron Parish, and
- a license to a 6,800-square-mile seismic database comprising several seismic surveys in the shallow waters offshore Texas and Louisiana.

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The offshore Texas database has been available previously to the industry and was processed using a technique called dip move out (“DMO”). We acquired the DMO data and underwrote the reprocessing of the data utilizing another technology known as prestack time migration (“PSTM”). Both DMO and PSTM are processing techniques which improve seismic data quality to more accurately image subsurface features and delineate hydrocarbon accumulations. Of the two techniques, PSTM is more advanced and technically accurate. The regional PSTM data is the technology tool which management believes gives us a competitive advantage.

### *Analysis and Methodology*

We have developed a prospect generation infrastructure capable of detailed analyses of large volumes of seismic, geological and engineering data. We employ a rigorous methodology which includes:

- the detailed analyses of existing fields to identify geological and geophysical attributes for use as analogs,
- regional trend mapping to extend prolific plays into under-explored areas,
- the use of workstation interpretation techniques to rapidly identify prospects with attributes similar to those identified in the analog fields,
- the integration of seismic interpretation, well control, structure, stratigraphy, timing, sourcing factors, and production data to quantify prospect potential, and
- the integration of the above sciences with experience and conservative economic evaluation to focus the exploration program on highly commercial projects.

By conducting a thorough analysis of the data and strict adherence to the methodology, we believe that we can reduce the risk of dry holes and achieve significant growth, while maintaining a competitive cost of exploration and development.

### *Experience*

We have built a technical and management team that is experienced in the Gulf of Mexico and in various technical specialties required for our exploration program. The technical staff averages over 30 years of experience exploring for oil and gas in the Gulf Coast. We believe that this experienced team allows us to be very productive in the generation and acquisition of prospects.

### *Competition and Markets*

The availability of a ready market for and the price of any hydrocarbons that we produce will depend on many factors beyond our control, including the extent of domestic production and imports of foreign oil, the marketing of competitive fuels, the proximity and capacity of natural gas pipelines, the availability of transportation and other market facilities, the demand for hydrocarbons, the political conditions in international oil-producing regions, the effect of federal and state regulation of allowable rates of production, taxation, the conduct of drilling operations and federal regulation of natural gas. In the past, as a result of excess deliverability of natural gas, many pipeline companies curtailed the amount of natural gas taken from producing wells, shut in some producing wells, significantly reduced gas taken under existing contracts, refused to make payments under applicable take-or-pay provisions and have not contracted for gas available from some newly completed wells.

In addition, the restructuring of the natural gas pipeline industry has eliminated the gas purchasing activity of traditional interstate gas transmission pipeline buyers. Producers of natural gas, therefore, have been required to develop new markets among gas marketing companies, end-users of natural gas and local distribution companies. All of these factors, together with economic factors in the marketing area, generally may affect the supply and/or demand for oil and gas and thus the prices available for sales of oil and gas.

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Competition in the industry is intense, particularly with respect to the acquisition of producing properties and proved undeveloped acreage. We compete with the major oil companies and other independent producers of varying sizes, all of which are engaged in the exploration, development and acquisition of producing and non-producing properties.

### ***Government Regulation***

Our oil and gas exploration, development and related operations are subject to extensive federal, state and local statutes, rules, regulations, and other laws. Failure to comply with such laws can result in substantial penalties. The regulatory burden on the oil and gas industry increases our cost of doing business and affects our profitability.

#### ***MMS Regulations***

We conduct certain activities on federal oil and gas leases which the Minerals Management Service, or “MMS”, administers. The MMS grants leases through competitive bidding. These leases contain relatively standardized terms and require compliance with detailed MMS regulations and orders pursuant to The Outer Continental Shelf Lands Act (“OCSLA”). For example, for offshore operations, we must comply with the following MMS requirements:

- obtain MMS approval of exploration plans prior to the commencement of exploration operations;
- obtain MMS approval of development and production plans prior to the commencement of such operations;
- obtain an MMS permit prior to the commencement of drilling (in addition to permits which may be required from other agencies, such as the Coast Guard, the Army Corps of Engineers and the Environmental Protection Agency);
- comply with stringent MMS engineering and construction specifications applicable to offshore production facilities located on the Outer Continental Shelf (“OCS”);
- comply with MMS prohibitions or restrictions on the flaring or venting of natural gas, liquid hydrocarbons and oil; and
- comply with MMS regulations governing the plugging and abandonment of wells located offshore and the removal of all production facilities.

#### ***Bonding and Financial Responsibility Requirements***

In connection with our ownership or operation of oil and gas leases, we are required by governmental agencies, including the MMS, to obtain bonding or otherwise demonstrate financial responsibility at varying levels. These bonds may cover such obligations as plugging and abandonment of wells, removal and closure of related exploration and production facilities, and pollution liabilities. The costs of such bonding and financial responsibility requirements can be substantial, and we may not be able to obtain such bonds and/or otherwise demonstrate financial responsibility in all cases.

#### ***Regulation of Production***

Our oil and gas production operations are subject to state conservation laws and regulations, including:

- laws relating to the unitization or pooling of oil and gas properties;
- laws establishing the maximum rates of production from wells;
- laws regulating the spacing of wells;



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- laws regulating the plugging and abandonment of wells; and
- laws which otherwise regulate the operation of, and production from, both oil and gas wells.

Such laws may restrict the rate at which the wells in which we have an interest may produce oil or gas, with the result that the amount or timing of our revenues could be adversely affected.

### *Natural Gas Marketing*

FERC regulates the transportation and sale for resale of natural gas in interstate commerce pursuant to the NGA and the NGPA. Sales of our gas are currently not regulated and are made at market prices. However, in the past, the federal government has regulated the prices at which natural gas could be sold, and Congress could reenact price controls in the future.

### *Environmental Matters*

Our oil and gas exploration, development and related operations are subject to the same federal, state and local laws and regulations relating to the protection of the environment that are applicable to our LNG operations. See “LNG Receiving Terminal Development—Government Regulation—Environmental Matters.” In addition, our oil and gas exploration, development and related operations are subject to the following:

*NORM.* The disposal of wastes containing Naturally Occurring Radioactive Material, which are commonly generated during oil and gas production, is regulated under state law. Typically, wastes containing naturally occurring radioactive material can be managed on site or disposed of at facilities licensed to receive such waste at costs that are not expected to be material.

*Oil Pollution Act.* The federal Oil Pollution Act (“OPA”) requires owners and operators of facilities that could be the source of an oil spill into waters of the United States (a term defined to include rivers, creeks, wetlands and coastal waters) to adopt and implement plans and procedures to prevent any such oil spill. OPA also requires affected facility owners and operators to demonstrate that they have at least \$35 million in financial resources to pay the costs of cleaning up an oil spill and to compensate any parties damaged by an oil spill. Such financial assurances may be increased to as much as \$150 million if a formal assessment indicates such an increase is warranted.

## **Financial Information about Segments**

During the last three fiscal years, all of our revenues have resulted from our oil and gas exploration and development activities. For information about our segments’ revenues, profits and losses and total assets, see Note 16 in Notes to Consolidated Financial Statements.

## **Subsidiaries**

A substantial portion of our assets are held by or under our four wholly-owned operating subsidiaries: Cheniere LNG, Inc., Cheniere LNG Services, Inc., Cheniere Energy Operating Co., Inc. and Cheniere-Gryphon Management, Inc. We conduct most of our operations through one or more of these subsidiaries, including our operations relating to our development of an LNG receiving terminal business.

## **Employees**

We had 32 full-time employees as of February 27, 2004.

## RISK FACTORS

The following are some of the important factors that could affect our financial performance or could cause actual results to differ materially from estimates contained in our forward-looking statements. These important factors are not exclusive.

### **Risk Factors Related to Us as an Early Stage Company**

*We are subject to the expenses, difficulties and uncertainties generally associated with early stage companies.*

We have a limited operating history with respect to our oil and gas exploration activities, and we have not yet started operating any LNG receiving facilities. We face all of the risks inherent in the establishment and growth of any new business. From our inception, we have incurred losses and may continue to incur losses, depending on whether we generate sufficient revenue either from LNG receiving operations or from producing reserves acquired through acquisitions or drilling activities. For the past several years, we dedicated a significant portion of our investment capital toward the development of LNG receiving terminals rather than to our oil and gas exploration activities, and we do not anticipate that our LNG receiving operations will generate revenues before the second half of 2007. Additionally, we may be unable to implement and complete our business plan, and our business may be ultimately unsuccessful. These factors make evaluating our business and forecasting our future operating results difficult. Furthermore, any continued losses and any delays in the implementation or completion of our business plan may have a material adverse effect on our business, our results of operations, our financial condition and the market price of our common stock.

*We depend on key personnel and could be seriously harmed if we lost their services.*

We depend on our executive officers for various activities. We do not maintain key person life insurance policies on any of our personnel. Although we have agreements relating to compensation and benefits with certain of our executive officers, we do not have any employment contracts or other agreements with key personnel binding them to provide services for any particular term. The loss of the services of any of these individuals could seriously harm us. In addition, our future success will depend in part on our ability to attract and retain additional qualified personnel.

### **Risk Factors Related to Our LNG Receiving Terminal Development Business**

*The construction of LNG receiving facilities is subject to various development risks.*

We are involved in the development of several LNG receiving facilities. The construction of these projects is subject to the risks of cost overruns and delays. Key factors that may affect the timing and outcome of such projects include, but are not limited to: project approval by joint venture partners; identification of additional participants to reach optimum levels of participation; timely issuance of necessary permits, licenses and approvals by governmental agencies and third parties; sufficient project financing; unanticipated changes in market demand or supply; competition with similar projects; labor disputes; site difficulties; marine congestion; weather conditions; unforeseen events, such as explosions, fires and product spills; delays in manufacturing and delivery schedules of critical equipment and materials; resistance in the local community; local and general economic conditions; and commercial arrangements for pipelines and related equipment to transport and market LNG.

If completion of the LNG receiving facilities is delayed beyond the estimated development periods, the actual cost of completion may increase beyond the amounts currently estimated in our capital budget. A delay in completion of the LNG receiving facilities would also cause a delay in the receipt of revenues projected from operation of the facilities, which may cause our business, results of operations and financial condition to be substantially harmed. The completion of the LNG receiving facilities could also be impacted by the availability or construction of sufficient LNG vessels.

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***Failure to obtain approvals and permits from governmental and regulatory agencies with respect to the development of our LNG receiving terminal business could have a detrimental effect on our LNG projects and on our company.***

We are currently focusing our efforts and resources on developing our LNG receiving facilities. The transportation of LNG is highly regulated, and we have yet to obtain several governmental and regulatory approvals and permits required in order to complete and maintain our LNG projects. We cannot determine the amount of time it may take to obtain the approvals and permits necessary to proceed with the construction and operation of an LNG receiving terminal. We have no control over the outcome of the review and approval process. If we are unable to obtain the approvals and permits, we may not be able to recover our investment in the project. In addition, failure to obtain these approvals and permits may have a material adverse effect on our business, results of operations and financial condition.

***Failure of LNG to become a competitive factor in the U.S. oil and gas industry could have a detrimental effect on our ability to implement and complete our business plan.***

In the United States, due mainly to an abundant supply of natural gas, LNG has not historically been a major energy source. Furthermore, LNG may not become a competitive factor in the U.S. oil and gas industry. The failure of LNG to become a competitive supply alternative to domestic natural gas and other import alternatives may have a material adverse effect on our ability to implement and complete our business plan as well as our business, results of operations and financial condition.

***We may have difficulty obtaining enough customers to generate a sufficient amount of revenue to recover our expenses incurred to enter the LNG receiving facilities market.***

We anticipate that we will incur significant costs as we enter the LNG receiving facilities market and pursue customers by utilizing a variety of marketing methods. In order for us to recover these expenses, we must attract and retain a sufficient number of customers to our LNG receiving facilities.

We may experience difficulty attracting customers because we are a small company with no operating history in the LNG business. A major focus of our marketing efforts will be to convince customers that the terminal sites we are developing will be approved and that we will secure adequate financing for their construction. If our marketing strategy is not successful, our business, results of operations, and financial condition will be materially adversely affected.

***We are subject to fluctuations in energy prices or the supply of LNG that would be particularly harmful to the development of our LNG receiving terminal business because of its developmental stage.***

If LNG prices are higher than prices of domestically produced natural gas or natural gas derived from other sources, our ability to compete with such suppliers may be negatively impacted. In addition, in the event the supply of LNG is limited or restricted for any reason, our ability to profitably operate an LNG receiving facility could be materially impacted. Revenues generated by an LNG receiving terminal depend on the volume of LNG processed and the price of the natural gas produced, both of which can be affected by the price of natural gas and natural gas liquids.

### **Risk Factors Related to Our Exploration and Development Business**

***We are subject to significant exploration risks, including the risk that we may not be able to find or produce enough oil and gas to generate any profits.***

Our exploration activities involve significant risks, including the risk that we may not be able to find or produce enough oil and gas to generate any profits. The wells we drill may not discover any oil or gas. Further,

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there is no way to know in advance of drilling and testing whether any prospect will yield oil or gas in sufficient quantities to make money for us. In addition, we are highly dependent on seismic activity and the related application of new technology as a primary exploration methodology. This methodology, however, requires greater pre-drilling expenditures than traditional drilling strategies. Even when fully used and properly interpreted, 3D seismic data can only assist us in identifying subsurface reservoirs and hydrocarbon indicators, and will not allow us to determine conclusively if hydrocarbons will in fact be present and recoverable. If our exploration efforts are unsuccessful, our business, results of operations and financial condition will be substantially harmed.

***We may not be able to acquire the oil and gas leases we need to sustain profitable operations.***

In order to engage in oil and gas exploration in the areas covered by our 3D seismic data, we must first acquire rights to conduct exploration and recovery activities on such properties. We may not be successful in acquiring farm-outs (agreements whereby the owner of lease interests grants to a third party the right to earn an assignment of an interest in the lease, typically by drilling one or more wells), seismic permits, lease options, leases or other rights to explore for or recover oil and gas. Both the U.S. Department of the Interior and the States of Texas and Louisiana award oil and gas leases on a competitive bidding basis. Non-governmental owners of the onshore mineral interests within the area covered by our exploration program are not obligated to lease their mineral rights to us except where we have already obtained lease options. In addition, other major and independent oil and gas companies with financial resources significantly greater than ours may bid against us for the purchase of oil and gas leases. If we are unsuccessful in acquiring these leases, permits, options and other interests, the area covered by our 3D seismic data that could be explored through drilling will be significantly reduced, and our business, results of operations and financial condition will be substantially harmed.

***If we are unable to obtain satisfactory turnkey contracts, we may have to assume additional risks and expenses when drilling wells.***

We anticipate that any wells drilled in which we have an interest will be drilled by established industry contractors under turnkey contracts that limit our financial and legal exposure. Under a turnkey drilling contract, a negotiated price is agreed upon and the money placed in escrow. The contractor then assumes all of the risk and expense, including any cost overruns, of drilling a well to contract depth and completing any agreed upon evaluation of the wellbore. Upon performance of all these items, the escrowed money is released to the contractor.

Circumstances may arise, however, where a turnkey contract is not economically beneficial to us or is otherwise unobtainable from proven industry contractors. In such instances, we may decide to drill wells on a day-rate basis. Under a day-rate drilling contract, the operator pays an agreed sum for each day of drilling required to reach contract depth. All risk and expense of drilling a well to total depths lies with the operator in day-rate contracts. The drilling of such test wells would subject us to the usual drilling hazards such as cratering, explosions, uncontrollable flows of oil, gas or well fluids, fires, pollution and other environmental risks. We would also be liable for any cost overruns attributable to drilling problems that otherwise would have been covered by a turnkey contract. These liabilities, if incurred, may have a materially adverse impact on our business, results of operations and financial condition.

***If we are unsuccessful at marketing our oil and gas at commercially acceptable prices, our profitability will decline.***

Our ability to market oil and gas at commercially acceptable prices depends on, among other factors, the following:

- the availability and capacity of gathering systems and pipelines;
- federal and state regulation of production and transportation;

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- changes in supply and demand; and
- general economic conditions.

Our inability to respond appropriately to changes in these factors could negatively effect our profitability.

### ***Shortage of rigs, equipment, supplies or personnel may restrict our operations.***

Our industry is cyclical and, from time to time, there is a shortage of drilling rigs, equipment, supplies or personnel. During these periods, the costs and delivery times of rigs, equipment and supplies are substantially greater. In addition, demand for, and wage rates of, qualified drilling rig crews rises with increases in the number of active rigs in service. Shortages of drilling rigs, equipment or supplies could delay or restrict our exploration and development operations, which in turn could impair our financial condition and results of operations.

### ***We depend on industry partners and could be seriously harmed if they do not perform satisfactorily, which is usually not within our control.***

Because we have few employees and limited operating revenues, we are and will continue to be largely dependent on industry partners for the success of our oil and gas exploration projects. We could be seriously harmed if we fail to attract industry partners to participate in the drilling of prospects which we identify or if our industry partners do not perform satisfactorily on projects that affect us. We often have and will continue to have no control over factors that would influence the performance of our partners.

### ***There are numerous uncertainties inherent in estimating quantities of proved oil and gas reserves and future net cash flows.***

Numerous uncertainties, including those beyond our control, are inherent in estimating quantities of proved oil and gas reserves. Information included herein for 2003 relating to estimates of our proved reserves is based on reports prepared by Sharp Petroleum Engineering, Inc. Reserve engineering is a subjective process of estimating underground accumulations of oil and gas that cannot be measured in an exact manner. Estimates of economically recoverable oil and gas reserves and of future net cash flows may vary considerably from the actual results because of a number of variable factors and assumptions involved. These include:

- historical production from the area compared with production from other producing areas;
- the effects of regulation by governmental agencies;
- future oil and gas prices;
- operating costs;
- severance and excise taxes;
- development costs; and
- workover and remedial costs.

Therefore, the estimates of the quantities of oil and gas and the expected future net cash flows computed by different engineers or by the same engineers (but at different times) may vary significantly. The actual production, revenues and expenditures related to our reserves may vary materially from the engineers' estimates. In addition, we may make changes to our estimates of reserves and future net cash flows. These changes may be based on the following factors:

- production history;
- results of future development;

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- oil and gas prices;
- performance of counterparties under agreements to which we are a party; and
- operating and development costs.

Do not interpret the PV-10 values included in this Form 10-K as the current market value of our properties' estimated oil and gas reserves. According to the SEC, the PV-10 is generally based on prices and costs as of the date of the estimate. In contrast, the actual future prices and costs may be materially higher or lower. Actual future net cash flows may also be affected by the following factors:

- the amount and timing of actual production;
- the supply of, and demand for, oil and gas;
- the curtailment or increases in consumption by natural gas purchasers; and
- the changes in governmental regulations or taxation.

The timing in producing and the costs incurred in developing and producing oil and gas will affect the timing of actual future net cash flows from proved reserves. Ultimately, the timing will affect the actual present value of oil and gas. In addition, the SEC requires that we apply a 10% discount factor in calculating PV-10 for reporting purposes. This is not necessarily the most appropriate discount factor to apply because it does not take into account the interest rates in effect, the risks associated with us and our properties, or the oil and gas industry in general.

***Because of our lack of diversification, factors harming the oil and gas industry in general, including downturns in prices for oil and gas, would be especially harmful to us.***

We are an independent energy company and are not actively engaged in any other industry. Our revenues and results of operation are substantially dependent on the oil and gas industry in general and the prevailing prices for oil and gas in particular. Circumstances that harm the oil and gas industry in general will have an especially harmful effect on us. Oil and gas prices have been and are likely to continue to be volatile and subject to wide fluctuations in response to any of the following factors:

- relatively minor changes in the supply of and demand for oil and gas;
- political conditions in international oil producing regions;
- the extent of domestic production and importation of oil in relevant markets;
- the level of consumer demand;
- weather conditions;
- the competitive position of oil or gas as a source of energy as compared with other energy sources;
- the refining capacity of oil purchasers; and
- the effect of federal and state regulation on the production, transportation and sale of oil and gas.

It is likely that adverse changes in the oil and gas market or the regulatory environment would have an adverse effect on our business, results of operations and financial condition, including our ability to develop and implement our LNG project and to obtain capital from lending institutions, industry participants, private or public investors or other sources.

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### **Risk Factors Related to Our Business in General**

***Our future growth and profitability are highly dependent on the development of our LNG receiving terminal business and the success of our exploration program.***

Historically, the primary focus of our operations has been identifying drilling prospects, but in recent years we have focused on developing our LNG receiving facilities. Almost all of the assets on our balance sheet are represented by investments to date in our exploration program, including related seismic data. Our drilling activity in 1999 through 2003, to date, has established only limited proved reserves (oil and gas reserves that geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions). Furthermore, we have achieved only limited oil and gas production as of December 31, 2003. For the past several years, we dedicated a significant portion of our investment capital toward the development of LNG receiving terminals rather than to our oil and gas exploration activities, and we do not anticipate that our LNG receiving operations will generate operating revenues before 2007.

Our future growth and profitability depend heavily on the development of our LNG receiving facilities and the success of our exploration program in locating additional proved reserves and achieving additional oil and gas production. Failure to develop our LNG receiving facilities or to locate such additional reserves and achieve additional production may have a material adverse effect on our business, results of operations and financial condition.

***We experience intense competition in the energy industry, which may make it difficult for us to succeed.***

The energy industry is highly competitive. If we are unable to compete effectively, we will not succeed. A number of factors may give our competitors advantages over us. For example, most of our current and potential competitors have significantly greater financial resources and a significantly greater number of experienced and trained managerial and technical personnel than we do. In addition, the businesses of such competitors are in many cases more diversified than ours. We may not be able to compete effectively with such companies. Moreover, the energy industry competes with other industries in supplying the energy and fuel needs of industrial, commercial and other consumers. Increased competition causing excess capacity and depressed prices could have a substantially negative impact on our operating revenues.

***We may not be able to obtain additional financing on terms that are acceptable to us, which could harm our ability to conduct business.***

As of December 31, 2003, we had \$4,487,352 of current assets and working capital of \$155,526. In January 2004, we received net proceeds of \$13,884,750 from a private placement of 1,100,000 shares of our common stock, and we also received the remaining \$2,500,000 from Freeport LNG, which was payable pursuant to the sale of our 60% interest in the Freeport LNG project. In January and February 2004, we received net proceeds of \$1,309,559 related to the issuance of 557,056 shares of common stock pursuant to exercises of warrants and stock options. We may need additional capital for a number of purposes. If we are unable to obtain additional financing, it could significantly harm our ability to conduct our business, including our ability to construct LNG terminals and our ability to take advantage of opportunities that come from our exploration program. We will need substantial additional funds to execute our plan for developing and implementing an LNG receiving terminal business, including engineering, environmental, marine, regulatory, construction and legal work, including any such work involved in permitting and Federal Energy Regulatory Commission, or FERC, filings related to our development of the Corpus Christi and Sabine Pass LNG receiving terminals and related pipelines.

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### ***Obtaining additional capital may result in an adverse effect on our business.***

Additional capital could be obtained from a combination of funding sources, many of which may have a material adverse effect on our business, results of operations and financial condition. These potential funding sources include:

- cash flow from operating activities, which is sensitive to prices we receive for our oil and natural gas;
- borrowings from financial institutions, which may subject us to certain restrictive covenants, including covenants restricting our ability to raise additional capital or pay dividends;
- debt offerings, which would increase our leverage and add to our need for cash to service such debt;
- additional offerings of our equity securities, which would cause dilution of our common stock;
- sales of prospects generated by our exploration group, which would reduce future revenues from our exploration program;
- additional sales of interests in our LNG projects, which would reduce future revenues from LNG terminal operations; and
- arrangement of a business development loan from, or prepayment of terminal use fees by, prospective sellers or purchasers of LNG.

Our ability to raise additional capital will depend on our results of operations and the status of various capital and industry markets at the time such additional capital is sought. Accordingly, capital may not become available to us from any particular source or at all. Even if additional capital becomes available, it may not be on terms acceptable to us. Failure to obtain additional financing on acceptable terms may have a material adverse effect on our business, results of operations and financial condition.

### ***We are subject to significant operating hazards and uninsured risks, one or more of which may create significant liabilities for us.***

Our oil and gas operations are subject to all of the risks and hazards typically associated with the exploration for, and the development and production of, oil and gas. In accordance with customary industry practices, we intend to maintain insurance against some, but not all, of these risks and losses. Moreover, we may not be able to maintain adequate insurance in the future at rates we consider reasonable. The occurrence of a significant event not fully insured or indemnified against could seriously harm our business, results of operations and financial condition.

Risks in drilling operations include cratering, explosions, uncontrollable flows of oil, gas or well fluids, fires, pollution and other environmental risks. Our activities are also subject to perils specific to marine operations, such as capsizing, collision and damage or loss from severe weather. These hazards can cause personal injury and loss of life, severe damage to and destruction of property and equipment, pollution or environmental damage and suspension of operations.

In the event we complete the LNG receiving terminal, the operations of such facility will be subject to the inherent risks normally associated with those operations, including explosions, pollution, release of toxic substances, fires, hurricanes and adverse weather conditions and other hazards, each of which could result in damage to or destruction of our facilities or damage to persons and property. In addition, our operations face possible risks associated with acts of aggression on our assets. If any of these events were to occur, we could suffer substantial losses. We will maintain insurance against these types of risks to the extent and in the amounts that we believe are reasonable. Our financial condition and results of operations could be adversely affected if a significant event occurs that is not fully covered by insurance.



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### *Existing and future U.S. governmental regulation, taxation and price controls could seriously harm us.*

Oil and gas operations are subject to extensive federal, state and local laws and regulations that regulate the discharge of materials into the environment or otherwise relate to the protection of the environment.

Failure to comply with such rules and regulations can result in substantial penalties and may harm us. Present, as well as future, legislation and regulations could cause additional expenditures, restrictions and delays in our business, the extent of which cannot be predicted and which may require us to limit substantially, delay or cease operations in some circumstances. In most areas where we plan to conduct activities, there are statutory provisions regulating the production of oil and natural gas which may restrict the rate of production and adversely affect revenues. We plan to acquire oil and gas leases in the Gulf of Mexico, which, if acquired, would be granted by the federal government and administered by the U.S. Department of Interior Minerals Management Service. This department strictly regulates the exploration, development and production of oil and gas reserves in the Gulf of Mexico. Such regulations could seriously harm our operations in the Gulf of Mexico. The federal government regulates the interstate transportation of oil and natural gas, through the Federal Energy Regulatory Commission, or FERC. The FERC has in the past regulated the prices at which oil and gas could be sold. Federal reenactment of price controls or increased regulation of the transport of oil and natural gas could seriously harm us.

Our operations are also subject to extensive federal, state and local laws and regulations governing the discharge of oil and hazardous materials into the environment or otherwise relating to environmental protection. These laws and regulations may require the acquisition of a permit before drilling commences, restrict or prohibit the types, quantities and concentration of substances that can be released into the environment or wastes that can be disposed of in connection with drilling and production activities, prohibit drilling activities on certain lands lying within wetlands or other protected areas and impose substantial liabilities for pollution or releases of hazardous substances resulting from drilling and production operations. Failure to comply with these laws and regulations may also result in civil and criminal fines and penalties. Moreover, state and federal environmental laws and regulations may become more stringent.

Federal laws and regulations such as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, the Clean Air Act, or CAA, the Oil Pollution Act of 1990, or OPA, and the Clean Water Act, or CWA, and analogous state laws have continually imposed increasingly strict requirements for water and air pollution control, solid waste management and strict financial responsibility and remedial response obligations relating to oil spill protection. The cost of complying with such environmental legislation could have a general harmful effect on our operations.

In addition, the U.S. Department of Transportation through its Office of Pipeline Safety has regulations that govern all aspects of the design, construction, operation and maintenance of pipeline and LNG facilities. While these regulations have existed for several years, they are undergoing extensive changes to fully implement the 2002 amendment to the Natural Gas Pipeline Safety Act. These new regulations are expected to be published in early 2004 and will focus primarily on ensuring the integrity of pipeline systems by requiring periodic inspection of pipeline facilities and repair of any defects discovered in the inspection process. We anticipate that the new rules will result in changes in the way we evaluate and document our pipeline integrity process. However, until the regulations are finalized, we will not know the exact nature of the new requirements nor can we estimate additional compliance costs, if any.

Existing environmental laws and regulations may be revised or new laws and regulations may be adopted or become applicable to us. Revised or additional laws and regulations that result in increased compliance costs or additional operating restrictions, particularly if those costs are not fully recoverable from insurance or our customers, could have a material adverse effect on our business, financial condition or results of operations.

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### ***Some of our economic value is derived from our ownership interest in Gryphon, over which we exercise no day to day control.***

We own 100% of the outstanding common stock of Gryphon (9.3% effective ownership after giving effect to the potential conversion of Gryphon's preferred stock) and some of our value is derived from this investment. We do not exercise control over Gryphon and therefore do not have the ability to effect a change of control to Gryphon. Accordingly, Gryphon's management team could make business decisions without our consent that could impair the economic value of our investment in Gryphon.

### ***We may have to take actions that are disruptive to our business strategy to avoid registration under the Investment Company Act of 1940.***

The Investment Company Act of 1940, or Investment Company Act, requires registration for companies that are engaged primarily in the business of investing, reinvesting, owning, holding or trading in securities. A company may be deemed to be an investment company if it owns investment securities with a value exceeding 40% of the value of its total assets (excluding government securities and cash items) on an unconsolidated basis, unless an exemption or safe harbor applies. Securities issued by companies other than majority-owned subsidiaries are generally counted as investment securities for purposes of the Investment Company Act. We own a minority equity interest in certain entities that could be counted as investment securities. If the value of our minority interests in these entities exceeds 40% of the value of our total assets (excluding government securities and cash items), we could be considered an investment company in the future if we do not obtain an exemption or qualify for a safe harbor. As a result, fluctuations in the value, or the income and revenues attributable to us from our ownership of interests in companies we do not control could cause us to be deemed an investment company. Registration as an investment company would subject us to restrictions that are inconsistent with our fundamental business strategy. We may have to take actions, including buying, refraining from buying, selling or refraining from selling securities or other assets, contrary to what we would otherwise deem to be in our best interest in order to continue to avoid registration under the Investment Company Act.

### ***Terrorist attacks and continued hostilities in the Middle East or other sustained military campaigns may adversely impact our business.***

The terrorist attacks that took place in the United States on September 11, 2001 were unprecedented events that have created many economic and political uncertainties, some of which may materially adversely impact our business. The long-term impact that terrorist attacks and the threat of terrorist attacks may have on our business is not known at this time. Uncertainty surrounding continued hostilities in the Middle East or other sustained military campaigns may adversely impact our business in unpredictable ways.

### ***The concentration of our customers in the energy industry could increase our exposure to credit risk, which could result in losses.***

The concentration of our customers in the energy industry may impact our overall exposure to credit risk, either positively or negatively, in that customers may be similarly affected by prolonged changes in economic and industry conditions. We perform ongoing credit evaluations of our customers and do not generally require collateral in support of our trade receivables. We maintain reserves for credit losses and, generally, actual losses have been consistent with our expectations.

### **Item 3. LEGAL PROCEEDINGS**

We have been, and may in the future be, involved as a party to various legal proceedings, which are incidental to the ordinary course of business. Management regularly analyzes current information and as necessary, provides accruals for probable liabilities on the eventual disposition of these matters. In the opinion of

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management and legal counsel, as of December 31, 2003, there were no threatened or pending legal matters that would have a material adverse impact on our consolidated results of operations, financial position or cash flows.

### **Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

## **PART II**

### **Item 5. MARKET PRICE FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Our Stock has traded on the American Stock Exchange under the symbol LNG since March 24, 2003. Our common stock had previously traded on the American Stock Exchange under the symbol CXY from March 5, 2001 through March 23, 2003. The table below presents the high and low daily closing sales prices of the common stock, as reported by the American Stock Exchange, for each quarter during 2002 and 2003.

	<u>High</u>	<u>Low</u>
Three Months Ended		
March 31, 2002	1.50	0.93
June 30, 2002	1.50	0.82
September 30, 2002	1.30	0.90
December 31, 2002	1.35	0.80
Three Months Ended		
March 31, 2003	1.60	1.20
June 30, 2003	5.10	1.39
September 30, 2003	6.03	4.29
December 31, 2003	11.90	5.05

As of February 29, 2004, we had 18,659,994 shares of common stock outstanding held by approximately 4,200 beneficial owners.

We have never paid a cash dividend on our common stock. We currently intend to retain earnings to finance the growth and development of our business and do not anticipate paying any cash dividends on the common stock in the foreseeable future. Any future change in our dividend policy will be made at the discretion of our board of directors in light of our financial condition, capital requirements, earnings, prospects, and any restrictions under any credit agreements, as well as other factors the board of directors deems relevant.

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**Item 6. SELECTED FINANCIAL DATA**

Selected financial data set forth below are derived from our audited Consolidated Financial Statements for the periods indicated. The financial data should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our Consolidated Financial Statements and Notes thereto included elsewhere in this report.

	Year Ended December 31,				
	2003	2002	2001	2000	1999
Revenues	\$ 657,467	\$ 239,055	\$ 2,372,632	\$ 5,320,432	\$ 1,614,055
Production costs	—	90,038	420,242	388,637	128,859
Depreciation, depletion and amortization	428,680	368,562	1,243,828	3,371,383	1,361,644
Ceiling test write-down	—	—	5,126,248	—	—
General and administrative expenses					
LNG Terminal Development(1)	6,704,538	1,556,782	1,788,419	343,572	—
Other	2,542,399	1,918,580	2,503,544	1,595,087	1,908,805
Loss from operations	(9,018,150)	(3,694,907)	(8,709,649)	(378,247)	(1,785,253)
Interest income	2,740	7,733	18,578	23,916	31,530
Equity in net loss of affiliate(2)	—	(2,184,847)	(2,974,191)	(426,649)	—
Equity in net loss of limited partnership(3)	(4,471,529)	—	—	—	—
Gain on sale of properties	—	340,257	—	—	—
Gain on sale of LNG assets	4,760,000	—	—	—	—
Gain on sale of limited partnership interest	423,454	—	—	—	—
Minority Interest(4)	3,015,468	—	—	—	—
Loss on extinguishment of debt	—	(100,544)	—	—	—
Net loss	(5,288,017)	(5,632,308)	(11,665,262)	(780,980)	(1,753,723)
Net loss per share (basic and diluted)(5)	(0.36)	(0.42)	(0.89)	(0.07)	(0.27)
Weighted average shares outstanding (basic and diluted)(5)	14,771,700	13,297,393	13,035,256	10,732,678	6,449,104

	December 31,				
	2003	2002	2001	2000	1999
Cash	\$ 1,257,693	\$ 590,039	\$ 610,718	\$ 1,888,562	\$ 1,175,950
Working Capital	155,526	(1,413,235)	(530,242)	1,234,390	(3,290,245)
Oil and gas properties, proved, net	1,087,152	842,882	1,929,124	6,727,613	9,459,041
Oil and gas properties, unproved	18,047,802	16,751,347	16,236,962	18,253,731	20,648,923
Total assets	24,590,757	21,059,390	25,023,676	34,665,618	34,481,275
Total liabilities	5,331,826	3,262,055	1,874,401	1,604,410	6,735,537
Total stockholders' equity	19,138,899	17,797,335	23,149,275	33,061,208	27,745,738

- (1) The year ended 2002 includes \$1,740,426 in recoveries of general and administrative expenses reimbursable under the term of an agreement related to our sale of the Freeport LNG site, which closed in February 2003. See Note 7 to our Consolidated Financial Statements.
- (2) Effective January 1, 2003, we began accounting for this investment in Gryphon using the cost method of accounting. The amounts listed for 2002, 2001 and 2000 represent our equity in the net loss of Gryphon under the equity method of accounting. See Note 6 to our Consolidated Financial Statements.
- (3) Represents our equity in the net loss of Freeport LNG. See Note 7 to our Consolidated Financial Statements.

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- (4) Represents minority interest in the net loss of Corpus Christi LNG. See Note 8 to our Consolidated Financial Statements.
- (5) Net loss per share and weighted average shares outstanding have been restated to give effect to the one-for-four reverse stock split which was effective in October 2000.

### **Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

#### **General**

We are engaged primarily in the development of a liquefied natural gas, or LNG, receiving terminal business and related LNG business opportunities centered on the U.S. Gulf Coast. The LNG receiving terminal business consists of receiving deliveries of LNG from LNG ships, processing such LNG to return it to a gaseous state and delivering it to pipelines for transportation to purchasers. We are also engaged in oil and gas exploration, development and exploitation activities in the Gulf of Mexico.

#### **Results of Operations—Comparison of the Fiscal Years Ended December 31, 2003 and 2002**

*Overview*—Our financial results for the year ended December 31, 2003 reflect a loss of \$5,288,017, or \$0.36 per share (basic and diluted), compared to a loss of \$5,632,308 or \$0.42 per share (basic and diluted) in 2002. The major factors contributing to our loss in 2003 were: LNG receiving terminal development expenses of \$6,704,538 (which were offset by a \$3,015,468 minority interest in the operations of our Corpus Christi LNG partnership), our equity share of the loss in the Freeport LNG limited partnership of \$4,471,529 and other general and administrative expenses of \$2,542,399. These factors are offset by a \$4,760,000 gain on the sale of LNG assets and a \$423,454 gain on the sale of a limited partnership interest in the Freeport LNG terminal.

*LNG Terminal Development Activities*—Our principal focus in both 2003 and 2002 was the development of LNG receiving terminals. As a result, terminal development expenses represented a major part of our operating costs and expenses for both years. In 2003, we phased out our direct involvement in developing the Freeport, Texas, site, but we accelerated the schedule of terminal development at two new sites located near Sabine Pass, Louisiana, and near Corpus Christi, Texas. Accordingly, gross terminal development expenses, before any cost recoveries, were 103% higher in 2003 (\$6,704,538) than in 2002 (\$3,297,208).

In 2003, we formed a limited partnership to develop the Corpus Christi LNG terminal. We are the general partner, and we own a 67% limited partner interest. We recorded \$3,015,468 in terminal development expenses related to this site in 2003; however, this amount was completely offset by the minority interest of our 33% partner who provided funding for all development costs in 2003. The remainder of our 2003 terminal development expenses related to the Sabine Pass site, where we own 100% of the project.

In 2002, we incurred \$3,297,208 in terminal development expenses for the Freeport LNG terminal. We entered into an agreement in August 2002 to sell a 60% interest in the terminal in exchange for payments to us totaling \$5,000,000 over time and payments to others of up to \$9,000,000 for expenses, which were already incurred or are to be incurred in connection with the development of the Freeport LNG terminal. During 2002, \$1,740,426 in such development expenses were charged to the purchaser. This recovery reduced our terminal development expenses reported for 2002 to \$1,556,782.

In February 2003, our Freeport LNG terminal project was acquired by Freeport LNG in which we received a 40% limited partnership interest in addition to the consideration described above. In connection with the sale of LNG assets to Freeport LNG, we reported a gain of \$4,760,000. Furthermore, we sold a 10% interest in Freeport LNG in March 2003 for \$2,333,333, resulting in a gain of \$423,454. Throughout 2003, we received payments totaling \$2,500,000 from Freeport LNG, which amounts were recorded as a reduction to our investment in the partnership. In addition, our 30% limited partner interest in the operations of Freeport LNG resulted in our

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recording equity in the net loss of the partnership of \$4,471,529 for 2003. This non-cash loss reduced our investment in Freeport LNG to zero.

*Other General and Administrative Expenses*—Other general and administrative (“G&A”) expenses relate to our general corporate and other activities. These expenses increased \$623,819, or 33%, to \$2,542,399 in 2003 compared to \$1,918,580 in 2002. The principal components of G&A are employee compensation and contracted services, legal fees and travel. We expanded our staff from 13 to 17 throughout 2003 as we expanded our business. We incurred more legal expenses in connection with securities compliance filings and increased securities registration costs. We traveled more as we increased our profile among the investment community and as we developed an LNG trading venture based in Europe.

*Oil and Gas Activities*—Oil and gas revenues increased by \$418,412, or 175%, to \$657,467 in 2003 from \$239,055 in 2002 as a result of increased production volumes (123,494 Mcfe in 2003 compared with 94,441 Mcfe in 2002) and increased average natural gas prices of \$5.33 per Mcf in 2003 from \$2.58 per Mcf in 2002. We had production from 11 wells in 2003 as compared with six wells in 2002. We incurred no production costs in 2003 because all of our revenues were generated from non-cost bearing overriding royalty interests. Production costs in 2002 totaled \$90,038 and related to the early months of 2002 before we sold our cost-bearing working interests in oil and gas properties.

*Equity in Net Loss of Unconsolidated Affiliate*—On January 1, 2003, we began accounting for our interest in Gryphon on the cost method of accounting because we no longer had sufficient board representation to provide us with the opportunity to exert significant influence over the financial and operating policies of the company. In 2002, we accounted for our investment using the equity method of accounting, and our equity share of Gryphon’s losses was \$2,184,847.

### **Results of Operations—Comparison of the Fiscal Years Ended December 31, 2002 and 2001**

*Overview*—Our financial results for the year ended December 31, 2002 reflect a loss of \$5,632,308, or \$0.42 per share (basic and diluted), compared to a loss of \$11,665,262 or \$0.89 per share (basic and diluted) in 2001. The major factors contributing to our loss in 2002 were: LNG terminal development expenses of \$3,297,208 (offset by cost recoveries of \$1,740,426) for a net cost of \$1,556,782, other general and administrative expenses of \$1,918,580, and equity in loss of unconsolidated affiliate of \$2,184,847.

*LNG Terminal Development Activities*—Throughout 2002 and 2001, our operations were primarily focused on the development of a potential LNG terminal site near Freeport, Texas. Gross terminal development expenses, before any cost recoveries, incurred in 2002 (\$3,297,208) were 84% higher than in 2001 (\$1,788,419). The increased level of expenditures relates principally to the advancing stages of the project and the acceleration of work leading to the filing of an application with FERC in March 2003.

In August 2002, we entered into an agreement to sell a 60% interest in the Freeport LNG terminal in exchange for payments to us totaling \$5,000,000 and additional payments of up to \$9,000,000 for expenses which were already incurred or to be incurred later in connection with the development of the Freeport LNG terminal. During 2002, \$1,740,426 in such development expenses were charged to the purchaser. This recovery reduced our terminal development expenses reported for 2002 to \$1,556,782.

*Oil and Gas Activities*—Oil and gas revenues decreased to \$239,055 in 2002 from \$2,372,632 in 2001 as a result of decreased production volumes (94,441 Mcfe in 2002 compared with 558,422 Mcfe in 2001). The decline in production volumes primarily results from the sale of our two producing wells at West Cameron Block 49 in April 2002. Adding to the effect of declining production was a decrease in average gas prices to \$2.58 per Mcf in 2002 compared to \$4.48 per Mcf in the prior year. Production costs decreased 79% to \$90,038 in 2002 from \$420,242 in 2001.

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Depreciation, depletion and amortization (“DD&A”) decreased to \$368,562 in 2002 from \$1,243,828 in 2001 as a result of both the decline in our production volumes, described above, and a lower DD&A rate per unit (\$0.79 per Mcfe versus \$1.84 per Mcfe). Our DD&A rate declined due to our change in emphasis toward selling prospects for front-end fees plus carried interests, as opposed to direct participation in drilling costs, and due to the effect of our \$5,126,248 ceiling test write-downs recorded in 2001.

*Other General and Administrative Expenses*—G&A related to our general corporate and other activities, decreased \$584,964, or 23%, to \$1,918,580 in 2002 compared to \$2,503,544 in 2001. The major components of the decrease were in legal fees, investor relations expenses and franchise taxes. Legal fees were lower in 2002 because in 2001 they included costs related to the buyout of our partner’s interest in the seismic data set of the Cameron Project and a higher level of securities compliance filings and securities registration costs than in 2002. Our investor relations efforts in 2002 were less extensive than in 2001 when we made a concerted effort to communicate with the investment community about our completed transaction with Warburg to form our affiliate, Gryphon, and our new listing on the American Stock Exchange. Franchise taxes were lower in 2002 because we had a reverse stock split, which reduced our authorized shares from 120,000,000 shares to 40,000,000 during 2000.

*Equity in Loss of Unconsolidated Affiliate*—Equity in net loss of unconsolidated affiliate includes our share of the net loss of Gryphon, but also Gryphon’s preferred dividends in arrears. The amount we recognized for 2002 decreased to \$2,184,847 from \$2,974,191 in 2001 because during 2002 our recognition of these non-cash charges reduced our investment basis to zero. We did not reduce our basis below zero because we did not guarantee any obligations of Gryphon and were not committed to provide additional financial support to Gryphon.

### **Liquidity and Capital Resources**

Management expects that we will meet all of our liquidity requirements for the next twelve months through a combination of cash balances, collection of receivables, issuances of our debt or equity securities, issuances of common stock pursuant to exercises by the holders of existing warrants and options, sales of regas capacity in our planned LNG receiving terminals, sales of prospects generated by our exploration group, borrowings under our line of credit and cash flows from current operations. In the event that we are unable to obtain additional capital from one or more of these sources, our operations could be adversely affected.

At December 31, 2003, we had working capital of \$155,526. In January 2004, we received net proceeds of \$13,884,750 from a private placement of 1,100,000 shares of our common stock, and we also received the remaining \$2,500,000 from Freeport LNG, which was payable pursuant to the sale of our 60% interest in the Freeport LNG project. In January and February 2004, we received net proceeds of \$1,309,559 related to the issuance of 557,056 shares of common stock pursuant to exercises of warrants and stock options. The pro forma effect of these transactions, had they been consummated as of December 31, 2003, would have been to increase our working capital to \$17,849,835.

### ***Cash Flow from Operating Activities***

Net cash used in operations for the year ended December 31, 2003 totaled \$7,558,864, compared to net cash used in operations of \$2,764,325 in 2002. Because most of our resources were dedicated to the development of LNG receiving terminals in both 2002 and 2003, the main reason for the increase is that we were involved in the development of three LNG receiving terminals during 2003 as compared with only one terminal throughout most of 2002.

### ***Issuances of Common Stock***

Since our inception, the primary source of financing for our operating expenses, investments in our exploration program and investments in our development of LNG receiving terminals has been the sale of our

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equity securities. Through December 31, 2003, we have issued 16,488,187 shares of Cheniere common stock, generating net proceeds of \$43,462,992. During 2003 and 2001, we raised \$4,372,032 and \$493,329, respectively, net of offering costs, from the exchange or exercise of warrants, the exercise of stock options and the sale of Cheniere units (common stock and warrants) to accredited investors pursuant to Regulation D. Proceeds of the offerings were used for the development of LNG receiving terminals and for general corporate purposes.

We issued a total of 3,190,794 shares of common stock in 2003. In April 2003, we issued 750,000 shares of common stock pursuant to a contingent contractual obligation related to Cheniere's 2001 acquisition of an option to lease the Freeport LNG terminal site. In May 2003, we issued 792,892 shares of common stock to seventeen investors in a private placement made pursuant to Regulation D. The purchase price of the shares included cash of \$1,189,338 and the surrender of existing warrants to purchase 792,892 shares of our common stock. Offering expenses relating to the private placement were \$57,956. In August 2003, we issued 378,308 shares pursuant to a cashless exercise of warrants to purchase 700,000 shares. Throughout 2003, we issued a total of 1,082,094 shares pursuant to the exercise of warrants, resulting in net cash proceeds of \$2,948,385. We also issued 187,500 shares pursuant to the exercise of stock options, resulting in proceeds of \$292,265.

We did not sell any equity securities in 2002. In 2001, we issued a total of 750,000 shares of common stock. In February 2001, we issued to one stockholder 250,000 units at a cash purchase price of \$2.00 per unit, each unit consisting of one share of Cheniere common stock, \$.003 par value per share, and one warrant to purchase one-sixth of a share of Cheniere common stock. Proceeds of the offering, net of offering costs, were \$493,329. In June 2001, we issued 500,000 shares of Cheniere common stock as partial consideration for a lease option on an LNG receiving terminal site near Freeport, Texas.

### ***Bank Line of Credit***

On July 25, 2003, we established a \$5,000,000 line of credit with a commercial bank, with an initial borrowing base of \$2,000,000. The facility is secured by our assets, and its term runs through December 31, 2004. Borrowings bear interest at the bank's prime rate plus 2.5% per annum. In addition, a commitment fee of 0.5% per annum is assessed on the unused borrowing base capacity. A loan origination fee of 1% of the initial borrowing base was paid at closing. During 2003, we borrowed \$1,000,000 under the facility to acquire oil and gas leases. The balance was repaid in January 2004. We also used the facility to establish a standby letter of credit in the amount of \$865,142 in connection with our office lease.

### ***Short-Term Promissory Notes***

In February 2003, we executed a promissory note payable in the amount of \$225,000. The proceeds of the note were used to pay certain costs related to our 3-D seismic database. In July 2003, we repaid the note payable.

In June 2002, we received a \$750,000 payment for the sale of options to purchase an aggregate of up to a 20% interest in the Freeport LNG receiving terminal project. The payment was refundable, and repayment was secured by a note payable that we executed. In March 2003, an option was exercised and the note payable was canceled.

### ***Sale of Interest in Freeport LNG Terminal***

In August 2002, we entered into an agreement to sell a 60% interest in our planned LNG receiving facility near Freeport, Texas. In February 2003, our Freeport LNG project was acquired by Freeport LNG Development, L.P., in which we held a 40% interest. Effective March 1, 2003, we sold a 10% interest in Freeport LNG to an affiliate of Contango Oil & Gas Company for \$2,333,333 payable over time. We now retain a 30% interest in Freeport LNG. Freeport LNG paid us cash and assumed liabilities related to the Freeport LNG project for costs, which represented an aggregate amount of \$1,740,426, in addition to paying us a \$1,000,000 initial installment at



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closing. We received additional payments of \$1,500,000 in 2003 and \$2,500,000 in January 2004 from Freeport LNG.

In June 2003, Dow signed an agreement with Freeport LNG for the potential long-term use of the receiving terminal. Under the agreement, Dow will have regas rights to as much as 500 Mmcfd beginning with commercial start-up of the facility in 2007. In February 2004, Freeport LNG and Dow entered into a 20-year TUA providing for a firm commitment by Dow for the use of 250 Mmcfd of regas capacity and an option by Dow until August 2004 to acquire an additional 250 Mmcfd of regas capacity.

On December 21, 2003, ConocoPhillips and Freeport LNG signed an agreement under which ConocoPhillips will reserve one Bcf per day of regas capacity in the terminal at the Freeport facility. ConocoPhillips will also obtain a 50% interest in the general partner of Freeport LNG and provide a substantial majority of the financing to construct the facility, which is currently estimated to cost in excess of \$500 million. The ConocoPhillips transaction is expected to close in the spring of 2004, subject to completion of remaining documentation and satisfaction of closing conditions.

Because the initial development expenses of the Freeport LNG project are to be funded by the 60% limited partner in Freeport LNG, we have not been required to contribute any cash to Freeport LNG for development activities, nor do we anticipate being required to make capital contributions to Freeport LNG in the future.

### ***Corpus Christi LNG Terminal Funding Negotiations***

Under the terms of the limited partnership agreement of Corpus LNG, which was formed for our Corpus Christi LNG receiving terminal project, we contributed our technical expertise and know-how, and all of the work in progress related to the Corpus Christi project, in exchange for a 66.7% limited partner interest in Corpus LNG. BPU LNG committed to contribute its approximately 210-acre tract of land plus related easements and additional rights to an additional 400 acres, and cash to fund the first \$4,500,000 of Corpus LNG project expenses in exchange for a 33.3% limited partner interest. We will manage the project through the general partner interest held by our wholly-owned subsidiary.

### ***Exploration Funding***

On October 11, 2000, we completed a transaction with Warburg to fund our exploration program on approximately 8,800 square miles of seismic data in the Gulf of Mexico through a newly formed affiliated company, Gryphon. We contributed selected assets and liabilities in exchange for 100% of the common stock of Gryphon (36.8% effective interest after conversion of preferred stock) and \$2,000,000 in cash. Warburg contributed \$25,000,000 and received preferred stock, with an 8% cumulative dividend, convertible into 63.2% of Gryphon's common stock.

Cheniere and Warburg also have the option, in connection with subsequent capital calls made by Gryphon, to contribute up to an additional \$75,000,000 to Gryphon, proportionate to their respective ownership interests. Under the terms of the agreement governing these additional contributions, in the event that either we or Warburg elects not to participate in any additional contribution, the other investor has the option to purchase the non-participating investor's proportionate share. During 2001 and 2002, Gryphon made cash calls totaling \$60,000,000 against its capital commitment of \$75,000,000. Gryphon made no additional cash calls during 2003. We declined to participate in such cash calls, and Warburg elected to purchase our proportionate share of such cash calls. As a result, our ownership interest in Gryphon, after the potential effect of converting preferred stock into common stock, was reduced from 36.8% at December 31, 2000 to 9.3% as of December 31, 2003.

Prior to 2003, we accounted for our investment in Gryphon using the equity method of accounting. Effective January 1, 2003, we began accounting for our investment in Gryphon using the cost method of accounting because we lost the ability to exercise significant influence over Gryphon's operating and financial policies, as our representation on Gryphon's board of directors was reduced to one director.

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### *Seismic Reprocessing*

Between June 2000 and October 2000, we acquired licenses to approximately 6,800 miles of seismic data primarily in the shallow waters offshore Texas and also in the West Cameron area in the Gulf of Mexico (the "Offshore Texas Project Area") in separate transactions with Seitel Data Ltd., a division of Seitel Inc., and Jebco Seismic, L.P. We committed to reprocess all of the data from the Offshore Texas Project Area at a cost of approximately \$8,500,000, payable in installments beginning in October 2000 and continuing through the final delivery of reprocessed data, which was received in 2003. We have no existing or contingent liability related to seismic reprocessing as of December 31, 2003.

### *Sale of Licenses to Seismic Data*

In June and July 2001, we sold licenses to 6,800 square miles of seismic data to Gryphon for \$7,000,000. We received cash proceeds of \$853,197. Gryphon also assumed \$6,820,824 of our obligation to fund the reprocessing of the seismic data. In connection with the transactions, we also transferred 6,740 shares of Gryphon common stock to Gryphon. We retain one license to all of the data in the Offshore Texas Project Area.

### *Sale of Proprietary Seismic Data*

In September 2001, we acquired for \$500,000 all rights to our 228-square-mile proprietary seismic database from the industry partner with whom we had jointly acquired the data in 1996 and 1997. We subsequently sold the seismic data to a seismic marketing company for \$2,500,000 and a 50% share in licensing proceeds generated by the marketing company. In September 2002, we sold our remaining interest in future licensing proceeds to the marketing company for \$825,000. Proceeds from the September 2001 and 2002 sales of 3D seismic data were recorded as a reduction to our unproved oil and gas property costs. We retain a license to all of the seismic data for use in our exploration program.

### *Contractual Obligations*

We are committed to making cash payments in the future on certain of our contracts. We have no off-balance sheet debt or other such unrecorded obligations, and we have not guaranteed the debt of any other party. Below is a schedule of the future payments that we are obligated to make based on agreements in place as of December 31, 2003.

	Payments Due for Years Ended December 31,						
	Total	2004	2005	2006	2007	2008	Thereafter
Note Payable(1)	\$ 1,000,000	\$ 1,000,000	—	—	—	—	—
Operating Leases(2)	\$ 3,597,000	\$ 455,000	\$ 522,000	\$ 299,000	\$ 305,000	\$ 305,000	\$ 1,711,000
LNG Consulting Retainer(3)	\$ 100,000	\$ 100,000	—	—	—	—	—

(1) At December 31, 2003, we had borrowings of \$1,000,000 against our \$5,000,000 line of credit with a commercial bank. The \$1,000,000 was repaid in January 2004.

(2) A discussion of operating leases can be found at Note 15 of the Notes to Consolidated Financial Statements.

(3) In April 2001, we engaged research consultants in connection with the development of our LNG receiving terminal business. In connection with the February 2003 closing on the sale of the Freeport LNG terminal (described above), we agreed to make cash payments totaling \$200,000 and issued warrants to purchase 225,000 shares of Cheniere common stock at a price of \$2.50 per share to the consultants. A payment of \$100,000 was made in 2003, and the remaining amount will be paid in 2004.

Our obligations under LNG site options are renewable on an annual or semiannual basis. We may terminate our obligation at any time by electing not to renew or by exercising the option.

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### **Other Matters**

#### ***Critical Accounting Estimates and Policies***

The selection and application of accounting policies is an important process that has developed as our business activities have evolved and as the accounting rules have developed. Accounting rules generally do not involve a selection among alternatives, but involve an implementation and interpretation of existing rules, and the use of judgment, to the specific set of circumstances existing in our business. We make every effort to properly comply with all applicable rules on or before their adoption, and believe the proper implementation and consistent application of the accounting rules are critical. However, not all situations are specifically addressed in the accounting literature. In these cases, we must use our best judgment to adopt a policy for accounting for these situations. We accomplish this by analogizing to similar situations and the accounting guidance governing them, and often consult with our independent accountants about the appropriate interpretation and application of these policies. Our most critical accounting policy is our accounting under the full cost method of accounting. This area involves complex situations and a high degree of judgment either in the application and interpretation of existing literature or in the development of estimates that impact our financial statements.

#### ***Accounting for LNG Activities***

We have been in the preliminary stage of developing LNG receiving terminals. Substantially all costs related thereto have been expensed when incurred. Land costs associated with LNG terminal sites are capitalized. Costs of certain permits are capitalized as intangible LNG assets. We have also incurred costs related to options to purchase or lease land that may be used for potential LNG terminal sites.

#### ***Full Cost Method of Accounting***

We follow the full cost method of accounting for our oil and gas properties. Under this method, all productive and non-productive exploration and development costs incurred for the purpose of finding oil and gas reserves are capitalized. Such capitalized costs include lease acquisition, geological and geophysical work, delay rentals, drilling, completing and equipping oil and gas wells, together with internal costs directly attributable to property acquisition, exploration and development activities. Interest is capitalized on oil and gas properties not subject to amortization and in the process of development.

The costs of our oil and gas properties, including the estimated future costs to develop proved reserves, are depreciated using a composite units-of-production rate based on estimates of proved reserves. Investments in unproved properties and major development projects are not amortized until proved reserves associated with the projects can be determined or until impairment occurs. If the results of an assessment indicate that the properties are impaired, then the amount of the impairment is added to the capitalized costs to be amortized. Net capitalized costs are limited to a capitalization ceiling, calculated on a quarterly basis as the aggregate of the present value, discounted at 10%, of estimated future net revenues from proved reserves, based on current economic and operating conditions, plus the lower of cost or fair market value of unproved properties, less related income tax effects. At June 30, 2001 and September 30, 2001, our capitalized costs exceeded our capitalization ceiling, resulting in ceiling test write-downs totaling \$5,126,248 for the year.

Our allocation of seismic exploration costs to proved properties involves an estimate of the total reserves to be discovered in the project. This estimate includes a number of assumptions that we have factored into a four-year plan. Such factors include an estimate of the number of exploration prospects generated, prospect reserve potential, success ratios and ownership interests. We transfer unproved properties to proved properties based on a ratio of proved reserves discovered at a point in time to the estimate of total reserves to be discovered in our exploration program. It is reasonably possible, based on the results obtained from future drilling and prospect generation, that revisions to this estimate could affect our capitalization ceiling.

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### ***Oil and Gas Reserves***

The process of estimating quantities of proved reserves is inherently uncertain, and the reserve data included in this document are only estimates. Reserve engineering is a subjective process of estimating underground accumulations of natural gas and crude oil that cannot be measured in an exact manner. The process relies on interpretations of available geologic, geophysical, engineering and production data. The extent, quality and reliability of this technical data can vary. The process also requires certain economic assumptions, some of which are mandated by the SEC, such as oil and gas prices, drilling and operating expenses, capital expenditures, taxes and availability of funds. The accuracy of a reserve estimate is a function of the quality and quantity of available data, the interpretation of that data, the accuracy of various mandated economic assumptions and the judgment of the persons preparing the estimate.

Our proved reserve information included in this document for 2003 is based on estimates prepared by Sharp Petroleum Engineering, Inc. Estimates prepared by others may be higher or lower than our estimates.

Because these estimates depend on many assumptions, all of which may substantially differ from actual results, reserve estimates may be different from the quantities of natural gas and crude oil that are ultimately recovered. In addition, results of drilling, testing and production after the date of an estimate may justify material revisions to the estimate.

The present value of future net cash flows does not necessarily represent the current market value of our estimated proved natural gas and oil reserves. In accordance with SEC requirements, we base the estimated discounted future net cash flows from proved reserves on prices and costs on the date of the estimate. Actual future prices and costs may be materially higher or lower than the prices and costs as of the date of the estimate.

Our rate of recording DD&A is dependent upon our estimate of proved reserves. If the estimate of proved reserves declines, the rate at which we record DD&A expense increases, reducing net income. Such a decline may result from lower market prices, which may make it uneconomical to drill for and produce higher cost fields.

### ***New Accounting Pronouncements***

In January 2003, the FASB issued Interpretation No. 46, *Consolidation of Variable Interest Entities*, and subsequently revised the Interpretation in December 2003 (FIN 46R). This Interpretation of Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, addresses consolidation by business enterprises of variable interest entities, which have certain characteristics. As revised, FIN 46R is now generally effective for financial statements for interim or annual periods ending on or after March 15, 2004. We have not identified any variable interest entities. In the event a variable interest entity is identified, we do not expect the requirements of FIN 46R to have a material impact on our consolidated financial statements.

In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*. SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. An issuer is required to classify a financial instrument that is within the scope of this statement as a liability (or an asset in some circumstances). SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. We adopted the standard on July 1, 2003, and the adoption did not have a material impact on our consolidated financial statements.

### ***Other Recent Developments***

In July 2003, an issue was brought before the Financial Accounting Standards Board (FASB) regarding whether or not contract-based oil and gas mineral rights held by lease or contract ("mineral rights") should be recorded or disclosed as intangible assets. The issue presents a view that these mineral rights are intangible assets

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as defined in Statement of Financial Accounting Standards (SFAS) No. 141, "Business Combinations," and, therefore, should be classified separately on the balance sheet as intangible assets. SFAS No. 141 and SFAS No. 142, "Goodwill and Other Intangible Assets," became effective for transactions subsequent to June 30, 2001, with the disclosure requirements of SFAS No. 142 required as of January 1, 2002. SFAS No. 141 requires that all business combinations initiated after June 30, 2001 be accounted for using the purchase method and that intangible assets be disaggregated and reported separately from goodwill. SFAS No. 142 established new accounting guidelines for both finite lived intangible assets and indefinite lived intangible assets. Under the statement, intangible assets should be separately reported on the face of the balance sheet and accompanied by disclosure in the notes to financial statements. SFAS No. 142 does not apply to accounting utilized by the oil and gas industry as prescribed by SFAS No. 19, and is silent about whether or not its disclosure provisions apply to oil and gas companies. The Emerging Issues Task Force (EITF) has added the treatment of oil and gas mineral rights to an upcoming agenda, which may result in a change in how we classify these assets.

Should such a change be required, the amounts related to business combinations and major asset purchases that would be classified as "intangible undeveloped mineral interest" are immaterial as of December 31, 2003 and December 31, 2002. The amounts related to business combinations and major asset purchases that would be classified as "intangible developed mineral interest" are also immaterial as of December 31, 2003 and December 31, 2002.

### **ITEM 7A. *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK***

The development of our LNG receiving terminal business is based upon the foundational premise that prices of natural gas in the U.S. will be sustained at levels of \$3.00 per Mcf or more. Should the price of natural gas in the U.S. decline to sustained levels below \$3.00 per Mcf, our ability to develop and operate LNG receiving terminals could be significantly negatively affected.

We produce and sell natural gas, crude oil and condensate. As a result, our financial results can be affected as these commodity prices fluctuate widely in response to changing market forces. We have not entered into any derivative transactions.

In the normal course of business, our financial condition is exposed to minimal market risk associated with interest rate movements on our borrowings. A one percent increase or decrease in the levels of interest rates on variable rate debt would not result in a material change to our results of operations.

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ITEM 8. *FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA*

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CHENIERE ENERGY, INC. AND SUBSIDIARIES

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All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

**REPORT OF INDEPENDENT ACCOUNTANTS**

To the Board of Directors and  
Stockholders of Cheniere Energy, Inc:

We have audited the consolidated balance sheets of Cheniere Energy, Inc. and subsidiaries (the "Company") as of December 31, 2003 and 2002, and the related consolidated statements of operations, stockholders' equity and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We did not audit the financial statements of Freeport LNG Development, L.P. ("Freeport LNG"), an investment which, as discussed in note 7 to the consolidated financial statements, is accounted for by the equity method of accounting. The investment in Freeport LNG was zero as of December 31, 2003 and 2002, and the equity in its net loss was \$4,471,529 and zero, respectively, for the years then ended. We also did not audit the financial statements of Gryphon Exploration Company ("Gryphon"), an investment which, as discussed in Note 6 to the consolidated financial statements, has been, until January 1, 2003, accounted for by the equity method of accounting. The investment in Gryphon was zero as of December 31, 2003 and 2002, and the equity in its net loss was \$2,184,847 for the year ended December 31, 2002. The financial statements of Freeport LNG and Gryphon were audited by other auditors whose reports have been furnished to us, and our opinion, insofar as it relates to the amounts included for Freeport LNG and Gryphon, are based solely on the reports of the other auditors.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, based on our audits and the reports of other auditors, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Cheniere Energy, Inc. and subsidiaries at December 31, 2003 and 2002, and the consolidated results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States.

**MANN FRANKFORT STEIN & LIPP CPAs, L.L.P.**

Houston, Texas  
February 29, 2004

**REPORT OF INDEPENDENT ACCOUNTANTS**

To the Board of Directors and  
Stockholders of Cheniere Energy, Inc:

In our opinion, the consolidated statements of operations, stockholders' equity and cash flows for the year ended December 31, 2001 present fairly, in all material respects, the results of operations and cash flows of Cheniere Energy, Inc. and its subsidiaries for the year ended December 31, 2001, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 18 to the consolidated financial statements, the Company has experienced recurring losses from operations and has a negative working capital balance at December 31, 2001 that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 18. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**PRICEWATERHOUSECOOPERS LLP**

Houston, Texas  
March 29, 2002, except for Note 16 as to  
which the date is March 25, 2004



**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEET**

	December 31,	
	2003	2002
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and Cash Equivalents	\$ 1,257,693	\$ 590,039
Accounts Receivable		
Affiliates	1,000,000	—
Other	1,828,065	1,137,682
Prepaid Expenses	401,594	121,099
	<u>4,487,352</u>	<u>1,848,820</u>
<b>OIL AND GAS PROPERTIES, full cost method</b>		
Proved Properties, net	1,087,152	842,882
Unproved Properties, not subject to amortization	18,047,802	16,751,347
	<u>19,134,954</u>	<u>17,594,229</u>
LNG SITE COSTS	310,500	1,400,000
FIXED ASSETS, net	578,281	216,341
INVESTMENT IN UNCONSOLIDATED AFFILIATE	—	—
INVESTMENT IN LIMITED PARTNERSHIP	—	—
INTANGIBLE LNG ASSETS	79,670	—
	<u>\$ 24,590,757</u>	<u>\$ 21,059,390</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts Payable	\$ 1,984,314	\$ 1,828,267
Accrued Liabilities	1,347,512	683,788
Note Payable	1,000,000	750,000
	<u>4,331,826</u>	<u>3,262,055</u>
DEFERRED REVENUE	1,000,000	—
MINORITY INTEREST	120,032	—
COMMITMENTS AND CONTINGENCIES	—	—
<b>STOCKHOLDERS' EQUITY</b>		
Preferred Stock, \$.0001 par value		
Authorized: 5,000,000 shares		
Issued and Outstanding: none	—	—
Common Stock, \$.003 par value		
Authorized: 40,000,000 shares		
Issued and Outstanding: 16,488,187 shares at December 31, 2003 and 13,297,393 shares at December 31, 2002	49,465	39,892
Additional Paid-in-Capital	48,034,244	41,414,236
Accumulated Deficit	(28,944,810)	(23,656,793)
	<u>19,138,899</u>	<u>17,797,335</u>
<b>Total Liabilities and Stockholders' Equity</b>	<u>\$ 24,590,757</u>	<u>\$ 21,059,390</u>

The accompanying notes are an integral part of these financial statements.

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**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF OPERATIONS**

	Year Ended December 31,		
	2003	2002	2001
<b>Revenues</b>			
Oil and Gas Sales	\$ 657,467	\$ 239,055	\$ 2,372,632
<b>Total Revenues</b>	<b>657,467</b>	<b>239,055</b>	<b>2,372,632</b>
<b>Operating Costs and Expenses</b>			
Production Costs	—	90,038	420,242
Depreciation, Depletion and Amortization	428,680	368,562	1,243,828
Ceiling Test Write-down	—	—	5,126,248
General and Administrative Expenses			
LNG Terminal Development	6,704,538	1,556,782	1,788,419
Other	2,542,399	1,918,580	2,503,544
<b>General and Administrative Expenses</b>	<b>9,246,937</b>	<b>3,475,362</b>	<b>4,291,963</b>
<b>Total Operating Costs and Expenses</b>	<b>9,675,617</b>	<b>3,933,962</b>	<b>11,082,281</b>
Loss from Operations	(9,018,150)	(3,694,907)	(8,709,649)
Equity in Net Loss of Unconsolidated Affiliate	—	(2,184,847)	(2,974,191)
Equity in Net Loss of Limited Partnership	(4,471,529)	—	—
Gain on Sale of Proved Oil and Gas Properties	—	340,257	—
Gain on Sale of LNG Assets	4,760,000	—	—
Gain on Sale of Limited Partnership Interest	423,454	—	—
Loss on Early Extinguishment of Debt	—	(100,544)	—
Interest Income	2,740	7,733	18,578
<b>Loss Before Income Taxes and Minority Interest</b>	<b>(8,303,485)</b>	<b>(5,632,308)</b>	<b>(11,665,262)</b>
Provision for Income Taxes	—	—	—
<b>Loss Before Minority Interest</b>	<b>(8,303,485)</b>	<b>(5,632,308)</b>	<b>—</b>
Minority Interest	3,015,468	—	—
<b>Net Loss</b>	<b>\$ (5,288,017)</b>	<b>\$ (5,632,308)</b>	<b>\$ (11,665,262)</b>
<b>Net Loss Per Share—Basic and Diluted</b>	<b>\$ (0.36)</b>	<b>\$ (0.42)</b>	<b>\$ (0.89)</b>
<b>Weighted Average Number of Shares Outstanding—Basic and Diluted</b>	<b>14,771,700</b>	<b>13,297,393</b>	<b>13,035,256</b>

The accompanying notes are an integral part of these financial statements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance—December 31, 2000	12,547,393	\$ 37,642	\$ 39,382,789	\$ (6,359,223)	\$ 33,061,208
Issuances of Stock	750,000	2,250	1,647,750	—	1,650,000
Issuances of Warrants	—	—	110,000	—	110,000
Expenses Related to Offerings	—	—	(6,671)	—	(6,671)
Net Loss	—	—	—	(11,665,262)	(11,665,262)
Balance—December 31, 2001	13,297,393	\$ 39,892	\$ 41,133,868	\$ (18,024,485)	\$ 23,149,275
Issuances of Warrants	—	—	280,368	—	280,368
Net Loss	—	—	—	(5,632,308)	(5,632,308)
Balance—December 31, 2002	13,297,393	\$ 39,892	\$ 41,414,236	\$ (23,656,793)	\$ 17,797,335
Issuances of Stock	3,190,794	9,573	5,732,915	—	5,742,488
Issuances of Warrants	—	—	945,049	—	945,049
Expenses Related to Offerings	—	—	(57,956)	—	(57,956)
Net Loss	—	—	—	(5,288,017)	(5,288,017)
Balance—December 31, 2003	16,488,187	\$ 49,465	\$ 48,034,244	\$ (28,944,810)	\$ 19,138,899

The accompanying notes are an integral part of these financial statements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**

	Year Ended December 31,		
	2003	2002	2001
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net Loss	\$ (5,288,017)	\$ (5,632,308)	\$ (11,665,262)
Adjustments to Reconcile Net Loss to Net Cash Used In Operating Activities:			
Depreciation, Depletion and Amortization	428,680	368,562	1,243,828
Ceiling Test Write-down	—	—	5,126,248
Non-Cash Expense	(3,636)	(32,649)	380,000
Gain on Sale of Proved Oil and Gas Properties	—	(340,257)	—
Loss on Early Extinguishment of Debt	—	100,544	—
Equity in Net Loss of Unconsolidated Affiliate	—	2,184,847	2,974,191
Equity in Net Loss of Limited Partnership	4,471,529	—	—
Gain on Sale of LNG Assets	(4,760,000)	—	—
Gain on Sale of Limited Partnership Interest	(423,454)	—	—
Minority Interest	(3,015,468)	—	—
Changes in Operating Assets and Liabilities			
Other Accounts Receivable	229,747	(752,648)	591,672
Prepaid Expenses	(482,428)	(27,786)	14,818
Accounts Payable and Accrued Liabilities	1,284,183	1,367,370	(877,772)
<b>NET CASH USED IN OPERATING ACTIVITIES</b>	<b>(7,558,864)</b>	<b>(2,764,325)</b>	<b>(2,212,277)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Purchases of Fixed Assets	(340,837)	(14,506)	(407,817)
Oil and Gas Property Additions	(2,514,357)	(1,430,472)	(4,343,705)
Net Proceeds from Sale of Proved Oil and Gas Properties	—	2,235,365	—
Sale of Interest in Oil and Gas Prospects	391,350	628,259	2,039,429
Sale of Oil and Gas Seismic Data	—	825,000	3,353,197
LNG Site Costs	—	(250,000)	(200,000)
Purchase of Intangible LNG Assets	(79,670)	—	—
Sale of LNG Assets	1,873,000	—	—
Sale of Limited Partnership Interest	700,000	—	—
<b>NET CASH PROVIDED BY INVESTING ACTIVITIES</b>	<b>29,486</b>	<b>1,993,646</b>	<b>441,104</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from Issuances of Notes Payable	1,225,000	1,250,000	—
Repayment of Note Payable	(225,000)	(500,000)	—
Sale of Common Stock	4,429,988	—	500,000
Offering Costs	(57,956)	—	(6,671)
Partnership Contributions by Minority Owner	2,825,000	—	—
<b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>	<b>8,197,032</b>	<b>750,000</b>	<b>493,329</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>667,654</b>	<b>(20,679)</b>	<b>(1,277,844)</b>
CASH AND CASH EQUIVALENTS—BEGINNING OF YEAR	590,039	610,718	1,888,562
<b>CASH AND CASH EQUIVALENTS—END OF YEAR</b>	<b>\$ 1,257,693</b>	<b>\$ 590,039</b>	<b>\$ 610,718</b>

The accompanying notes are an integral part of these financial statements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE 1—ORGANIZATION AND NATURE OF OPERATIONS**

Cheniere Energy, Inc., a Delaware corporation, is a Houston-based company engaged primarily in the development of a liquefied natural gas (“LNG”) receiving terminal business and related LNG business opportunities centered on the U.S. Gulf Coast. The terms Cheniere and Company refer to Cheniere Energy, Inc. and its subsidiaries. Cheniere is also engaged in oil and gas exploration, development and exploitation activities in the Gulf of Mexico.

**NOTE 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

The consolidated financial statements include the accounts of Cheniere Energy, Inc. and its majority-owned subsidiaries. Cheniere also holds ownership interests in entities that are accounted for under the equity method and cost method of accounting. All significant intercompany accounts and transactions have been eliminated in consolidation. Certain items in the prior year financial statements have been reclassified to conform with the 2003 presentation.

**LNG Activities**

The Company has been in the preliminary stage of developing LNG receiving terminals. Substantially all costs related thereto have been expensed when incurred. Land costs associated with LNG terminal sites are capitalized. Costs of certain permits are capitalized as intangible LNG assets. Cheniere has also incurred costs related to options to purchase or lease land that may be used for potential LNG terminal sites.

**Oil and Gas Properties**

The Company follows the full cost method of accounting for its oil and gas properties. Under this method, all productive and nonproductive exploration and development costs incurred for the purpose of finding oil and gas reserves are capitalized. Such capitalized costs include lease acquisition, geological and geophysical work, delay rentals, drilling, completing and equipping oil and gas wells, together with internal costs directly attributable to property acquisition, exploration and development activities. Interest is capitalized on oil and gas properties not subject to amortization and in the process of development. The Company capitalized interest totaling \$41,107, (\$42,261) and \$165,813 and general and administrative expenses, net of reimbursements, totaling \$976,000, \$829,000 and \$782,000 for the years 2003, 2002 and 2001, respectively. Capitalized interest for 2002 was negative due to a refund of interest that was paid in 2001.

The costs of the Company’s oil and gas properties, including the estimated future costs to develop proved reserves, are depreciated using a composite units-of-production rate based on estimates of proved reserves. Investments in unproved properties and major development projects are not amortized until proved reserves associated with the projects can be determined or until impairment occurs. If the results of an assessment indicate that the properties are impaired, then the amount of the impairment is added to the capitalized costs to be amortized. Net capitalized costs are limited to a capitalization ceiling, calculated on a quarterly basis as the aggregate of the present value, discounted at 10%, of estimated future net revenues from proved reserves, based on current economic and operating conditions, plus the lower of cost or fair market value of unproved properties, less related income tax effects.

The Company’s allocation of seismic exploration costs between proved and unproved properties involves an estimate of the total reserves to be discovered in the Company’s exploration program. This estimate includes a

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

number of assumptions that Cheniere has factored into a four-year plan. Such factors include an estimate of the number of exploration prospects generated, prospect reserve potential, success ratios and ownership interests. The Company transfers unproved properties to proved properties based on a ratio of proved reserves discovered at a point in time to the estimate of total reserves to be discovered in Cheniere's exploration program. It is reasonably possible, based on the results obtained from future drilling and prospect generation, that revisions to this estimate could affect the Company's capitalization ceiling.

Sales of proved and unproved properties are accounted for as adjustments of capitalized costs with no gain or loss recognized, unless such adjustments would significantly alter the relationship between capitalized costs and proved oil and gas reserves.

In July 2003, an issue was brought before the Financial Accounting Standards Board (FASB) regarding whether or not contract-based oil and gas mineral rights held by lease or contract ("mineral rights") should be recorded or disclosed as intangible assets. The issue presents a view that these mineral rights are intangible assets as defined in Statement of Financial Accounting Standards (SFAS) No. 141, "Business Combinations," and, therefore, should be classified separately on the balance sheet as intangible assets. SFAS No. 141 and SFAS No. 142, "Goodwill and Other Intangible Assets," became effective for transactions subsequent to June 30, 2001, with the disclosure requirements of SFAS No. 142 required as of January 1, 2002. SFAS No. 141 requires that all business combinations initiated after June 30, 2001 be accounted for using the purchase method and that intangible assets be disaggregated and reported separately from goodwill. SFAS No. 142 established new accounting guidelines for both finite lived intangible assets and indefinite lived intangible assets. Under the statement, intangible assets should be separately reported on the face of the balance sheet and accompanied by disclosure in the notes to financial statements. SFAS No. 142 does not apply to accounting utilized by the oil and gas industry as prescribed by SFAS No. 19, and is silent about whether or not its disclosure provisions apply to oil and gas companies. The Emerging Issues Task Force (EITF) has added the treatment of oil and gas mineral rights to an upcoming agenda, which may result in a change in how Cheniere classifies these assets.

Should such a change be required, the amounts related to business combinations and major asset purchases that would be classified as "intangible undeveloped mineral interest" are immaterial as of December 31, 2003 and December 31, 2002. The amounts related to business combinations and major asset purchases that would be classified as "intangible developed mineral interest" are also immaterial as of December 31, 2003 and December 31, 2002.

**Revenue Recognition**

Revenues from the sale of oil and gas production are recognized upon passage of title, net of royalty interests. When sales volumes differ from the Company's entitled share, an underproduced or overproduced imbalance occurs. To the extent an overproduced imbalance exceeds the Company's share of the remaining estimated proved natural gas reserves for a given property, the Company records a liability. At December 31, 2003 and 2002, the Company had no gas imbalances.

**Fixed Assets**

Fixed assets are recorded at cost. Repairs and maintenance costs are charged to operations as incurred. Depreciation is computed using the straight-line method over their estimated useful lives, which range from two to five years. Upon retirement or other disposition of fixed assets, the cost and related accumulated depreciation is removed from the accounts and the resulting gains or losses are recorded.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Offering Costs**

Offering costs consist primarily of placement fees, professional fees and printing costs. These costs are charged against the related proceeds from the sale of common stock in the periods in which they occur or charged to expense in the event of a terminated offering.

**Income Taxes**

Provisions for income taxes are based on taxes payable or refundable for the current year and deferred taxes on temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements. Deferred tax assets and liabilities are included in the financial statements at currently enacted income tax rates applicable to the period in which the deferred tax assets and liabilities are expected to be realized or settled as prescribed in SFAS No. 109, *Accounting for Income Taxes*. As changes in tax laws or rates are enacted, deferred tax assets and liabilities are adjusted through the current period's provision for income taxes. A valuation allowance is provided for deferred tax assets if it is more likely than not that such asset will not be realizable.

**Stock-Based Compensation**

SFAS No. 123, *Accounting for Stock-Based Compensation*, encourages, but does not require, companies to record compensation cost for stock-based employee compensation plans at fair value. In December 2002, the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure—an amendment of FASB Statement No. 123*, to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. The statement also amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based compensation and the effect of the method used on reported results.

The Company has chosen to continue to account for stock-based compensation issued to employees using the intrinsic value method prescribed in Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations. Accordingly, compensation cost for stock options is measured as the excess, if any, of the quoted market price of the Company's stock at the date of the grant over the amount an employee must pay to acquire the stock. The Company grants options at or above the market price of its common stock at the date of each grant.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The fair value of options is calculated using the Black-Scholes option-pricing model. Had the Company adopted the fair value method of accounting for stock based compensation, compensation expense would have been higher, and net loss and net loss attributable to common shareholders would have increased for the periods presented. No change in cash flows would occur. The effects of applying SFAS No. 123 in this pro forma disclosure are not indicative of future amounts.

	Year Ended December 31,		
	2003	2002	2001
Net loss as reported	\$ (5,288,017)	\$ (5,632,308)	\$ (11,665,262)
Deduct:			
Total stock based employee compensation expense determined under fair value based method for all awards, net of related income tax	(966,795)	(607,766)	(427,575)
Pro forma net loss	\$ (6,254,812)	\$ (6,240,074)	\$ (12,092,837)
Net Loss Per Share			
Basic—as reported	\$ (0.36)	\$ (0.42)	\$ (0.89)
Basic—pro forma	(0.42)	(0.47)	(0.93)
Diluted—as reported	(0.36)	(0.42)	(0.89)
Diluted—pro forma	(0.42)	(0.47)	(0.93)

The weighted average fair value of warrants and options granted as employee compensation during 2003, 2002 and 2001 was \$1.44, \$1.20 and \$0.76 respectively. The fair values were determined using the Black-Scholes option-pricing model with the following weighted average assumptions, and a forfeiture rate that is assumed to be negligible:

	Year Ended December 31,		
	2003	2002	2001
Dividend yield	0.0%	0.0%	0.0%
Weighted average volatility	107.5%	107.8%	84.3%
Risk-free interest rate	3.0%	2.9%	3.5%
Expected lives of options	4.0 years	4.0 years	4.0 years

**Earnings (Loss) Per Share**

Earnings (loss) per share (“EPS”) is computed in accordance with the requirements of SFAS No. 128, *Earnings Per Share*. Basic EPS excludes dilution and is computed by dividing net income (loss) by the weighted average number of shares outstanding during the period. Diluted EPS reflects potential dilution and is computed by dividing net income by the weighted average number of common shares outstanding during the period increased by the number of additional common shares that would have been outstanding if the potential common shares had been issued. Potential dilutive common stock equivalents include stock options from employee benefit plans and warrants to purchase common stock. Basic and diluted EPS for all periods presented are the same since the effect of the Company’s options and warrants is antidilutive to its net loss per share under SFAS No. 128. Stock options and warrants representing securities that could potentially dilute basic EPS in the future that were not included in the fully diluted computation because they would have been anti-dilutive for the years 2003, 2002 and 2001 were 3,259,583, 4,577,132 and 4,591,399, respectively. No adjustments were made to reported net loss in the computation of EPS.



**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**Cash Equivalents**

The Company classifies all investments with original maturities of three months or less as cash equivalents.

**Fair Value of Financial Instruments**

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and notes payable approximate fair value because of the short maturity of those instruments.

**Commodity Price Risk**

The Company produces and sells natural gas, crude oil and condensate. As a result, the Company's financial results can be affected as these commodity prices fluctuate widely in response to changing market forces. The Company has not entered into any hedging transactions. The Company's market risk with respect to its variable-rate, short-term note payable is considered to be immaterial due to the short-term nature of this instrument.

**Concentration of Credit Risk**

All of the Company's revenues are attributable to overriding royalty interests in properties operated by two companies. These companies sell Cheniere's royalty share of production for Cheniere, pay the associated severance taxes, and remit the balance to Cheniere. The Company's products are commodities and have a readily available market for sale.

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires that the Company make estimates and assumptions that affect the amounts reported in the financial statements and the accompanying notes. The most significant estimate pertains to proved oil and gas reserve volumes. Actual results could differ from those estimates.

**New Accounting Pronouncements**

In January 2003, the FASB issued Interpretation No. 46, *Consolidation of Variable Interest Entities*, and subsequently revised the Interpretation in December 2003 (FIN 46R). This Interpretation of Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, addresses consolidation by business enterprises of variable interest entities, which have certain characteristics. As revised, FIN 46R is now generally effective for financial statements for interim or annual periods ending on or after March 15, 2004. We have not identified any variable interest entities. In the event a variable interest entity is identified, we do not expect the requirements of FIN 46R to have a material impact on our consolidated financial statements.

In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*. SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. An issuer is required to classify a financial instrument that is within the scope of this statement as a liability (or an asset in some circumstances). SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. We adopted the standard on July 1, 2003, and the adoption did not have a material impact on our consolidated financial statements.

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**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**NOTE 3—ACCRUED LIABILITIES**

Accrued liabilities consist of the following:

	December 31,	
	2003	2002
Taxes other than income	\$ 36,986	\$ 42,611
Accrued LNG costs	1,183,191	391,177
Accrued oil and gas property costs	—	250,000
Other accrued liabilities	127,335	—
Accrued liabilities	<u>\$ 1,347,512</u>	<u>\$ 683,788</u>

**NOTE 4—FIXED ASSETS**

Fixed assets consist of the following:

	December 31,	
	2003	2002
Furniture and fixtures	\$ 209,514	\$ 48,618
Computers and office equipment	524,359	303,151
Other	409,157	263,936
	<u>1,143,030</u>	<u>615,705</u>
Less accumulated depreciation	(564,749)	(399,364)
Fixed assets, net	<u>\$ 578,281</u>	<u>\$ 216,341</u>

Depreciation expense related to the Company's fixed assets totaled \$165,385, \$185,396 and \$197,789 for the years ended December 31, 2003, 2002 and 2001, respectively.

**NOTE 5—OIL AND GAS PROPERTIES**

Investments in oil and gas properties consist of the following:

	December 31,	
	2003	2002
Oil and gas properties:		
Proved	\$ 1,223,020	\$ 857,388
Unproved	18,047,802	16,751,347
	<u>19,270,822</u>	<u>17,608,735</u>
Less accumulated depreciation, depletion and amortization	(135,868)	(14,506)
	<u>\$ 19,134,954</u>	<u>\$ 17,594,229</u>

Depreciation, depletion and amortization of oil and gas property costs totaled \$121,362, \$74,566 and \$1,029,239 for the years ended December 31, 2003, 2002 and 2001, respectively. Depreciation, depletion and amortization per equivalent Mcf (using an Mcf-to-barrel conversion factor of 6 to 1) was \$0.98, \$0.79 and \$1.84 for the years ended December 31, 2003, 2002 and 2001, respectively.

Costs incurred for unproved oil and gas properties were \$2,514,357 in 2003 and \$2,813,370 in 2002. The Company believes that unproved property costs will be evaluated within four years.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

At June 30, 2001 and September 30, 2001, the Company's capitalized costs exceeded its capitalization ceiling, resulting in ceiling test write-downs totaling \$5,126,248 for the year ended December 31, 2001.

The Company has made substantial investments in acquiring, processing and reprocessing its seismic databases covering a 6,800-square-mile project area offshore Texas and Louisiana and a 228-square-mile project area onshore and offshore Louisiana. The costs of these projects become subject to amortization on a ratable basis as the oil and gas reserves expected to be recovered from the projects are discovered. The Company began drilling prospects identified within its seismic databases in 1999, but did not participate in the drilling of any wells in 2000, 2001, 2002 or 2003. The Company did, however, have overriding royalty interests in wells drilled by others during these periods. Interpretation of this data and related prospect generation is ongoing.

In September 2001, Cheniere paid \$500,000 to acquire all rights to its 228-square-mile proprietary seismic database from the industry partner with whom it had jointly owned the data since 1996. Concurrent with this acquisition, Cheniere sold the seismic data to a seismic marketing company for \$2,500,000 and a 50% share in licensing proceeds generated by the marketing company. In September 2002, Cheniere sold its remaining interest in future licensing proceeds to the marketing company for \$825,000. Proceeds from the September 2001 and 2002 sales of 3D seismic data were recorded as a reduction to the Company's unproved oil and gas property costs. Cheniere retains a license to all of the seismic data for use in its exploration program.

In April 2002, the Company sold all of its proved working interests in oil and gas properties for \$2,235,365. A gain of \$340,257 was recorded on the sale.

**NOTE 6—INVESTMENT IN UNCONSOLIDATED AFFILIATE**

Prior to January 1, 2003, Cheniere accounted for its investment in Gryphon Exploration Company ("Gryphon") using the equity method of accounting because its participation on the Gryphon board of directors provided it with the ability to exercise significant influence over the operating and financial policies of Gryphon. In December 2002, the extent of such influence was diminished when one of the two Cheniere-appointed representatives on the Gryphon board of directors resigned his position as an officer of Cheniere. Accordingly, effective January 1, 2003, Cheniere began accounting for its investment in Gryphon using the cost method of accounting. As of December 31, 2002, Warburg, Pincus Equity Partners, L.P. ("Warburg") had invested \$85,000,000 in Gryphon convertible preferred stock. If Warburg had converted its investment to common stock as of such date, Cheniere's ownership interest would have been 9.3%. This effective percent ownership remains unchanged as of December 31, 2003.

Cheniere began engaging in a series of transactions related to Gryphon in 2000. On October 11, 2000, Cheniere completed a transaction with Warburg to fund its exploration program on approximately 8,800 square miles of seismic data in the Gulf of Mexico (the "Louisiana Data Set") through a newly-formed affiliated company, Gryphon. Cheniere contributed selected assets and liabilities in exchange for 100% of the common stock of Gryphon (36.8% voting interest after conversion of preferred stock) and \$2,000,000 in cash. Such assets included: the Louisiana Data Set, certain offshore leases, a prospect then being drilled, its exploration agreement with an industry partner and certain other assets and liabilities. The net book value of the assets and liabilities contributed was \$7,065,919, which consisted of assets of \$9,115,963 (primarily unproved oil and gas property) and liabilities of \$2,050,044 (primarily accounts payable). Warburg contributed \$25,000,000 and received preferred stock, with an 8% accrued dividend, convertible into 63.2% of Gryphon's common stock. Cheniere accounted for the contribution of net assets at its historical cost, whereby the net amount of such assets and liabilities less the \$2,000,000 in cash was reclassified to investment in affiliate. No gain or loss was recognized at the time of contribution, primarily due to Cheniere's commitment to provide additional funding described above and due to the uncertainty of realization of the carrying value of the contributed unproved oil and gas properties.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Cheniere and Warburg also have the option, in connection with subsequent capital calls made by Gryphon, to contribute up to an additional \$75,000,000 to Gryphon, proportionate to their respective ownership interests. Under the terms of the agreement governing these additional contributions, in the event that either Cheniere or Warburg elects not to participate in any additional contribution, the other investor has the option to purchase the non-participating investor's proportionate share. Assuming (i) that Gryphon makes subsequent capital calls for an aggregate of \$75,000,000, (ii) that Cheniere elects not to participate in any of the capital calls and (iii) that Warburg elects to purchase all of Cheniere's proportionate share, and giving effect to Cheniere's sale to Gryphon of 6,740 shares of Gryphon common stock in July 2001 and its sale to Gryphon of 51,400 shares of Gryphon common stock in March 2002 (see Note 6), the Company's effective interest in Gryphon, after giving effect to the conversion of Gryphon's preferred stock, would be reduced to 8.0%.

There were no cash calls in 2003. However, during 2002 and 2001, Gryphon made cash calls totaling \$60,000,000. Cheniere declined to participate in such cash calls, and Warburg elected to purchase all of Cheniere's proportionate share of such cash calls. Also during 2001, Cheniere transferred 6,740 shares of Gryphon common stock to Gryphon in connection with the sale of licenses to certain seismic data. In March 2002, Cheniere sold 51,400 shares of its Gryphon common stock to Gryphon, subject to certain repurchase options (discussed below). As a result of these transactions, Cheniere's ownership interest in Gryphon was reduced to 9.3% as of December 31, 2002.

In connection with the seismic license contributed to Gryphon upon its formation, Cheniere entered into an agreement with the third party issuer of the license. The agreement provided that Cheniere would pay a transfer fee to the third party in an aggregate amount of up to \$2,500,000. Such transfer fee was contingent upon Gryphon's completion of up to ten successful wells during the license period and within the license area. Cheniere's existing and contingent obligations under this agreement were fully discharged in March 2002 in connection with its sale of 51,400 shares of Gryphon common stock to Gryphon and the related assumption by Gryphon of these obligations.

During 2002, as a result of Gryphon's cumulative losses and preferred dividend arrearages, Cheniere's basis of its investment in Gryphon was reduced to zero, but not below zero, because Cheniere does not guarantee any obligations of Gryphon and is not committed to provide additional financial support to Gryphon. Cheniere's equity share of Gryphon's losses for 2002 was \$2,184,847, calculated by applying Cheniere's 100% common stock ownership interest to Gryphon's net loss of \$519,000, reducing such result for Gryphon's preferred dividend arrearages of \$5,844,746 for the year and limiting the cumulative amount of net loss recognized to the balance of Cheniere's investment in Gryphon. The amount of the net loss that was not recorded by Cheniere as of December 31, 2002 was \$4,179,000. For 2001, Cheniere's equity share of Gryphon's losses was \$2,974,191, calculated by applying Cheniere's 100% common stock ownership interest to Gryphon's net income of \$84,000 and reducing such result for Gryphon's preferred dividend arrearages of \$3,058,191 for the year. As of December 31, 2003, the amount of Gryphon's preferred dividends in arrears was \$17,125,936.

Prior to January 1, 2003, activities related to Cheniere's investment in Gryphon were accounted for using the equity method of accounting. Accordingly, for the period prior to 2003, the summarized financial information relative to Gryphon is set forth below (in thousands):

	<b>December 31, 2002</b>
Current assets	\$ 12,215
Oil and gas properties, full cost method	91,007
Fixed assets	458
Current liabilities	11,870
Long-term liabilities	—
Deferred tax liabilities	2,043

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

	Year Ended December 31,	
	2002	2001
Revenues	\$11,143	\$ 2,382
Income (loss) from continuing operations	(674)	82
Net income (loss)	(519)	84
Preferred dividends in arrears	(5,845)	(3,058)
Cheniere's equity in losses from unconsolidated affiliate	(2,185)	(2,974)

The following items represent the differences between Cheniere's equity share of Gryphon's net assets and the balance in Cheniere's investment in unconsolidated affiliate (in thousands):

	December 31, 2002
Cheniere's equity share of Gryphon's net assets	\$ 4,767
Gryphon losses not yet recorded by Cheniere	4,179
Preferred stock dividends in arrears	(9,349)
Excess of Cheniere cost basis	(500)
Gryphon offering expenses	903
Cheniere's investment basis	\$ —

**NOTE 7—INVESTMENT IN LIMITED PARTNERSHIP**

In August 2002, Cheniere entered into an agreement with entities controlled by Michael S. Smith ("Smith") to sell a 60% interest in the Freeport site and project. On February 27, 2003, Cheniere sold its interest in the site and project to Freeport LNG Development, L.P. ("Freeport LNG"), in which the Company held a 40% limited partner interest. Smith holds a 60% limited partner interest in Freeport LNG. Cheniere recovered \$1,740,426, in costs it had incurred on the project and received an additional \$5,000,000 (\$2,500,000 during 2003 and \$2,500,000 in January 2004) from Freeport LNG. For the funding of Freeport LNG project development costs, Smith also committed to contribute up to \$9,000,000 and to allocate available proceeds from any sales of options or capacity reservations and/or proceeds from loans related to capacity reservations to these costs. In connection with the closing, Cheniere issued warrants to Smith to purchase 700,000 shares of Cheniere common stock at a price of \$2.50 per share, exercisable for a period of 10 years.

Effective March 1, 2003, Cheniere sold a 10% limited partner interest in Freeport LNG to an affiliate of Contango Oil & Gas Company ("Contango") for \$2,333,333 payable over time, including the cancellation of the Company's \$750,000 short-term note payable. Cheniere also issued warrants to Contango to purchase 300,000 shares of Cheniere common stock at a price of \$2.50 per share, exercisable for a period of 10 years. As a result of the sale, Cheniere now holds a 30% limited partner interest in Freeport LNG.

The Company accounted for the transfer of the site and planned LNG receiving terminal to Freeport LNG in accordance with Emerging Issues Task Force Issue No. 01-2, *Interpretations of APB Opinion No. 29*. Accordingly, Cheniere recorded a \$4,760,000 gain on sale of LNG assets to the extent of the 60% interest not retained.

The Company accounts for its 30% limited partnership investment in Freeport LNG using the equity method of accounting. During 2003, Cheniere received installment payments totaling \$2,500,000 from Freeport LNG, which amounts were recorded as a reduction to the basis of the Company's investment in the partnership. In addition, Cheniere's 30% limited partner interest in the operations of Freeport LNG resulted in the Company

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

sharing in the net loss of the partnership in the amount of \$4,471,529 for 2003. This non-cash loss reduced the basis of Cheniere's investment in Freeport LNG to zero.

The financial position of Freeport LNG at December 31, 2003 and the results of Freeport LNG's operations for the year ended December 31, 2003 and for the period from inception (December 1, 2002) through December 31, 2003 are summarized as follows (in thousands):

		December 31, 2003
Current assets	\$	295
Fixed assets, net, and security deposit		150
Total assets	\$	445
Current liabilities	\$	5,887
Partners' capital		(5,442)
Total liabilities and partners' capital	\$	445

  

	Year Ended, December 31, 2003	Inception (December 1, 2002) through December 31, 2003
Loss from continuing operations	\$ (14,940)	\$ (15,832)
Net loss	(14,940)	(15,832)
Cheniere's equity in losses from limited partnership	(4,472)	(4,472)

As of December 31, 2003, the Company's investment in Freeport LNG was reduced to zero and the amount of the net loss in the partnership not recorded by Cheniere was \$278,071.

**NOTE 8—MINORITY INTEREST IN LIMITED PARTNERSHIP**

In May 2003, Cheniere formed a limited partnership, Corpus Christi LNG, L.P. ("Corpus LNG") to develop an LNG receiving terminal near Corpus Christi, Texas. Under the terms of the limited partnership agreement, Cheniere contributed its technical expertise and know-how, and all of the work in progress related to the Corpus Christi project, in exchange for a 66.7% interest in Corpus LNG.

Cheniere's consolidated financial statements include the accounts of Corpus LNG. The \$3,015,468 minority interest included in the consolidated statement of operations for the year ended December 31, 2003 is equal to the entire net loss of Corpus LNG due to Cheniere's investment basis being zero and the minority owner's 100% funding of project expenses through December 31, 2003.

**NOTE 9—NOTES PAYABLE**

At December 31, 2003, Cheniere had an outstanding debt obligation of \$1,000,000 on its line of credit with a commercial bank. The balance was repaid in January 2004. At December 31, 2002, Cheniere had a \$750,000 short-term note payable outstanding. This note was canceled in March 2003 as discussed below.

Set forth below is a description of financing facilities used by the Company under which financing cash inflows and outflows occurred during the three years ended December 31, 2003.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**July 2003—Commercial Bank Financing**

In July 2003, Cheniere established a \$5,000,000 line of credit with a commercial bank, with an initial borrowing base of \$2,000,000. The facility is secured by the assets of the Company, and its term, as amended, runs through December 31, 2004. Borrowings bear interest at the bank's prime rate plus 2.5% per annum, and a commitment fee of 0.5% per annum is assessed on the unused borrowing base capacity. The interest and commitment fee are payable quarterly. A loan origination fee of 1% of the initial borrowing base was paid at closing. At December 31, 2003, Cheniere had a debt obligation of \$1,000,000 and an \$865,142 letter of credit outstanding against this line of credit. The \$1,000,000 debt obligation was repaid in January 2004.

**February 2003—Promissory Note**

In February 2003, Cheniere executed a promissory note payable in the amount of \$225,000. The proceeds of the note were used to pay certain costs related to the Company's 3-D seismic database.

The note bore interest at a rate of approximately 12% per annum and was secured by a pledge of the Company's oil and gas receivables. In July 2003, Cheniere repaid the balance outstanding on the promissory note payable. The note and related security agreement were canceled.

**June 2002—LNG Receiving Terminal Financing**

In June 2002, Cheniere received a \$750,000 payment for the sale of two options to purchase an aggregate of up to a 20% interest in its Freeport LNG receiving terminal project. The payment was refundable in the event an option was not exercised. The potential repayment was secured by an 8% note payable executed by Cheniere. In March 2003, an option was exercised, the note payable canceled, and the payment applied to the purchase price per the terms of the agreement.

**March 2002—\$500,000 Bridge Financing**

In March 2002, the Company entered into a short-term bridge financing arrangement with an unrelated third-party lender. The amount of the borrowing was \$500,000. The term was 120 days. Interest was payable monthly at 10% per annum. Warrants were issued to the lender for the purchase of 150,000 shares of Cheniere common stock, exercisable at a price of \$2.50 per share on or before March 7, 2012. In addition, Cheniere extended the term to March 7, 2012 on existing warrants for the purchase of 255,417 shares held by parties affiliated with the lender. Based on the Black-Scholes model, the warrants issued (150,000 shares) and the extension of existing warrants (255,417 shares) in connection with this financing arrangement have an aggregate value of \$241,939. Debt discount of \$163,045 was recorded based on the relative fair values of the note payable and the warrants. An additional 50,000 warrants were required to be issued to the lender for each month or partial month for which the principal remained unpaid after April 7, 2002. The Company repaid the loan on April 22, 2002, resulting in a loss on early extinguishment of debt in the amount of \$100,544, which is classified as an ordinary loss in the Company's statement of operations. Cheniere also issued an additional 50,000 warrants to the lender, valued at \$24,054 based on the Black-Scholes model.

**NOTE 10—DEFERRED REVENUE**

On December 23, 2003, Cheniere LNG Services, Inc. ("Cheniere LNG Services"), a wholly-owned subsidiary of Cheniere, entered into a shareholders agreement whereby it became a minority owner of J&S Cheniere S.A., a Switzerland joint-stock company ("J&S Cheniere"). The majority owner is J&S Group S.A. ("J&S Group"). J&S Cheniere was formed for the purpose of buying, selling and trading LNG. Under the

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

shareholders agreement, Cheniere LNG Services identifies and assists with LNG-related business opportunities that it determines are appropriate for J&S Cheniere. Cheniere LNG Services is not required to offer any particular business opportunities nor funding to J&S Cheniere. Cheniere LNG Services has no board of director representation nor does it participate in the day-to-day management of J&S Cheniere. All financing of the business opportunities will be provided by J&S Group should it determine that a business opportunity is appropriate for J&S Cheniere. However, J&S Group is not required to fund any particular business opportunity. Cheniere accounts for this investment using the cost method of accounting. At December 31, 2003, Cheniere's investment basis was zero.

Also on December 23, 2003, Cheniere LNG, Inc. ("Cheniere LNG"), a wholly-owned subsidiary of Cheniere, and J&S Cheniere entered into an option agreement providing J&S Cheniere an option to purchase LNG storage tank capacity and regas capacity of up to 200 Mmcf/d in each of Cheniere LNG's Sabine Pass and Corpus Christi LNG facilities. Following execution of the option agreement, \$1,000,000 was paid by J&S Cheniere to Cheniere LNG in January 2004. At December 31, 2003, the \$1,000,000 was included in accounts receivable. It was recorded as deferred revenue because the option fee is refundable if Cheniere LNG does not receive FERC approval for at least one of the terminals or it does not proceed with the development of at least one of the terminals. Upon FERC approval and other related approvals and receipt of permits for each terminal, J&S Cheniere has 60 days to exercise its option at each terminal. The option agreement contemplates negotiation of a definitive terminal use agreement for each of the facilities, which will specify the terms and conditions of the purchase and sale of the capacity and related services. Cheniere LNG will record the option fee as revenue once it is no longer subject to refund.

**NOTE 11—INCOME TAXES**

From its inception, the Company has recorded losses for both financial reporting purposes and for federal income tax reporting purposes. Accordingly, the Company is not presently a taxpayer and has not recorded a provision for income taxes in any of the periods presented in the accompanying financial statements.

At December 31, 2003, the Company had net operating loss ("NOL") carryforwards for tax reporting purposes of approximately \$26,500,000. In accordance with SFAS No. 109, a valuation allowance equal to the net tax benefit for deferred taxes has been established due to the uncertainty of realizing the benefit of such NOL carryforwards.



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**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Deferred tax assets and liabilities reflect the net tax effect of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities at December 31, 2003 and 2002 are as follows:

	December 31,	
	2003	2002
<b>Deferred tax assets</b>		
NOL carryforwards	\$ 9,809,102	\$ 8,226,583
Oil and gas properties and fixed assets	—	70,169
Investment in unconsolidated affiliate	513,190	513,190
LNG Terminal Development	1,303,499	—
	<u>11,625,791</u>	<u>8,809,942</u>
<b>Deferred tax liabilities</b>		
Oil and gas properties and fixed assets	56,181	—
	<u>56,181</u>	<u>—</u>
<b>Net deferred tax assets</b>	11,569,610	8,809,942
Less: valuation allowance	(11,569,610)	(8,809,942)
	<u>\$ —</u>	<u>\$ —</u>

NOL carryforwards expire starting in 2012 extending through 2023. Certain of the Company's NOLs are subject to per year availability under Internal Revenue Code Section 382 change of ownership limitations.

The gross change in the valuation allowance for deferred tax assets was approximately \$2,759,668, \$(2,582,183) and \$7,739,165 during the years ended December 31, 2003, 2002 and 2001, respectively.

**NOTE 12—WARRANTS**

As of December 31, 2003, Cheniere has issued and outstanding 1,299,583 warrants for the purchase of its common stock. The Company has reserved an equal number of shares of common stock for issuance upon the exercise of its outstanding warrants. Warrants issued by the Company do not confer upon the holders thereof any voting or other rights of a stockholder of the Company. The Company has granted warrants in connection with certain of its debt or equity financings and as compensation for services. In instances where warrants were granted in connection with financings, such warrants were valued based on the estimated fair market value of the stock at the date of issuance. Where warrants were issued for services, fair value was calculated using the Black-Scholes pricing model. The terms of warrants outstanding at December 31, 2003 range from approximately three to fourteen years, with a weighted average remaining life of 5.5 years. Prices at which the warrants are exercisable range from \$1.06 to \$11.50 per share, with a weighted average exercise price of \$3.30 per share at December 31, 2003. Information related to Cheniere's warrants is summarized in the following table:

	December 31,		
	2003	2002	2001
Outstanding at beginning of period	2,593,521	2,850,288	2,758,621
Warrants issued	1,716,250	312,500	91,667
Warrants exercised	(1,082,093)	—	—
Warrants canceled	(1,928,095)	(569,267)	—
	<u>1,299,583</u>	<u>2,593,521</u>	<u>2,850,288</u>
Weighted average exercise price of warrants outstanding	\$ 3.30	\$ 4.06	\$ 4.47
Weighted average remaining contractual life of warrants outstanding	5.5 years	2.7 years	1.8 years

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**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table summarizes information about warrants outstanding at December 31, 2003:

<u>Exercise Prices</u>	<u>Number Outstanding</u>	<u>Weighted Average Years Remaining Contractual Life</u>
\$9.50 – \$11.50	25,000	0.7
\$7.50	12,500	0.7
\$5.50 – \$6.00	276,250	6.4
\$3.00	50,000	1.3
\$2.50	725,000	6.8
\$1.06 – \$1.75	210,833	1.8
	<u>1,299,583</u>	

In February 2003, in connection with the sale of a 60% interest in its Freeport LNG project, the Company issued warrants valued at \$540,015 to purchase 700,000 shares of Cheniere common stock. The Company also issued warrants to purchase 241,250 shares of Cheniere common stock to a former employee of the Company and the current President and Chief Operating Officer of Freeport LNG, in replacement of his options to purchase 241,250 shares of Cheniere common Stock. The number and exercise prices of the warrants were the same as the options replaced and ranged from \$1.06 to \$12.00 per share. The Company issued warrants valued at \$173,576 to purchase 225,000 shares of Cheniere common stock to LNG consultants for services previously performed for the Company. In connection with the sale of a 10% interest in the limited partnership, the Company issued warrants valued at \$241,893 to purchase 300,000 shares of Cheniere common stock to the purchaser.

In April 2003, the Company issued warrants to purchase 250,000 shares of Cheniere common stock at \$2.50 per share to its Chief Executive Officer as a signing bonus. At the time of issue, the current market price was \$1.80 per share. The warrants vest one year from the date of issue.

In August 2003, the Company issued 378,308 shares of common stock in exchange for the surrender of warrants to purchase 700,000 shares in a cashless transaction. The warrants were exercisable at \$2.50 per share based on the then-current market price of \$5.44 per share.

**NOTE 13—STOCK-BASED COMPENSATION**

In 1997, the Company established the Cheniere Energy, Inc. 1997 Stock Option Plan, as amended (the “Option Plan”), which allows for the issuance of options to purchase up to 2,500,000 shares of Cheniere common stock. The Company has reserved 2,500,000 shares of common stock for issuance upon the exercise of options which have been granted or which may be granted. The Company had granted options on 2,147,500 shares which were outstanding or had been exercised as of December 31, 2003. The term of options granted under the Option Plan is generally five years. Vesting varies, but generally occurs over three or four years, in increments of 33% or 25%, respectively, on each anniversary of the grant date. All options granted under the Option Plan have exercise prices equal to or greater than fair market value at the date of grant.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

A summary of the status of the Company's stock options is presented below:

	December 31,		
	2003	2002	2001
Outstanding at beginning of period	1,983,611	1,741,111	884,236
Options granted at an exercise price of \$4.62 per share	50,000	—	—
Options granted at an exercise price of \$4.45 per share	50,000	—	—
Options granted at an exercise price of \$2.70 per share	50,000	—	—
Options granted at an exercise price of \$2.38 per share	—	—	20,000
Options granted at an exercise price of \$2.16 per share	—	—	20,000
Options granted at an exercise price of \$1.85 per share	250,000	—	—
Options granted at an exercise price of \$1.70 per share	—	—	100,000
Options granted at an exercise price of \$1.45 per share	50,000	—	—
Options granted at an exercise price of \$1.44 per share	20,000	—	—
Options granted at an exercise price of \$1.27 per share	20,000	—	—
Options granted at an exercise price of \$1.25 per share	—	267,500	—
Options granted at an exercise price of \$1.20 per share	—	30,000	—
Options granted at an exercise price of \$1.06 per share	—	—	760,000
Options granted at an exercise price of \$0.93 per share	—	50,000	—
Options exercised	(187,500)	—	—
Options converted to warrants	(241,250)	—	—
Options canceled / expired	(84,861)	(105,000)	(43,125)
Outstanding at end of period	1,960,000	1,983,611	1,741,111
Exercisable at end of period	1,161,980	1,106,111	664,444
Weighted average exercise price of options outstanding	\$ 2.23	\$ 2.07	\$ 2.21
Weighted average exercise price of options exercisable	\$ 2.49	\$ 2.56	\$ 3.16
Weighted average fair value of options granted during the period	\$ 1.60	\$ 1.20	\$ 0.76
Weighted average remaining contractual life of options outstanding	2.9 years	3.4 years	4.1 years

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table summarizes information about fixed options outstanding at December 31, 2003:

Exercise Prices	Options Outstanding		Options Exercisable
	Number Outstanding	Weighted Average Years Remaining Contractual Life	Number Outstanding
\$6.00	210,000	0.8	205,313
\$4.62	50,000	4.6	25,000
\$4.45	50,000	4.5	—
\$2.75	175,000	1.6	175,000
\$2.70	50,000	4.4	—
\$2.38	20,000	2.0	13,333
\$2.16	20,000	2.1	13,333
\$1.94	237,500	1.9	237,500
\$1.85	250,000	4.3	—
\$1.45	50,000	4.0	—
\$1.44	20,000	3.1	6,667
\$1.27	20,000	4.1	—
\$1.25	247,500	4.0	122,500
\$1.20	30,000	3.7	10,000
\$1.06	480,000	2.9	336,667
\$0.93	50,000	3.8	16,667
	1,960,000		1,161,980

**NOTE 14—RELATED PARTY TRANSACTIONS**

In December 2003, Cheniere LNG Services entered into a shareholders agreement whereby Cheniere LNG Services acquired a minority interest in J&S Cheniere. One of the directors of J&S Cheniere is the brother of Charif Souki, Cheniere’s Chairman, President and Chief Executive Officer.

In April 2002, Charles M. Reimer, Cheniere’s then-President, advanced amounts totaling \$30,000 to the Company. Subsequent to its sale of producing oil and gas properties, Cheniere repaid the advances on April 25, 2002, with accrued interest at 10% per annum totaling \$122.

In March 2002, Cheniere sold 51,400 shares of its Gryphon common stock to Gryphon, subject to an option to repurchase the shares, thereby reducing its interest in Gryphon from 20.2% to 13.7% on an as-converted basis. Such sale was made in connection with the settlement of a lawsuit filed by Fairfield Industries Incorporated against Cheniere and Gryphon. In connection with its sale of Gryphon common stock to Gryphon, Cheniere had a one-year option to repurchase all or a portion of the 51,400 shares at a price of \$50 per share if exercised within 120 days of the sale or at prices increasing ratably thereafter to approximately \$68 per share one year after the sale. As consideration for the shares, Gryphon agreed to make payments in full satisfaction of certain existing and contingent obligations of Cheniere totaling \$3,561,692. Cheniere, Gryphon and Fairfield Industries reached a settlement agreement whereby a lawsuit and related claims asserted by Fairfield against Cheniere and Gryphon were dismissed.

In conjunction with certain of the Company’s private placements of equity in 2001, placement fees have been paid to Investors Administration Services, Limited (“IAS”), a company in which the brother of Charif Souki, Cheniere’s then-Chairman, was a principal. Placement fees to IAS totaled \$30,000 for 2001 and were expensed.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Commencing October 1, 2001, Cheniere has made office space available for use by Keith F. Carney, a non-management director. The pro rata amount of office lease expense related to that space was \$4,400, \$4,500 and \$1,125 in 2003, 2002 and 2001, respectively.

In September 2001, the Company made a payment of \$40,000 to Charif Souki, its then-Chairman, representing consulting fees for the months of October 2001 through January 2002.

In July 2001, Cheniere sold to Gryphon one of its two licenses to certain 3D seismic data covering an additional 3,000 square miles. Gryphon agreed to pay Cheniere's accounts payable of \$1.3 million and the remaining commitment of \$2.9 million related to the reprocessing of the data. In connection with the transaction, Cheniere also transferred to Gryphon 6,740 shares of Gryphon common stock, valued at approximately \$418,000 or \$62 per share, based on the estimated fair market value of the Gryphon common stock, which considered the fair value of such stock at the formation of Gryphon and any significant changes in Gryphon's operations or market conditions since that date. The proceeds at closing of \$1.3 million were allocated as a reduction to the carrying amount of Cheniere's investment in Gryphon (\$418,000) and unproved oil and gas properties (\$882,000). Cheniere retains one license to the seismic data.

In June 2001, Cheniere sold to Gryphon for \$3,500,000 one of its two licenses to the Seitel 3D seismic data. Gryphon paid \$853,197 in cash to Cheniere and agreed to pay \$2,646,803 of Cheniere's obligations related to the reprocessing of the data. Cheniere remained responsible for payment of the final \$1,061,692 in reprocessing charges upon final delivery of all reprocessed data, which was received in 2003. This payment obligation was assumed by Gryphon in connection with Cheniere's March 2002 sale of 51,400 shares of Gryphon common stock to Gryphon.

In April 2001, the Company sold an interest in a prospect to Gryphon. Gryphon paid Cheniere \$225,563 for a 50% interest in the related leases and will pay a disproportionate share of the drilling costs on terms representative of what a third party would pay for participation in the prospect generated by Cheniere.

**NOTE 15—COMMITMENTS AND CONTINGENCIES**

**Lease Commitments**

In November 2000, the Company entered into an office lease agreement with a term, as extended, which ran through March 31, 2004. In October 2003, the Company entered into a lease agreement related to new office space with a term which runs from December 2003 through April 2014. Beginning in April 2004, Cheniere's monthly lease rental is \$21,543 and escalates to \$24,235 beginning in February 2009 through the remaining term of the lease. The Company has an option to renew the lease for an additional five years at the then-current market rate. Cheniere is also responsible for its proportionate share of the building operating expenses. In connection with the lease, Cheniere has issued a letter of credit in favor of the landlord in the amount of \$865,142. In addition, the lease creates a lien on all property that Cheniere places on the premises as a security interest for payment of amounts due under the terms of the lease.

In December 2003, the Company entered an agreement to lease software for use in its exploration activities. This lease provides for annual payments of \$230,000 per year to be made prior to the beginning of each contract year. The lease runs through December 31, 2006.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Future annual minimum lease payments are as follows:

<u>December 31,</u>	<u>Year Ending</u>	<u>Operating Lease</u>
2004		\$ 455,000
2005		522,000
2006		299,000
2007		305,000
2008		305,000
Thereafter		1,711,000
<b>Total</b>		<b>\$ 3,597,000</b>

Cheniere's total rental expense for office space for the years ending December 31, 2003, 2002 and 2001 was \$128,351, \$131,038 and \$157,146, respectively.

**LNG Commitments**

In connection with the acquisition of the option to lease the Freeport LNG receiving terminal site in June 2001, Cheniere issued 500,000 shares of common stock valued at \$1,150,000, or \$2.30 per share, the closing price of Cheniere's common stock on the date of the transaction, to the seller of the lease option. The Company also committed to issue an additional 750,000 shares of its common stock to the seller of the lease option in April 2003, for which Cheniere received no additional consideration. These shares were issued in April 2003 at a value of \$1,312,500, or \$1.75 per share, the closing price of Cheniere's common stock on the date of issuance. The seller of the lease option also obtained the right to receive a royalty payment on the gross quantities of gas processed through LNG terminals owned by Cheniere LNG. The royalty is calculated based on \$0.03 per Mcf on the quantities of gas processed through LNG terminals that Cheniere owns, subject to a maximum royalty of approximately \$10,950,000 per year. In 2002, a long-term lease was secured by Freeport LNG, and at the closing of the sale of Cheniere's interests in the site and project, Freeport LNG assumed the obligation to pay the royalty with respect to gas processed and produced at the Freeport LNG facility.

The Company's obligations under LNG site options are renewable on an annual or semiannual basis. Cheniere may terminate its obligations at any time by electing not to renew or by exercising the options.

On December 23, 2003, Cheniere LNG and J&S Cheniere entered into an option agreement under which J&S Cheniere has an option to purchase LNG storage tank capacity and regas capacity of up to 200 Mmcf/d day in each of Cheniere LNG's Sabine Pass and Corpus Christi LNG facilities. Following execution of the option agreement, \$1,000,000 was paid by J&S Cheniere to Cheniere LNG in January 2004. The option fee is refundable if Cheniere LNG does not receive Federal Energy Regulatory Commission (FERC) approval for at least one of the terminals or it does not proceed with the development of at least one of the terminals. Upon FERC approval and other related approvals and receipt of permits for each terminal, J&S Cheniere has 60 days to exercise its option at each terminal. The option agreement contemplates negotiation of a definitive TUA for each of the facilities, which will specify the terms and conditions of the purchase and sale of the capacity and related services.

**Legal proceedings**

The Company has been and may in the future be involved as a party to various legal proceedings, which are incidental to the ordinary course of business. Management regularly analyzes current information and as

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

necessary, provides accruals for probable liabilities on the eventual disposition of these matters. In the opinion of management and legal counsel, as of December 31, 2003, there were no threatened or pending legal matters that would have a material impact on the Company's consolidated results of operations, financial position or cash flows.

**NOTE 16—BUSINESS SEGMENT INFORMATION**

The Company's business activities are conducted within two principal operating segments: LNG receiving terminal development and oil and gas exploration and development. These segments operate independently, and there are no intercompany revenues or expenses between them.

The LNG receiving terminal segment develops LNG receiving terminals in the United States. An experienced LNG development team has been assembled and is actively working on developing LNG receiving terminals on the U.S. Gulf Coast.

The exploration and development segment explores for oil and natural gas using a regional database of 7,000 square miles of regional 3D seismic data. Exploration efforts are focused on the shallow waters of the Gulf of Mexico offshore of Louisiana and Texas and consist primarily of seismic data interpretation and prospect generation activities. The segment participates in drilling and production operations with industry partners on the prospects that Cheniere generates. In April 2002, Cheniere sold all of its working interest in producing properties at that time. During the second half of 2002 and all of 2003, all of Cheniere's revenue resulted from overriding royalty interests in new oil and gas discoveries.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

	Segments				Total Consolidated
	LNG Receiving Terminal	Oil & Gas Exploration and Development	Total	Corporate and Other(1)	
<b>As of or for the Year Ended December 31, 2003:</b>					
Revenues	\$ —	\$ 657,467	\$ 657,467	\$ —	\$ 657,467
Depreciation, Depletion, and Amortization	141,933	191,745	333,678	95,002	428,680
Income (loss) from operations	(6,846,471)	465,723	(6,380,748)	(2,637,402)	(9,018,150)
Equity in net loss of equity method investee(2)	(4,471,529)	—	(4,471,529)	—	(4,471,529)
Gain on sale of LNG assets(3)	4,760,000	—	4,760,000	—	4,760,000
Gain on sale of limited partnership interest(4)	423,454	—	423,454	—	423,454
Total Assets	2,952,816	20,219,541	23,172,357	1,418,400	24,590,757
Investment in equity method investees	—	—	—	—	—
Expenditures for additions to long-lived assets	—	2,553,794	2,553,794	532,879	3,086,673
<b>As of or for the Year Ended December 31, 2002:</b>					
Revenues	\$ —	\$ 239,055	\$ 239,055	\$ —	\$ 239,055
Depreciation, Depletion, and Amortization	108,600	190,311	298,911	69,651	368,562
Income (loss) from operations	(1,665,482)	(41,294)	(1,706,776)	(1,988,131)	(3,694,907)
Equity in net loss of equity method investee(5)	—	(2,184,847)	(2,184,847)	—	(2,184,847)
Gain on sales of assets(6)	—	340,257	340,257	—	340,257
Total Assets	2,506,584	17,730,029	20,236,613	822,777	21,059,390
Investment in equity method investees	—	—	—	—	—
Expenditures for additions to long-lived assets	125,000	2,828,381	2,953,381	14,506	2,967,887
<b>As of or for the Year Ended December 31, 2001:</b>					
Revenues	\$ —	\$ 2,372,632	\$ 2,372,632	\$ —	\$ 2,372,632
Depreciation, Depletion, and Amortization	16,800	1,115,647	1,132,447	111,381	1,243,828
Ceiling test write-down(7)	—	5,126,248	5,126,248	—	5,126,248
Income (loss) from operations	(2,149,299)	(4,375,566)	(6,524,865)	(2,184,784)	(8,709,649)
Equity in net loss of equity method investee(5)	—	(2,974,191)	(2,974,191)	—	(2,974,191)
Total Assets	1,367,190	22,724,819	24,092,009	931,667	25,023,676
Investment in equity method investees	—	3,747,199	3,747,199	—	3,747,199
Expenditures for additions to long-lived assets	1,350,000	5,067,039	6,417,039	248,386	6,665,425

- (1) Includes corporate activities and certain intercompany eliminations.
- (2) Represents equity in net loss of Cheniere's investment in Freeport LNG. The Company's investment basis was reduced to zero as of December 31, 2003.
- (3) In February 2003, Cheniere sold a 60% interest in its Freeport LNG terminal project to Freeport LNG. A gain of \$4,760,000 was recognized on the sale. See Note 7 to the Consolidated Financial Statements.
- (4) In March 2003, Cheniere sold a 10% limited partner interest in Freeport LNG to a third party and recognized a gain of \$423,454. See Note 7 to the Consolidated Financial Statements.
- (5) For the years 2002 and 2001, Cheniere recognized losses of \$2,184,847 and \$2,974,191, respectively, on its equity investment in Gryphon. Its investment basis was reduced to zero as of December 31, 2002. Effective January 1, 2003, Cheniere began using the cost method of accounting for this investment. See Note 6 to the Consolidated Financial Statements.
- (6) In April 2002, the Company sold its producing wells and recognized a gain of \$340,257.
- (7) During 2001, the Company was required to write down its investment in oil and gas properties in accordance with full cost accounting rules. See Note 2 to the Consolidated Financial Statements.



**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**NOTE 17—SUPPLEMENTAL CASH FLOW DISCLOSURES AND DISCLOSURES OF NON-CASH TRANSACTIONS**

In December 2003 in connection with the Corpus Christi LNG project, the minority interest owner contributed two tracts of land valued at \$310,500 to be used for the LNG terminal site.

In August 2003, the Company issued 378,308 shares of common stock in exchange for the surrender of warrants to purchase 700,000 shares in a cashless transaction. The warrants were exercisable at \$2.50 per share based on the then-current market price of \$5.44 per share.

In April 2003, pursuant to a contingent contractual obligation related to Cheniere's 2001 acquisition of an option to lease the Freeport LNG terminal site, the Company issued 750,000 shares of its common stock, valued at \$1,312,500 on the date of issuance, to satisfy a closing requirement related to Cheniere's February 2003 sale of a 60% interest in its Freeport LNG project.

In February 2003, in connection with the sale of a 60% interest in its Freeport LNG site and project, the Company issued warrants valued at \$540,015 to purchase 700,000 shares of Cheniere common stock. As a result of the closing on the Freeport transaction, the Company issued warrants valued at \$173,576 to purchase 225,000 shares of Cheniere common stock to LNG consultants for services previously performed for the Company. In connection with the sale of a 10% interest in Freeport LNG, the Company issued warrants valued at \$241,893 to purchase 300,000 shares of Cheniere common stock to the purchaser, and the purchaser canceled the \$750,000 note previously payable by Cheniere. These transactions are described in more detail in Notes 7 and 15 to the Consolidated Financial Statements.

In 2002, Cheniere transferred computer equipment with a net book value of \$29,001 to an exploration consulting company as compensation for its services. The Company sold 51,400 shares of its Gryphon common stock to Gryphon in consideration for their assumption of certain existing and contingent liabilities of Cheniere totaling \$3,561,692. In connection with the sale of the Company's proved oil and gas properties, Cheniere issued warrants to purchase 50,000 shares of Cheniere common stock to a consultant valued at \$22,695. The Company issued warrants to purchase 200,000 shares of Cheniere common stock and extended the expiration period on existing warrants to purchase 255,417 shares of Cheniere common stock, all at a value of \$265,993, in connection with a short-term bridge financing arrangement with an unrelated third-party lender. Cheniere issued warrants to purchase 50,000 shares of Cheniere common stock to a consultant valued at \$39,269 for assistance in marketing the Company's LNG terminal capacity. The Company issued 12,500 stock options valued at \$10,435 to a consultant for assistance in developing the LNG terminal business. Cheniere issued warrants to purchase 12,500 shares of Cheniere common stock to an investor relations consultant valued at \$10,435. During 2002, the Company accrued an additional \$96,777 for the services of an LNG project consultant. As of December 31, 2002, Cheniere had an accrued liability to this consultant of \$366,777, of which \$166,777 was the estimated value of warrants to be issued to purchase 225,000 shares of Cheniere common stock. These warrants were issued in February 2003 at an exercise price of \$2.50 per common share.

In 2001, Cheniere issued warrants to a consultant to purchase 50,000 shares of Cheniere common stock valued at \$93,000. The Company issued 500,000 shares valued at \$1,150,000 to acquire an LNG site lease option at Freeport. The Company sold 6,740 shares of Gryphon common stock with a fair market value of \$417,880 to Gryphon in connection with the sale of a license to 3D seismic data; additional value ascribed to the sale of seismic data was \$256,141 (see Note 14 to Consolidated Financial Statements). In connection with the Company's sale of licenses to 3D seismic data to Gryphon, Gryphon assumed liabilities for reprocessing charges of \$6,820,824 and made a payment on behalf of Cheniere in the amount of \$5,847,533 during 2001. The

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Company accrued \$270,000 as of December 31, 2001, related to an obligation to issue to a consultant an equity participation in its Freeport LNG project. The Company issued 25,000 stock options valued at \$17,000 to a consultant for assistance in securing long-term supplies of LNG.

The Company paid \$41,107, \$55,920 and \$105,813 for interest in the years ended December 31, 2003, 2002 and 2001, respectively. The Company has not paid any income taxes in the three years ended December 31, 2003.

The values of securities issued by the Company in connection with the transactions described above are based on third party arms-length negotiated prices or the fair value as calculated using the Black-Scholes pricing model.

**NOTE 18—LIQUIDITY**

The financial statements as of December 31, 2001 were prepared on a going concern basis, which contemplated continuity of operations, realization of assets and liquidation of liabilities in the ordinary course of business. As of December 31, 2001, the Company had experienced recurring losses from operations and, during 2001, had negative cash flows from operating activities. In addition, the Company had a working capital deficiency of \$530,242 and an accumulated deficit of \$18,024,485 as of December 31, 2001. These considerations raised substantial doubt about Cheniere's ability to continue as a going concern as of December 31, 2001.

At December 31, 2003, however, Cheniere's working capital was \$155,526. In January 2004, Cheniere received net proceeds of \$13,884,750 from a private placement of 1,100,000 shares of Cheniere common stock. The Company also received the remaining \$2,500,000 from Freeport LNG, which was payable pursuant to the sale of Cheniere's 60% interest in the Freeport LNG project. Also, in January and February 2004, a total of 557,056 shares were issued pursuant to exercises of warrants and stock options resulting in additional net proceeds of \$1,309,559. The pro forma effect of these transactions, had they been consummated as of December 31, 2003, would have been to increase Cheniere's working capital to \$17,849,835.

Management expects that it will meet all of its liquidity requirements for the next twelve months through a combination of cash balances, collection of receivables, issuances of our debt or equity securities, issuances of common stock pursuant to exercises by the holders of existing warrants and options, sales of regas capacity in its planned LNG receiving terminals, sales of prospects generated by its exploration group, borrowings under its line of credit and cash flows from current operations.

**NOTE 19—SUBSEQUENT EVENTS**

In January 2004, the Company issued 1,100,000 shares of Cheniere common stock in a private placement under Regulation D to twelve accredited investors for a total consideration of \$14,850,000, or \$13.50 per share. The Company paid a 6.5% sales commission totaling \$965,250, resulting in \$13,884,750 in net proceeds received from the offering. The proceeds of the private placement will be used primarily for the development of LNG receiving terminals and for general corporate purposes.

In January 2004, the Company repaid the \$1,000,000 balance owing under its \$5,000,000 line of credit with a commercial bank using proceeds from the private placement of Cheniere common stock and other available funds.

In January and February 2004, 472,056 shares of Cheniere common stock were issued pursuant to the exercise of stock options, resulting in net cash proceeds of \$922,059. An additional 131,751 shares of Cheniere common stock were issued in a cashless exercise of options to purchase 157,945 shares.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

In January and February 2004, a total of 85,000 shares of Cheniere common stock were issued pursuant to the exercise of warrants. Proceeds of \$387,500 were received at the exercise prices.

In January 2004, Cheniere received the remaining \$2,500,000 from Freeport LNG, which was payable pursuant to Cheniere's sale of its 60% interest in the Freeport LNG project. This payment to Cheniere was accelerated as a result of Freeport LNG completing a transaction for the sale of terminal capacity for which Freeport LNG received payment of a capacity reservation fee of \$10,000,000 in January 2004. This \$2,500,000 payment to Cheniere was recorded in January 2004 as a reimbursement from limited partnership investment as Cheniere's investment in Freeport LNG had been reduced to zero as of December 31, 2003.

On January 29, 2004, Cheniere's shareholders approved the Cheniere Energy, Inc. 2003 Stock Incentive Plan (the "2003 Plan"). The 2003 Plan is a broad-based incentive plan, which allows for the issuance of stock options, purchased stock awards, bonus stock awards, stock appreciation rights, phantom stock awards, restricted stock awards, performance awards, and other stock or performance-based awards to employees, consultants and non-employee directors to purchase up to 1,000,000 shares of Cheniere common stock. The Company has reserved 1,000,000 shares of common stock for issuance upon the exercise of awards that have been granted or which may be granted. The term of any award under the 2003 Plan may not exceed a period of ten years.

In February 2004, under the 2003 Plan, 383,000 shares were issued to employees and directors of the Company in the form of bonus and restricted stock awards. The Company recorded \$1,915,000 of compensation expense in February 2004 related to the issuance of 127,667 shares (bonus stock awards) valued at \$15.00 per share that were fully vested on the date of grant. Compensation related to the 255,333 restricted shares will be accrued over the next two years. The restricted shares will vest on each of the first and second anniversaries of the grant date.

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**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The following table includes the pro forma effects as of December 31, 2003 of Cheniere's common stock issued pursuant to the private placement in January 2004, common stock issued upon warrant and stock option exercises in January and February 2004, the repayment of the Company's note payable in January 2004 and the reimbursement from limited partnership investment in January 2004:

	Unaudited			
	Historical	Pro Forma Adjustments		Pro Forma
		Debits	Credits	
Current Assets	\$ 4,487,352	13,884,750(1)	1,000,000(2)	\$ 21,181,661
		922,059(3)		
		387,500(4)		
		2,500,000(5)		
Oil and Gas Properties	19,134,954			19,134,954
LNG Site Costs	310,500			310,500
Other	657,951			657,951
<b>Total Assets</b>	<b>\$ 24,590,757</b>			<b>\$ 41,285,066</b>
Current Liabilities	\$ 4,331,826	1,000,000(2)		\$ 3,331,826
Deferred Revenue	1,000,000			1,000,000
Minority Interest	120,032			120,032
Stockholders' Equity				
Common Stock	49,465		3,300(1)	54,831
			1,811(3)	
			255(4)	
Additional Paid-in-Capital	48,034,244		13,881,450(1)	63,223,187
			920,248(3)	
			387,245(4)	
Accumulated Deficit	(28,944,810)		2,500,000(5)	(26,444,810)
<b>Total Stockholders' Equity</b>	<b>19,138,899</b>			<b>36,833,208</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 24,590,757</b>			<b>\$ 41,285,066</b>

The pro forma adjustments include the following items:

- (1) Issuance of 1,100,000 shares of common stock in a private placement, net of offering costs
- (2) Repayment of \$1,000,000 outstanding balance in notes payable
- (3) Issuance of common stock pursuant to exercise of options to purchase common stock
- (4) Issuance of common stock pursuant to exercise of warrants to purchase common stock
- (5) Cash reimbursement received after Cheniere's investment in Freeport LNG was reduced to zero.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
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**OIL AND GAS RESERVES AND RELATED FINANCIAL DATA**  
(unaudited)

**Costs Incurred in Oil and Gas Producing Activities**

Presented below are costs incurred in oil and gas property acquisition, exploration and development activities:

	Year Ended December 31,		
	2003	2002	2001
Acquisition of properties			
Proved properties	\$ —	\$ —	\$ —
Unproved properties	936,814	130,822	1,899,154
Exploration costs	1,577,543	2,682,548	2,908,654
Development costs	—	15,011	99,800
<b>Total</b>	<b>\$ 2,514,357</b>	<b>\$ 2,828,381</b>	<b>\$ 4,907,608</b>
Proportional share of unconsolidated affiliate(1)		\$ 43,496,000	\$ 36,576,000

(1) Effective January 1, 2003, Cheniere began accounting for its investment in Gryphon using the cost method of accounting. Prior to that time, Cheniere accounted for this investment using the equity method of accounting. Accordingly, the amounts for 2002 and 2001 represent Cheniere's proportional share, based on its 100% common stock ownership, of the costs incurred in oil and gas activities of Gryphon. Upon the conversion of Gryphon's preferred shares, such proportional share of Gryphon activities would be reduced to 9.3%, or \$4,045,000 for 2002.

Included in the above amounts for the years ended December 31, 2003, 2002 and 2001 were \$1,063,996, \$849,240 and \$947,813, respectively, of capitalized general and administrative expenses, capitalized interest expense and capitalized debt discount directly related to property acquisition, exploration and development.

**Capitalized Costs Related to Oil and Gas Producing Activities**

The following table presents total capitalized costs of proved and unproved properties and accumulated depreciation, depletion and amortization related to oil and gas producing operations:

	December 31,	
	2003	2002
Proved properties	\$ 1,223,020	\$ 857,388
Unproved properties	18,047,802	16,751,347
	19,270,822	17,608,735
Accumulated depreciation, depletion and amortization	(135,868)	(14,506)
	<b>\$ 19,134,954</b>	<b>\$ 17,594,229</b>
Proportional share of unconsolidated affiliate(1)		\$ 89,698,000

(1) Effective January 1, 2003, Cheniere began accounting for its investment in Gryphon using the cost method of accounting. Prior to that time, Cheniere accounted for this investment using the equity method of accounting. Accordingly, the amount for 2002 represents Cheniere's proportional share, based on its 100% common stock ownership, of the capitalized costs related to oil and gas producing activities of Gryphon. Upon the conversion of Gryphon's preferred shares, such proportional share of Gryphon's capitalized costs related to oil and gas producing activities would be reduced to 9.3%, or \$8,342,000 at December 31, 2002.

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**Results of Operations from Oil and Gas Producing Activities**

The results of operations from oil and gas producing activities are as follows:

	Year Ended December 31,		
	2003	2002	2001
Revenues	\$ 657,467	\$ 239,055	\$ 2,372,632
Production Costs	—	(90,038)	(420,242)
Depreciation, depletion and amortization	(121,362)	(74,566)	(1,029,239)
Ceiling test write-down	—	—	(5,126,248)
Income tax benefit (expense)	—	—	—
Results of operations from oil and gas producing activities (excluding corporate overhead and interest costs)	<u>\$ 536,105</u>	<u>\$ 74,451</u>	<u>\$ (4,203,097)</u>
Equity in results of operations from oil and gas producing activities (excluding corporate overhead and interest costs) of unconsolidated affiliate(1)		<u>\$ 828,000</u>	<u>\$ 907,000</u>

- (1) Effective January 1, 2003, Cheniere began accounting for its investment in Gryphon using the cost method of accounting. Prior to that time, Cheniere accounted for this investment using the equity method of accounting. Accordingly, the amounts for 2002 and 2001 represent Cheniere's proportional share, based on its 100% common stock ownership, of the results of operations from oil and gas producing activities (excluding corporate overhead and interest costs). Such proportional share will be reduced to 9.3% upon the conversion of Gryphon's preferred shares, resulting in a decrease in Cheniere's proportional interest in the results of operations from oil and gas producing activities to \$77,000 for 2002.

**Reserve Quantities**

Estimates of proved reserves of Cheniere and the related standardized measure of discounted future net cash flow information are based on the reports generated by the Company's independent petroleum engineers, Sharp Petroleum Engineering, Inc. in 2003 and Ryder Scott Company in 2001 and substantially, but not wholly, based on the report generated by Ryder Scott Company in 2002, in accordance with the rules and regulations of the SEC. The independent engineers' estimates were based upon a review of production histories and other geologic, economic, ownership and engineering data provided by the Company. These estimates represent the Company's interest in the reserves associated with its properties. All of the Company's oil and gas reserves are located within the United States or its territorial waters.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**SUPPLEMENTAL INFORMATION TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OIL AND GAS RESERVES AND RELATED FINANCIAL DATA—(Continued)**  
(unaudited)

The Company's estimates of its proved reserves and proved developed reserves of oil and gas as of December 31, 2003, 2002 and 2001 and the changes in its proved reserves are as follows:

	2003		2002		2001	
	Oil (Bbbls)	Gas (Mcf)	Oil (Bbbls)	Gas (Mcf)	Oil (Bbbls)	Gas (Mcf)
<b>Proved reserves:</b>						
Beginning of year	3,980	1,333,000	15,088	3,245,000	19,874	4,568,000
Revisions of prior estimates	(3,830)	(1,093,920)	—	—	(2,178)	(780,226)
Production	(17)	(123,392)	(495)	(91,470)	(2,608)	(542,774)
Sale of reserves in place	—	—	(14,598)	(3,177,278)	—	—
Extensions, discoveries and other additions	4,990	797,091	3,985	1,356,748	—	—
<b>End of year</b>	<b>5,123</b>	<b>912,779</b>	<b>3,980</b>	<b>1,333,000</b>	<b>15,088</b>	<b>3,245,000</b>
Interest in proved reserves of unconsolidated affiliate—end of year(1)			371,808	27,508,000	210,151	17,468,000
<b>Proved developed reserves:</b>						
Beginning of year	1,606	503,000	15,088	3,245,000	16,913	3,982,000
<b>End of year</b>	<b>3,024</b>	<b>759,095</b>	<b>1,606</b>	<b>503,000</b>	<b>15,088</b>	<b>3,245,000</b>
Interest in proved developed reserves of unconsolidated affiliate—end of year(1)			165,421	16,332,000	192,569	13,022,000

(1) Effective January 1, 2003, Cheniere began accounting for its investment in Gryphon using the cost method of accounting. Prior to that time, Cheniere accounted for this investment using the equity method of accounting. Accordingly, the amounts for 2002 and 2001 represent Cheniere's proportional share, based on its 100% common stock ownership, of the proved reserves and proved developed reserves of Gryphon. Upon the conversion of Gryphon's preferred shares, such proportional share of Gryphon reserves would be reduced to 9.3%, or proved reserves of 34,578 Bbbls and 2,558,000 Mcf and proved developed reserves of 15,384 Bbbls and 1,519,000 Mcf at December 31, 2002. Such reserves were not considered in the Company's calculation of depreciation, depletion and amortization or the calculation of its ceiling test.

There are numerous uncertainties inherent in estimating quantities of proved reserves and in projecting future rates of production and future amounts and timing of development expenditures, including many factors beyond the control of the Company. Reserve engineering is a subjective process of estimating underground accumulations of crude oil and natural gas that cannot be measured in an exact manner, and the accuracy of any reserve estimate is a function of the quality of available data and of engineering and geological interpretation and judgment. Estimates of proved undeveloped reserves are inherently less certain than estimates of proved developed reserves. The quantities of oil and gas that are ultimately recovered, production and operating costs, the amount and timing of future development expenditures, geologic success and future oil and gas sales prices may all differ from those assumed in these estimates. In addition, the Company's reserves may be subject to downward or upward revision based upon production history, purchases or sales of properties, results of future development, prevailing oil and gas prices and other factors.

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(unaudited)

**Standard Measure of Discounted Future Net Cash Flows**

The standardized measure of discounted future net cash flows was calculated by applying year-end prices (adjusted for location and quality differentials) to estimated future production, less future expenditures (based on year-end costs) to be incurred in developing and producing the Company's proved reserves and the estimated effect of future income taxes based on the current tax law. The resulting future net cash flows were discounted using a rate of 10% per annum.

The standardized measure of discounted future net cash flow amounts contained in the following tabulation does not purport to represent the fair market value of oil and gas properties. No value has been given to unproved properties. There are significant uncertainties inherent in estimating quantities of proved reserves and in projecting rates of production and the timing and amount of future costs. Future realization of oil and gas prices over the remaining reserve lives may vary significantly from current prices. In addition, the method of valuation utilized, based on year-end prices and costs and the use of a 10% discount rate, is not necessarily appropriate for determining fair value.

The standardized measure of discounted future net cash flows relating to proved oil and gas reserves is as follows:

	December 31,		
	2003	2002	2001
Future gross revenues	\$5,231,382	\$6,343,537	\$ 8,076,063
Less—future costs:			
Production	(134,251)	(163,683)	(2,570,550)
Development	—	(56,250)	(910,800)
Income Taxes	—	—	—
Future net cash flows	5,097,131	6,123,604	4,594,713
Less—10% annual discount for estimated timing of cash flows	(819,396)	(992,141)	(1,671,812)
Standardized measure of discounted future net cash flows	\$4,277,735	\$5,131,463	\$ 2,922,901



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The following table summarizes the principal sources of change in the standardized measure of discounted future net cash flows:

	Year Ended December 31,		
	2003	2002	2001
Standardized measure—beginning of period	\$ 5,131,463	\$ 2,922,901	\$ 20,618,002
Sales of oil and gas produced, net of production costs	(657,467)	(149,017)	(1,952,390)
Extensions, discoveries and other additions	3,691,594	5,208,984	—
Revisions to previous quantity estimates, timing and other	(4,944,824)	(28,799)	(675,047)
Net changes in prices and production costs	726,671	—	(21,242,047)
Sale of reserves in place	—	(2,212,670)	—
Development costs incurred	—	15,011	99,800
Changes in estimated development costs	—	(624,947)	(1,556,205)
Net changes in income taxes	—	—	5,062,716
Accretion of discount	330,298	—	2,568,072
Standardized measure—end of period	<u>\$ 4,277,735</u>	<u>\$ 5,131,463</u>	<u>\$ 2,922,901</u>
Standardized measure—end of period—proportional interest in reserves of unconsolidated affiliate(1)		<u>\$ 95,211,000</u>	<u>\$ 28,778,000</u>
Current prices at year-end, used in standardized measure			
Oil (per Bbl)	\$ 31.00	\$ 29.23	\$ 19.00
Gas (per Mcf)	5.63	4.64	2.61

- (1) Effective January 1, 2003, Cheniere began accounting for its investment in Gryphon using the cost method of accounting. Prior to that time, Cheniere accounted for this investment using the equity method of accounting. Accordingly, the amounts for 2002 and 2001 represent Cheniere's proportional share, based on its 100% common stock ownership, of the standardized measure of Gryphon's proved oil and gas reserves. Such proportional share of Gryphon's standardized measure will be reduced to 9.3% upon the conversion of Gryphon's preferred shares, resulting in a decrease in Cheniere's proportional interest in the standardized measure of unconsolidated affiliate to \$8,855,000 at December 31, 2002.

The Company may receive amounts different than those incorporated into the standardized measure of discounted cash flow for a number of reasons, including changes in prices. Therefore, the present value shown above should not be construed as the current market value of the estimated oil and gas reserves attributable to the Company's properties.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
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**SUMMARIZED QUARTERLY FINANCIAL DATA—(Continued)**  
(unaudited)

**Quarterly Financial Data—(unaudited)**

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Year
<b>Year ended December 31, 2003:</b>					
Revenues	\$ 110,120	\$ 121,300	\$ 135,245	\$ 290,802	\$ 657,467
Gross profit(1)	51,428	29,989	34,242	113,128	228,787
Income (loss) from operations	(862,744)	(1,185,749)	(2,924,546)	(4,045,111)	(9,018,150)
Net income (loss)(3)	3,121,309	(1,624,242)	(2,387,021)	(4,398,063)	(5,288,017)
Net income (loss) per share—basic and diluted	\$ 0.23	\$ (0.11)	\$ (0.16)	\$ (0.27)	\$ (0.36)
<b>Year ended December 31, 2002:</b>					
Revenues	\$ 161,604	\$ 37,955	\$ 21,998	\$ 17,498	\$ 239,055
Gross profit(1)	(18,423)	(52,528)	(111,912)	(36,682)	(219,545)
Income (loss) from operations(2)	(1,318,501)	(1,636,668)	(1,478,002)	738,264	(3,694,907)
Net income (loss)(2)	(2,530,967)	(2,366,029)	(1,474,972)	739,660	(5,632,308)
Net loss per share—basic and diluted	\$ (0.19)	\$ (0.18)	\$ (0.11)	\$ 0.06	\$ (0.42)

(1) Revenues less operating expenses other than general and administrative.

(2) Fourth quarter 2002 includes \$1,740,426 in recoveries of general and administrative expenses reimbursable under the terms of an agreement related to Cheniere's sale of its Freeport LNG site, which closed in February 2003.

(3) The first quarter of 2003 includes \$4,760,000 and \$423,454 in gains, respectively, on sales of 60% of the Freeport LNG terminal project to Freeport LNG and a 10% limited partner interest in Freeport LNG to a third party. See Note 7 to the Consolidated Financial Statements.

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**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

On October 17, 2002, Cheniere Energy, Inc. (the “Registrant”) dismissed PricewaterhouseCoopers LLP (“PWC”) as the Registrant’s principal accountant and engaged Mann Frankfort Stein & Lipp CPAs, L.L.P. (“Mann Frankfort”) as the principal accountant for the fiscal year ending December 31, 2002. The change in principal accountant was approved by the audit committee of the Registrant’s board of directors.

In connection with the audits of the Registrant’s fiscal year ended December 31, 2001, and the subsequent interim period through such dismissal, there were no disagreements between PWC and the Registrant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of PWC, would have caused them to make a reference thereto in their report on the financial statements for such year.

The reports of PWC on the consolidated financial statements of the Registrant and subsidiaries as of and for the year ended December 31, 2001 did not contain any adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope, or accounting principles, except the report on the consolidated financial statements as of and for the year ended December 31, 2001 included an explanatory paragraph regarding the existence of substantial doubt about the Registrant’s ability to continue as a going concern.

During the Company’s fiscal year ending December 31, 2001 and through October 17, 2002, the Registrant did not consult Mann Frankfort with respect to the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Registrant’s consolidated financial statements, or any other matters or reportable events listed in Items 304(a)(2)(i) and (ii) of Regulation S-K.

**ITEM 9A. CONTROLS AND PROCEDURES**

We maintain a set of disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports filed by us under the Securities Exchange Act of 1934, as amended (“Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. As of the end of the period covered by this report, we evaluated, under the supervision and with the participation of our management, including our President, Chief Executive Officer and Chairman of the Board and our Vice President & Chief Financial Officer, Secretary and Treasurer, the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 of the Exchange Act. Based on that evaluation, our President, Chief Executive Officer and Chairman of the Board and our Vice President & Chief Financial Officer, Secretary and Treasurer concluded that our disclosure controls and procedures are effective.

During the most recent fiscal quarter, there have been no changes in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART III**

**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Item 10 of Part III of this Report is incorporated by reference from Cheniere’s definitive proxy statement involving the election of directors, which is to be filed pursuant to Regulation 14A within 120 days after the end of Cheniere’s fiscal year ended December 31, 2003.

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**ITEM 11. EXECUTIVE COMPENSATION**

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Item 11 of Part III of this Report is incorporated by reference from Cheniere's definitive proxy statement involving the election of directors, which is to be filed pursuant to Regulation 14A within 120 days after the end of Cheniere's fiscal year ended December 31, 2003.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Item 12 of Part III of this Report is incorporated by reference from Cheniere's definitive proxy statement involving the election of directors, which is to be filed pursuant to Regulation 14A within 120 days after the end of Cheniere's fiscal year ended December 31, 2003.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Item 13 of Part III of this Report is incorporated by reference from Cheniere's definitive proxy statement involving the election of directors, which is to be filed pursuant to Regulation 14A within 120 days after the end of Cheniere's fiscal year ended December 31, 2003.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Pursuant to paragraph 3 of General Instruction G to Form 10-K, the information required by Item 14 of Part III is incorporated by reference from Cheniere's definitive proxy statement involving the election of directors, which is to be filed pursuant to Regulation 14A within 120 days after the end of Cheniere's fiscal year ended December 31, 2003.

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K**

(a) Financial Statements, Schedules and Exhibits

(1) Financial Statements—Cheniere Energy, Inc. and Subsidiaries:

<a href="#">Reports of Independent Accountants</a>	37
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The financial statements of Freeport LNG Development, L.P. for the period from December 1, 2002 to December 31, 2003, for which Cheniere used the equity method of accounting, have been filed as part of this report on Form 10-K. (See Item 15(d))

The financial statements of Gryphon Exploration Company for the two fiscal years ended December 31, 2002, for which Cheniere used the equity method of accounting, have been filed as part of this report on Form 10-K. (See Item 15(d))

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### (2) Financial Statement Schedules

All consolidated financial statement schedules have been omitted because they are not required, are not applicable, or the required information has been included elsewhere within this Form 10-K.

### (3) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1*	Amended and Restated Certificate of Incorporation of Cheniere Energy, Inc. ("Cheniere") (Incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-8 (File No. 333-112379), filed on January 30, 2004)
3.2*	Amended and Restated By-laws of Cheniere, as amended through January 29, 2004. (Incorporated by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-8 (File No. 333-112379), filed on January 20, 2004)
4.1*	Specimen Common Stock Certificate of Cheniere. (Incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-1 (File No. 333-10905), filed on August 27, 1996)
4.2*	Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of Gryphon Exploration Company. (Incorporated by reference to Exhibit 10.3 of the Company's Current Report on Form 8-K (File No. 000-09092), filed on October 20, 2000)
10.1*†	Cheniere Energy, Inc. 1997 Stock Option Plan. (Incorporated by reference to Exhibit 10.25 of the Company's Quarterly on Form 10-Q for the quarter ended November 30, 1997 (File No. 000-09092), filed on January 14, 1998)
10.2*†	Amendment No. 1 to Cheniere Energy, Inc. 1997 Stock Option Plan. (Incorporated by reference to Exhibit 10.27 of the Company's Annual Report on Form 10-K for the year ended December 31, 1999 (File No. 000-09092), filed on March 29, 2000)
10.3*†	Amendment No. 2 to Cheniere Energy, Inc. 1997 Stock Option Plan. (Incorporated by reference to Exhibit 4.7 of the Company's Registration Statement on Form S-8 (File No. 333-111457), filed on December 22, 2003)
10.4*†	Amendment No. 3 to Cheniere Energy, Inc. 1997 Stock Option Plan. (Incorporated by reference to Exhibit 8 of the Company's Registration Statement on Form S-8 (File No. 333-111457), filed on December 22, 2003)
10.5*†	Amendment No. 4 to Cheniere Energy, Inc. 1997 Stock Option Plan. (Incorporated by reference to Exhibit 9 of the Company's Registration Statement on Form S-8 (File No. 333-111457), filed on December 22, 2003)
10.6*†	Cheniere Energy, Inc. 2003 Stock Incentive Plan. (Incorporated by reference to Exhibit 4.5 of the Company's Registration Statement on Form S-8 (File No. 333-112379), filed on January 30, 2004)
10.7*	Seismic Data Purchase Agreement, dated June 21, 2000 between Seitel Data Ltd. and Cheniere. (Incorporated by reference to Exhibit 10.39 of the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2000 (File No. 000-09092), filed on August 11, 2000)
10.8*	Contribution and Subscription Agreement, dated as of September 15, 2000, by and among the Company, Gryphon Exploration Company and the other investors listed therein. (Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K (File No. 000-09092), filed on October 20, 2000)
10.9*	Stockholders Agreement, dated as of October 11, 2000. (Incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K (File No. 000-09092), filed on October 20, 2000)

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<u>Exhibit No.</u>	<u>Description</u>
10.10*	Settlement and Purchase Agreement, dated and effective as of June 14, 2001 by and between Cheniere, CXY Corporation, Crest Energy, L.L.C., Crest Investment Company and Freeport LNG Terminal, LLC. (Incorporated by reference to Exhibit 10.10 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001 (File No. 001-16383), filed on April 1, 2002)
10.11*	Stock Transfer Agreement, dated March 19, 2002, by and between Gryphon Exploration Company and Cheniere. (Incorporated by reference to Exhibit 10.11 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001 (File No. 001-16383) filed on April 1, 2002)
10.12*	Contribution Agreement, dated as of August 26, 2002, by and among Freeport LNG Investments, LLC, Freeport LNG-GP, Inc., Cheniere, Cheniere LNG, Inc. and Freeport LNG Terminal, LLC. (Incorporated by reference to Exhibit 2 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on September 4, 2002)
10.13*	Extension and Amendment to Contribution Agreement, dated as of September 19, 2002, by and among Freeport LNG Investments, LLC, Freeport LNG-GP, Inc., Cheniere, Cheniere LNG, Inc. and Freeport LNG Terminal, LLC. (Incorporated by reference to Exhibit 2 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on September 26, 2002)
10.14*	Second Extension and Amendment to Contribution Agreement, effective as of October 4, 2002, by and among Freeport LNG Investments, LLC, Freeport LNG-GP, Inc., Cheniere, Cheniere LNG, Inc. and Freeport LNG Terminal, LLC. (Incorporated by reference to Exhibit 1 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on November 5, 2002)
10.15*	Third Amendment to Contribution Agreement, effective as of February 27, 2003, by and among Freeport LNG Investments, LLC, Freeport LNG-GP, Inc., Cheniere, Cheniere LNG, Inc. and Freeport LNG Terminal, LLC. (Incorporated by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on March 7, 2003)
10.16*	Amended and Restated Limited Partnership Agreement of Freeport LNG Development, L.P., dated as of February 27, 2003, by and among Freeport LNG-GP, Inc., Freeport LNG Investments, LLC and Cheniere LNG, Inc. (Incorporated by reference to Exhibit 10.5 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on March 7, 2003)
10.17*	First Amendment to Amended and Restated Partnership Agreement of Freeport LNG Development, L.P., dated as of December 20, 2003, by and among Freeport LNG-GP, Inc., Freeport LNG Investments, LLC and Cheniere LNG, Inc. (Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on December 19, 2003)
10.18*	Warrant to Purchase Common Stock, dated as of February 27, 2003, issued by Cheniere in favor of Freeport LNG Investments, LLC. (Incorporated by reference to Exhibit 10.6 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on March 7, 2003)
10.19*	Option Agreement, dated February 27, 2003, by and between Freeport LNG Investments, LLC and Cheniere Energy, Inc. (Incorporated by reference to Exhibit 10.7 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on March 7, 2003)
10.20*	Partnership Interest Purchase Agreement, dated as of March 1, 2003, among Contango Sundance, Inc., Contango Oil & Gas, Cheniere LNG, Inc. and Cheniere. (Incorporated by reference to Exhibit 10.8 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on March 7, 2003)

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<u>Exhibit No.</u>	<u>Description</u>
10.21*	Warrant to Purchase Common Stock, dated March 1, 2003, issued by Cheniere in favor of Contango Sundance, Inc. (Incorporated by reference to Exhibit 10.9 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on March 7, 2003)
10.22*	Limited Partnership Agreement of Corpus Christi LNG, L.P., dated as of May 15, 2003, by and among Corpus Christ LNG-GP, Inc., BPU LNG and Cheniere. (Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K (File No. 001-16383), filed on June 11, 2003)
10.23*	Credit Agreement, dated as of July 25, 2003, by and between Cheniere, Cheniere LNG, Inc., Cheniere Energy Operating Co., Inc., Cheniere LNG Services, Inc., Cheniere-Gryphon Management, Inc. and Sterling Bank. (Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003 (File No. 001-16383), filed on August 13, 2003)
10.24*	First Amendment to Credit Agreement, dated as of October 24, 2003, by and between Cheniere, Cheniere LNG, Inc., Cheniere Energy Operating Co., Inc., Cheniere LNG Services, Inc., Cheniere-Gryphon Management, Inc. and Sterling Bank. (Incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 (File No. 001-16383), filed on November 13, 2003)
10.25	Omnibus Agreement, dated as of December 20, 2003, by and among Freeport LNG Development, L.P., Freeport LNG-GP, Inc., and ConocoPhillips Company.
21	Subsidiaries of Cheniere Energy, Inc.
23.1	Consent of Mann Frankfort Stein & Lipp CPAs, L.L.P.
23.2	Consent of PricewaterhouseCoopers LLP
23.3	Consent of KPMG LLP
23.4	Consent of Hein & Associates LLP
23.5	Consent of Sharp Petroleum Engineering, Inc.
23.6	Consent of Ryder Scott Company
31.1	Certification by Chief Executive Officer required by Rule 13a-14(a) and 15d-14(a) under the Exchange Act
31.2	Certification by Chief Financial Officer required by Rule 13a-14(a) and 15d-14(a) under the Exchange Act
32.1	Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\* Incorporated by reference

† Management contract or compensatory plan or arrangement

(b) Reports On Form 8-K:

*November 14, 2003*—The Company filed a Current Report on Form 8-K on November 14, 2003 to report the Company's results of operations for the third quarter ended September 30, 2003.

*December 22, 2003*—The Company filed a Current Report on Form 8-K on December 22, 2003 to report that it had entered into the First Amendment to the Amended and Restated Limited Partnership Agreement,

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dated as of December 20, 2003, by and among Freeport LNG-GP, Inc., Freeport LNG Investments, LLC, the Company, and Contango Sundance, Inc.

- (d) Freeport LNG Development, L.P. Financial Statements, for which Cheniere used the equity method of accounting for the period from December 1, 2002 to December 31, 2003, are filed as a part of this report beginning on page 81.

Gryphon Exploration Company Financial Statements, for which Cheniere used the equity method of accounting for the two fiscal years ending December 31, 2002, are filed as a part of this report beginning on page 90.



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**Table of Contents****SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CHENIERE ENERGY, INC.  
(Registrant)

By: \_\_\_\_\_ /s/ CHARIF SOUKI

**Charif Souki**  
**President, Chief Executive Officer and**  
**Chairman of the Board**

Date: March 25, 2004

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ CHARIF SOUKI _____ Charif Souki	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	March 25, 2004
/s/ WALTER L. WILLIAMS _____ Walter L. Williams	Vice Chairman of the Board and Director	March 25, 2004
/s/ DON A. TURKLESON _____ Don A. Turkleson	Vice President & Chief Financial Officer, Secretary & Treasurer (Principal Financial Officer)	March 25, 2004
/s/ CRAIG K. TOWNSEND _____ Craig K. Townsend	Vice President & Controller (Principal Accounting Officer)	March 25, 2004
/s/ NUNO BRANDOLINI _____ Nuno Brandolini	Director	March 25, 2004
/s/ KEITH F. CARNEY _____ Keith F. Carney	Director	March 25, 2004
/s/ PAUL J. HOENMANS _____ Paul J. Hoenmans	Director	March 25, 2004
/s/ DAVID B. KILPATRICK _____ David B. Kilpatrick	Director	March 25, 2004
/s/ J. ROBINSON WEST _____ J. Robinson West	Director	March 25, 2004

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**INDEPENDENT AUDITOR'S REPORT**

February 10, 2004

To the Partners of  
Freeport LNG Development, L.P., a Limited Partnership  
Houston, Texas

We have audited the accompanying balance sheet of Freeport LNG Development, L.P., a Delaware limited partnership (a development stage limited partnership), as of December 31, 2003, and the related statements of operations, changes in partners' capital (deficit) and cash flows for the year then ended and for the period from inception (December 1, 2002) through December 31, 2003. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Freeport LNG Development, L.P., as of December 31, 2003, and the results of its operations and its cash flows for the year then ended and for the period from inception (December 1, 2002) through December 31, 2003, in conformity with accounting principles generally accepted in the United States of America.

HEIN & ASSOCIATES LLP  
Phoenix, Arizona

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**FREEMPORT LNG DEVELOPMENT, L.P.**  
**(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)**

**BALANCE SHEET**

**DECEMBER 31, 2003**

**ASSETS**

Current assets:	
Cash and cash equivalents	\$ 77,000
Prepaid expenses	216,000
Other current assets	2,000
Total current assets	295,000
Property and equipment, net	121,000
Security deposit	29,000
<b>TOTAL ASSETS</b>	<b>\$ 445,000</b>

**LIABILITIES AND PARTNERS' CAPITAL (DEFICIT)**

Current liabilities:	
Accounts payable and accrued liabilities	\$ 3,386,000
Amounts payable to limited partners	2,501,000
Total current liabilities	5,887,000
Commitments and Contingency (Notes 3 and 6)	
Partners' capital (deficit), including deficit accumulated during the development stage of \$15,832,000.	(5,442,000)
<b>TOTAL LIABILITIES AND PARTNERS' CAPITAL (DEFICIT)</b>	<b>\$ 445,000</b>

See accompanying notes to the financial statements.

**FREEPORT LNG DEVELOPMENT, L.P.**  
*(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)*  
**STATEMENTS OF OPERATIONS**

	For the Year Ending December 31, 2003	Inception (December 1, 2002) through December 31, 2003
<b>REVENUES</b>	\$ —	\$ —
<b>EXPENSES:</b>		
Quintana site rental and related costs	573,000	573,000
Personnel and related costs	2,193,000	2,406,000
Engineering	2,419,000	2,667,000
Environmental and special studies	1,063,000	1,285,000
Purchase of limited partners start up and preconstruction cost (Note 4)	5,000,000	5,000,000
Professional services	3,068,000	3,152,000
Other general and administrative costs	624,000	749,000
	<hr/>	<hr/>
Total expenses	14,940,000	15,832,000
	<hr/>	<hr/>
<b>NET LOSS</b>	<b>\$ 14,940,000</b>	<b>\$ 15,832,000</b>

See accompanying notes to the financial statements.

**FREEMPORT LNG DEVELOPMENT, L.P.**  
**(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)**  
**STATEMENT OF PARTNERS' CAPITAL (DEFICIT)**  
**FOR THE YEAR FROM INCEPTION (DECEMBER 1, 2002)**  
**THROUGH DECEMBER 31, 2003**

	<u>General Partner</u>	<u>Limited Partners</u>	<u>Retained Deficit</u>	<u>Total Partners' Capital (Deficit)</u>
Balances at inception (December 1, 2002)	\$ —	\$ —	\$ —	\$ —
Net loss	—	—	(892,000)	(892,000)
	<u>—</u>	<u>—</u>	<u>(892,000)</u>	<u>(892,000)</u>
Balances at December 31, 2002	—	—	(892,000)	(892,000)
Capital contributions	—	10,390,000	—	10,390,000
Net loss	—	—	(14,940,000)	(14,940,000)
	<u>—</u>	<u>—</u>	<u>(14,940,000)</u>	<u>(14,940,000)</u>
Balances at December 31, 2003	<u>\$ —</u>	<u>\$ 10,390,000</u>	<u>\$ (15,832,000)</u>	<u>\$ (5,442,000)</u>

See accompanying notes to the financial statements.

**FREEPORT LNG DEVELOPMENT, L.P.**  
*(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)*  
**STATEMENT OF CASH FLOWS**

	<u>For the Year Ending December 31, 2003</u>	<u>Inception (December 1, 2002) through December 31, 2003</u>
<b>OPERATING ACTIVITIES:</b>		
Net loss	\$ (14,940,000)	\$ (15,832,000)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	15,000	15,000
Changes in assets and liabilities:		
Prepays and other assets	(218,000)	(218,000)
Security deposits	(29,000)	(29,000)
Accounts payable and accrued liabilities	2,494,000	3,386,000
Due to limited partners	2,501,000	2,501,000
Net cash used in operating activities	<u>(10,177,000)</u>	<u>(10,177,000)</u>
<b>INVESTING ACTIVITIES:</b>		
Purchase of property and equipment	(136,000)	(136,000)
<b>FINANCING ACTIVITIES:</b>		
Contributions from partners	10,390,000	10,390,000
Net increase in cash and cash equivalents	77,000	77,000
Cash and cash equivalents at beginning of period	—	—
Cash and cash equivalents at end of period	<u>\$ 77,000</u>	<u>\$ 77,000</u>

See accompanying notes to the financial statements.

**FREEPORT LNG DEVELOPMENT, L.P.**  
**(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)**  
**NOTES TO THE FINANCIAL STATEMENTS**

**1. SIGNIFICANT ACCOUNTING POLICIES:**

*Business Activity*—Freeport LNG Development, L.P. (the “Partnership”) is in the process of developing and building a liquefied natural gas (LNG) receiving and regasification facility on Quintana Island, near Freeport, Texas (the “Facility”). After construction is completed, the Partnership will own and operate the Facility.

*Use of Estimates*—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts in the financial statements and accompanying notes. Actual results could differ from these estimates and assumptions.

*Cash and Cash Equivalents*—The Partnership considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

*Property, Plant and Equipment*—Property, plant and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets for financial reporting purposes. Expenditures for major renewals and betterments that extend the useful lives will be capitalized. Expenditures for normal maintenance and repairs will be expensed as incurred. When assets are sold or abandoned, the cost of the assets sold or abandoned and the related accumulated depreciation will be eliminated from the accounts and any gains or losses will be charged or credited to other income (expense) of the respective period. The estimated useful lives by classification are as follows:

Office Equipment	5 years
Leasehold Improvements	15 years

*Revenue Recognition*—Revenues will be recognized when the terminal use fees are earned.

*Income Taxes*—The Partnership files its Federal income tax return as a partnership under the Internal Revenue Code. In lieu of corporate income taxes, the partners of the Partnership are taxed on their proportionate share of the Partnership’s taxable income. Accordingly, no provision or liability has been recognized for federal income tax purposes for those periods, as taxes are the personal responsibility of the individual partners of the Partnership.

**2. DEVELOPMENT STAGE OPERATIONS:**

The Partnership was formed December 1, 2002. Operations have been devoted to preconstruction costs such as obtaining approvals from the Federal Energy Regulatory Commission (“FERC”), and obtaining the appropriate leases and permits, and completing the engineering and environmental studies necessary for further development of the Facility.

**3. LIQUIDITY AND CONTINUED OPERATIONS:**

The Partnership will ultimately need to obtain FERC and other approvals in order to construct and operate the Facility. In addition, there are significant engineering, procurement and construction costs to be incurred and additional feasibility studies to be performed.

Notwithstanding the foregoing, the Partnership believes it will continue as a going-concern through December 31, 2004 based on the favorable results of the studies completed to date, and the strong financial



**FREEPORT LNG DEVELOPMENT, L.P.**  
**(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)**  
**NOTES TO THE FINANCIAL STATEMENTS—(Continued)**

backing of several of its partners and future customers. In addition to the funds received for capacity reservations, the Partnership expects to close on debt financing in 2004 to finance construction of the Facility based on an agreement reached with ConocoPhillips in 2003.

Ultimately the Partnership will need to obtain FERC, state and other approvals and it must obtain and close on sufficient project financing, successfully complete the construction of the Facility and achieve profitable operations. If it is unable to do so, the Partnership will be required to pursue other courses of action.

**4. CONTRIBUTION BY LIMITED PARTNER:**

The Partnership was formed with one General Partner, Freeport LNG-GP, Inc. ("Freeport GP") and one Limited Partner, Freeport LNG Investments, LLC ("Investments LP"). The General Partner owned 0% and the Limited Partner owned 100% of the Partnership. The purpose of the limited partnership is to develop and operate the Facility.

In February 2003 the Partnership agreement was amended and restated ("Amended and Restated Partnership Agreement") to provide for, among other things, the addition of Cheniere LNG Inc. ("Cheniere") as an additional limited partner.

Cheniere has represented to the Partnership that, prior to the amendment of the Partnership agreement, Cheniere incurred costs related to the LNG Facility. These costs included research and development, various feasibility and environmental studies, preconstruction costs and other related start-up costs. Together these costs are referred to as Cheniere's "know how." The estimated fair value of the work performed by Cheniere was agreed to by all the partners to be \$14,300,000. Cheniere had expensed all the costs as incurred.

The partners agreed that Cheniere would "contribute" know how valued at \$9,300,000 to the Partnership for a 40% limited partner interest in the Partnership. The Partnership agreed to purchase the remaining know how from Cheniere for \$5,000,000, payable in installments during 2003 of \$2.5 million with the remaining \$2.5 million due when the project receives FERC approval, or the Partnership receives a stipulated amount of cash from future customers for capacity reservations for the Facility.

The Amended and Restated Partnership Agreement also provided for Investments LP to fund the first \$9,000,000 of capital to the Partnership, after which time all additional costs would be borne by the partners in relation to their respective ownership percentages.

Because Cheniere's basis in the contributed assets was zero and the project is still in the preconstruction phase, no value is reflected on the balance sheet for Cheniere's know how, and Cheniere's capital account for accounting purposes is recorded at zero. The \$5,000,000 due to Cheniere for the purchase of the remaining know how has been expensed in the statement of operations.

Subsequent to the contribution, Cheniere sold a 10 percent interest in the Partnership to Contango Oil and Gas Company.

In December of 2003, Freeport LNG Investments, LLC was converted to Freeport LNG Investments, LLLP (Delaware).

**FREEPORT LNG DEVELOPMENT, L.P.**  
**(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)**  
**NOTES TO THE FINANCIAL STATEMENTS—(Continued)**

**5. AGREEMENT WITH CONOCOPHILLIPS:**

In December 2003, the Partnership, Freeport GP, and ConocoPhillips executed an omnibus agreement. This agreement governs several transactions among the entities, including the following:

- ConocoPhillips agreed to pay \$10,000,000 for a capacity reservation on the Facility.
- ConocoPhillips and the Partnership agreed to a term sheet providing for ConocoPhillips to make a loan to cover a substantial majority of the facility's anticipated construction costs, including interest during the construction phase. The debt service under this loan will be fully serviced by the ConocoPhillips Terminal Use Agreement ("TUA"). In addition, ConocoPhillips has agreed to make available a lender-of-last-resort financing facility for the Partnership's remaining share of construction costs, if any. The debt service for this loan would be paid by the Partnership from available revenues.
- ConocoPhillips also agreed to purchase 50% of the stock of Freeport GP for \$9,000,000. After the purchase of the stock, ConocoPhillips and Freeport GP will each appoint three persons to a board which will manage the construction and operation of the Facility.
- ConocoPhillips also agreed to the form of the Terminal Use Agreement which will govern the terms under which LNG is processed.

ConocoPhillips was not obligated to make the \$10,000,000 payment for the capacity reservation until it received specific engineering and design studies, which did not occur until 2004, therefore as of December 31, 2003 the Partnership has not recorded a receivable for this amount. The required documents were provided subsequent to December 31, 2003 and the Partnership received the \$10,000,000 payment in January 2004. The Partnership has recorded a liability at December 31, 2003, for the remaining \$2,500,000 that is due to Cheniere as discussed in Note 4.

**6. COMMITMENTS:**

The Partnership has entered a lease agreement, dated December 12, 2002 and as amended March 1, 2003, with the Brazos River Harbor Navigation District for the lease of the land on which the Facility will be constructed. The lease requires the Partnership to use its best efforts to obtain FERC and all other approvals, and requires communications with the landlord regarding the status of the approvals. The lease may be terminated by either party if the Partnership has not obtained FERC approval by March 1, 2005, and may be terminated earlier by the landlord if the required communications are not made. The lease term is 30 years beginning on March 1, 2003, with six options to renew the lease for an additional 10 years for each option. The initial rent payment is \$450,000 per year however, the lease contains escalation clauses which will increase the future minimum lease payment to \$1,800,000 per year. The escalation will take effect the earlier of (a) 180 days following FERC approval, (b) the dates on which construction on the LNG Facility begins, or (c) March 1, 2005. The lease includes an option, which has been exercised. The option requires additional lease payments of \$200,000 per year beginning in the year when the escalation takes effect. The lease rate may also increase based on increases in the Consumer Price Index (CPI).

Subsequent to December 31, 2003, the Partnership executed an additional lease for areas around the Facility for 29 years. The additional lease requires a \$100,000 payment each year.

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**FREEPORT LNG DEVELOPMENT, L.P.**  
**(A DEVELOPMENT STAGE LIMITED PARTNERSHIP)**  
**NOTES TO THE FINANCIAL STATEMENTS—(Continued)**

The following table presents the future minimum lease payments due under the original lease, the amendment and the additional lease (executed subsequent to December 31, 2003), assuming the fixed escalation begins on March 1, 2005, and ignoring any increases determined by an increase to the CPI index:

2004	\$ 550,000
2005	2,100,000
2006	2,100,000
2007	2,100,000
2008	2,100,000
Thereafter	50,400,000
	<u>\$ 59,350,000</u>

As of December 31, 2003, no deferred rent has been accrued for the escalation clause, as the Partnership has the right to terminate the lease should it be unable to obtain FERC approval.

Additionally, the lease provides that the Partnership will guarantee thru-put fees of \$1,250,000 per year (subject to increase for the CPI index) to be received by the Dock Facilities operated by the port from carriers shipping LNG to the Facility. This guarantee begins 42 months after the aforementioned escalation date.

Capacity Reservations—Investments LP has entered into an agreement whereby it borrowed \$5,000,000 from The Dow Chemical Company (“Dow”). In connection with this agreement, the Partnership agreed to reserve a stipulated capacity at the Facility for Dow. The Dow Capacity Reservation and the ConocoPhillips Capacity Reservation are expected to fully reserve for substantially all of the Facility’s anticipated capacity after completion of Phase 1 of the construction.

**7. PROPERTY AND EQUIPMENT:**

Property and equipment consists of:

Office equipment	\$ 97,000
Leasehold improvements	39,000
	<u>136,000</u>
Property and equipment	136,000
Less: accumulated depreciation	(15,000)
	<u>\$121,000</u>

**8. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES:**

Accounts payable and accrued liabilities consists of the following:

Employee bonuses	\$ 476,000
Engineering and study costs	1,447,000
Professional fees	887,000
Investment banking advisor fees	515,000
Other accrued liabilities and payables	61,000
	<u>\$ 3,386,000</u>

**Report of Independent Accountants**

To the Board of Directors and Stockholders of  
Gryphon Exploration Company:

We have audited the accompanying balance sheet of Gryphon Exploration Company, as of December 31, 2002, and the related statements of income (loss), stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the 2002 financial statements referred to above present fairly, in all material respects, the financial position of Gryphon Exploration Company, as of December 31, 2002, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

**KPMG LLP**

March 14, 2003, except as to Note 13, which is as of February 27, 2004  
Houston, Texas

**Report of Independent Accountants**

To the Board of Directors and Stockholders of  
Gryphon Exploration Company

In our opinion, the statements of income, of stockholders' equity and of cash flows for the year ended December 31, 2001 present fairly, in all material respects, the results of operations and cash flows of Gryphon Exploration Company for the year ended December 31, 2001 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

**PRICEWATERHOUSECOOPERS LLP**

March 29, 2002  
Houston, Texas

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**GRYPHON EXPLORATION COMPANY**  
**BALANCE SHEET**  
(dollars in thousands, except share related items)

**December 31, 2002**

<u>ASSETS</u>	
<b>CURRENT ASSETS</b>	
Cash and Cash Equivalents	\$ 2,986
Restricted Cash Deposits	260
Receivables from Joint Interest Owners and Revenue Receivables	3,188
Prepaid Expenses and Other	5,781
	<hr/>
Total Current Assets	12,215
<b>OIL AND GAS PROPERTIES, full cost method</b>	
Proved Properties, net	54,322
Unproved Properties, not subject to amortization	36,685
	<hr/>
Total Oil and Gas Properties	91,007
<b>FIXED ASSETS, net</b>	458
	<hr/>
Total Assets	\$ 103,680
	<hr/>
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>	
<b>CURRENT LIABILITIES</b>	
Accounts Payable and Accrued Liabilities	\$ 5,773
Advances from Joint Interest Owners	1,875
Revenue Payable	5
Short-term Note Payable	2,865
Hedge Liability	1,352
	<hr/>
Total Current Liabilities	11,870
	<hr/>
<b>DEFERRED TAX LIABILITY</b>	2,043
<b>COMMITMENTS AND CONTINGENCIES (NOTE 10)</b>	
<b>STOCKHOLDERS' EQUITY</b>	
Preferred Stock, \$.01 par value Authorized: 500,000 shares; Issued and Outstanding: 85,000 shares	2
Common Stock, \$.01 par value Authorized: 4,000,000 shares; Issued: 145,600 shares Outstanding: 87,460 shares	1
Additional Paid-in-Capital	93,160
Retained Earnings (Deficit)	(416)
Treasury Stock	
Recorded at cost—58,140 shares	(2,980)
	<hr/>
Total Stockholders' Equity	89,767
	<hr/>
Total Liabilities and Stockholders' Equity	\$ 103,680
	<hr/>

The accompanying notes are an integral part of these financial statements.

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**GRYPHON EXPLORATION COMPANY**  
**STATEMENTS OF INCOME (LOSS)**  
(dollars in thousands)

	Year ended December 31,	
	2002	2001
Oil and Gas Revenue	\$ 12,495	\$ 2,382
Loss on Derivative Instruments	(1,352)	—
	<u>11,143</u>	<u>2,382</u>
Operating Costs and Expenses		
Production Costs	804	254
Workover Costs	3,226	—
Depreciation, Depletion and Amortization	6,521	1,769
General and Administrative Expenses	1,423	685
	<u>11,974</u>	<u>2,708</u>
Total Operating Costs and Expenses	11,974	2,708
Loss From Operations Before Interest Income and Income Taxes	(831)	(326)
Interest Income	157	408
	<u>        </u>	<u>        </u>
Income (Loss) From Operations Before Income Taxes	(674)	82
Income Tax Benefit	155	2
	<u>        </u>	<u>        </u>
Net Income (Loss)	<u>\$ (519)</u>	<u>\$ 84</u>

The accompanying notes are an integral part of these financial statements

**GRYPHON EXPLORATION COMPANY**  
**STATEMENTS OF STOCKHOLDERS' EQUITY**  
(dollars in thousands)

	Common Stock		Preferred Stock		Additional Paid-In Capital	Retained Earnings	Treasury Stock	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance—December 31, 2000	145,600	\$ 1	25,000	\$ —	\$ 33,168	\$ 19	\$ —	\$ 33,188
Treasury Stock	(6,740)	—	—	—	—	—	(418)	(418)
Issuance of Preferred Stock	—	—	30,000	1	29,999	—	—	30,000
Offering Costs	—	—	—	—	(6)	—	—	(6)
Net Income	—	—	—	—	—	84	—	84
Balance—December 31, 2001	138,860	\$ 1	55,000	\$ 1	\$ 63,161	\$ 103	\$ (418)	\$ 62,848
Treasury Stock	(51,400)	—	—	—	—	—	(2,562)	(2,562)
Issuance of Preferred Stock	—	—	30,000	1	29,999	—	—	30,000
Net Loss	—	—	—	—	—	(519)	—	(519)
Balance—December 31, 2002	87,460	\$ 1	85,000	\$ 2	\$ 93,160	\$ (416)	\$ (2,980)	\$ 89,767

The accompanying notes are an integral part of these financial statements.



**GRYPHON EXPLORATION COMPANY**  
**STATEMENTS OF CASH FLOWS**  
(dollars in thousands)

	Year ended December 31,	
	2002	2001
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net Income (Loss)	\$ (519)	\$ 84
Adjustments to Reconcile Net Income (Loss) to		
Net Cash Provided by Operating Activities:		
Depreciation, Depletion and Amortization	6,521	1,769
Loss on Derivative Instruments	1,352	—
Deferred Income Taxes	862	(2)
Changes in Operating Assets and Liabilities		
Restricted Cash Deposits	1,491	5,421
Accounts Receivable	(1,869)	(246)
Prepaid Expenses	(1,920)	(3,084)
Accounts Payable and Current Liabilities	5,517	(6,123)
	11,435	(2,181)
<b>NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES</b>	<b>11,435</b>	<b>(2,181)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Oil and Gas Property Additions	(43,495)	(36,599)
Noncurrent Restricted Cash Deposits	—	2,608
Purchases of Fixed Assets	(323)	(513)
	(43,818)	(34,504)
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(43,818)</b>	<b>(34,504)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Sale of Preferred Stock	30,000	30,000
Purchase of Treasury Stock	(2,562)	(418)
Offering Costs	—	(6)
Proceeds from borrowings	—	1,804
Repayment of borrowings	—	(716)
	27,438	30,664
<b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>	<b>27,438</b>	<b>30,664</b>
<b>NET DECREASE IN CASH</b>	<b>(4,945)</b>	<b>(6,021)</b>
CASH—BEGINNING OF PERIOD	7,931	13,952
	\$ 2,986	\$ 7,931
<b>CASH—END OF PERIOD</b>	<b>\$ 2,986</b>	<b>\$ 7,931</b>

The accompanying notes are an integral part of these financial statements.

**GRYPHON EXPLORATION COMPANY**  
**NOTES TO FINANCIAL STATEMENTS**  
(dollars in thousands, except share related items)

**NOTE 1—Organization and Nature of Operations**

Gryphon Exploration Company, a Delaware corporation, (“Gryphon” or the “Company”) is a Houston-based company formed for the purpose of oil and gas exploration, development and exploitation. The Company is currently engaged in the exploration and production for oil and natural gas in the Gulf of Mexico. The Company began operations October 2000.

On October 11, 2000 (“Inception”), Gryphon completed a transaction with Warburg, Pincus Equity Partners, L.P. and certain affiliates thereof, (“Warburg”) a global private equity fund based in New York, and Cheniere Energy, Inc. (“Cheniere”) to fund an exploration program based upon approximately 8,800 square miles of 3D seismic data in the Gulf of Mexico (the “Fairfield data set”). Cheniere contributed selected net assets in exchange for 100% of the common stock of Gryphon. These assets included the Fairfield data set license, certain offshore leases, a prospect then being drilled, an exploration agreement with an industry partner (described in Note 4) and certain other assets and liabilities. In addition, Gryphon assumed certain liabilities and obligations of Cheniere in connection with the contribution of assets. The assets received from Cheniere less the liabilities assumed were recorded at their estimated net fair value at the date of the transaction. Also, at inception, Warburg contributed \$25,000 and received Gryphon Series A convertible preferred stock, with an 8% cumulative dividend (Series A preferred stock). Cheniere and Warburg also agreed, under certain circumstances, to contribute additional capital up to \$75,000 to Gryphon, proportionate to their respective ownership interests.

As further discussed in Note 6, Warburg and certain employees of the Company contributed an additional \$60,000 in exchange for 60,000 shares of Series A preferred stock during 2001 and 2002.

**NOTE 2—Summary of Significant Accounting Policies**

**Basis of Presentation**

The financial statements include the accounts of Gryphon Exploration Company. As an independent oil and gas producer, the Company’s revenue, profitability and future rate of growth are substantially dependent upon prevailing prices for natural gas, oil and condensate, which are dependent upon numerous factors beyond the Company’s control, such as economic, political and regulatory developments and competition from other sources of energy. The energy markets have historically been very volatile, and there can be no assurance that oil and gas prices will not be subject to wide fluctuations in the future. A substantial or extended decline in oil and gas prices could have a material adverse effect on the Company’s financial position, results of operations, cash flows, access to capital, and on the quantities of oil and gas reserves that may be economically produced.

**Oil and Gas Properties**

*General.* The Company uses the full cost method of accounting for exploration and development activities as defined by the U.S. Securities and Exchange Commission (“SEC”). Under this method of accounting, the costs for unsuccessful, as well as successful, exploration and development activities are capitalized as oil and gas properties. This includes any internal costs that are directly related to exploration and development activities. Gain or loss on the sale or other disposition of oil and gas properties is not recognized, unless the gain or loss would significantly alter the relationship between capitalized costs and proved reserves of oil and natural gas.

The sum of net capitalized costs and estimated future development and abandonment costs of oil and gas properties and mineral investments is amortized using the unit-of-production method. The carrying values of oil and gas properties included in these financial statements do not purport to represent replacement or market values.

**GRYPHON EXPLORATION COMPANY**  
**NOTES TO FINANCIAL STATEMENTS—(Continued)**  
(dollars in thousands, except share related items)

In accordance with SEC Regulation S-X Rule 410 a(2), proved oil and gas reserves are the estimated quantities of natural gas, crude oil, condensate, and natural gas liquids that geological and engineering data demonstrate with reasonable certainty can be recovered in future years from new reservoirs under existing economic and operating conditions. Reserves are considered proved if they can be produced economically as demonstrated by either actual production or conclusive formation tests. The Company emphasizes that the volumes of reserves are estimates which, by their nature, are subject to revision. The estimates are made using all available geological and reservoir data, as well as production performance data. These estimates, made by the Company's engineers and an independent third party reservoir engineering firm, are reviewed and revised, either upward or downward, as warranted by additional data. Revisions are necessary due to changes in assumptions based upon, among other things, reservoir performance, prices, economic conditions and governmental restrictions. Decreases in prices, for example, may cause a reduction in some proved reserves due to uneconomic conditions.

*Unproved Oil and Gas Properties.* Unproved oil and gas properties include costs that are excluded from proved oil and gas properties and are not subject to amortization. These amounts generally represent costs of investments in unproved properties, non-producing leases, seismic data sets, and major development projects. Gryphon excludes these costs until proved reserves are found or it is determined that the costs are impaired. All costs excluded are reviewed at least annually to determine if impairment has occurred. Any impairment is transferred to the costs to be amortized (the proved oil and gas property pool). The Company evaluates significant properties, composed primarily of costs associated with offshore leases and seismic data sets, at least annually. Non-producing leases are evaluated based on the progress of the Company's exploration program to date. Exploration costs are transferred from unproved oil and gas properties to proved oil and gas properties upon completion the first exploratory well on each property.

*Capitalized Seismic Costs / General & Administrative Expenses.* The Company capitalizes the costs associated with its 3D data sets as well as a portion of its General and Administrative expenses which are applicable to its exploration activities. As the direct costs associated with drilled properties are transferred from the Company's unproved oil and gas properties to its proved oil and gas properties, the Company allocates a portion of the capitalized 3D seismic and General and Administrative expense to the proved property pool. The Company's allocation of these costs is based upon the capitalized costs associated with each 3D data set area divided by the estimated number of prospects projected to be developed from each respective data set. During 2002 and 2001, respectively, the Company allocated approximately \$3,400 and \$1,800 of seismic exploration cost, general and administrative, and other costs transferred by Cheniere at Inception, to the cost of proved properties based on this allocation method. It is reasonably possible, based on the results obtained from future drilling, that revisions to this estimate could occur in the future, which could affect the Company's capitalization ceiling.

*Capitalized Interest.* SFAS No. 34, "Capitalization of Interest Costs," provides standards for the capitalization of interest costs as part of the historical cost of acquiring assets. Financial Accounting Standards Board Interpretation ("FIN") No. 33 provides guidance for the application of SFAS No. 34 to the full cost method of accounting for oil and gas properties. Under FIN No. 33, costs of investments in unproved properties and major development projects, which are not subject to amortization and on which exploration or development activities are in progress, qualify for capitalization of interest. Capitalized interest is calculated by multiplying the Company's weighted-average interest rate on debt by the amount of costs included in unproved oil and gas properties. Capitalized interest cannot exceed gross interest expense. As costs are transferred from the unproved oil and gas properties pool to the proved oil and gas properties pool, the associated capitalized interest is also transferred to the proved oil and gas properties pool. The Company incurred no interest expense during in 2002 or 2001, thus no interest costs were capitalized during those periods.

**GRYPHON EXPLORATION COMPANY**  
**NOTES TO FINANCIAL STATEMENTS—(Continued)**  
(dollars in thousands, except share related items)

*Ceiling Test.* The Company limits the capitalized costs of proved oil and gas properties, net of accumulated Depreciation, Depletion, and Amortization (“DD&A”) and the related deferred income taxes, to the estimated future net cash flows from proved oil and gas reserves, using prices in effect at the end of the applicable reporting period held flat for the life of production, discounted at 10%, net of related tax effects. If capitalized costs exceed this limit, the excess is charged to expense and reflected as additional DD&A.

**Revenue Recognition**

Revenues from the sale of oil and gas produced are recognized upon passage of title, net of royalty interests. When sales volumes differ from the Company’s entitled share, an overproduced or underproduced imbalance occurs. To the extent the overproduced imbalance exceeds the Company’s share of the remaining estimated proved natural gas reserves for a given property, the Company records a liability. At December 31, 2002 and 2001, the Company had no material gas imbalances.

**Reimbursable expenses**

The Company performs administrative services on behalf of third parties in accordance with certain contractual arrangements. The Company was reimbursed \$810 and \$449 during 2002 and 2001, respectively, related to these services. These reimbursements are offset against general and administrative expenses of the Company.

**Prepaid expenses**

Prepaid expenses at December 31, 2002 and 2001 consist of prepaid insurance premiums of \$4,093 and \$1,850, respectively, as well as other prepaid expenses.

**Fixed Assets**

Fixed assets are recorded at cost. Repairs and maintenance costs are charged to operations as incurred. Depreciation is computed using the straight-line method calculated to amortize the cost of assets over their estimated remaining useful lives, which are estimated as 9 to 36 months for software and computer equipment and 1 to 5 years for office furnishings. Leasehold improvements are amortized over the term of the underlying lease. Upon retirement or other disposition of property and equipment, the cost and related depreciation is removed from the accounts and the resulting gains or losses are recorded.

**Income Taxes**

The Company utilizes the liability method of accounting for income taxes, as set forth in Statement of Financial Accounting Standards No. 109, “Accounting for Income Taxes.” Under the liability method, deferred taxes are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse. Valuation allowances are recorded against deferred tax assets when it is considered more likely than not that the deferred tax assets will not be utilized.

**Stock-Based Compensation**

SFAS No. 123, “Accounting for Stock-Based Compensation,” encourages, but does not require, companies to record compensation cost for stock-based employee compensation plans at fair value. The Company has

**GRYPHON EXPLORATION COMPANY**  
**NOTES TO FINANCIAL STATEMENTS—(Continued)**  
(dollars in thousands, except share related items)

chosen to account for stock-based compensation using the intrinsic value method prescribed in Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"), and related interpretations. Accordingly, compensation cost for stock options is measured as the excess, if any, of the market price of the Company's stock at the date of the grant over the amount an employee must pay to acquire the stock. The Company grants options at or above the market price of its common stock at the date of each grant.

In December 2002, the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation-Transition and Disclosure, an amendment of FASB Statement No. 123*. This statement amends FASB Statement No. 123, Accounting for Stock-Based Compensation, to provide alternative methods of transition for a voluntary change to the fair value method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of Statement No. 123 to require prominent disclosures in both annual and interim financial statements. Certain of the disclosure modifications are required for fiscal years ending after December 15, 2002 and are included in the notes to these consolidated financial statements.

The fair value of options is calculated using the Black-Scholes option-pricing model. Assumptions used for 2002 and 2001 were: no dividend yield, no volatility, risk-free interest rate of 4.3% and 3.8%, respectively, and an expected average option life of 5 years. If the Company had adopted the recognition provisions of SFAS No. 123 for 2002 and 2001, the Company's financial statements would have not reflected a change in reported net income.

**Cash Equivalents**

The Company classifies all investments with original maturities of three months or less as cash equivalents.

**Restricted Cash Deposits**

Current restricted cash deposits represent deposits reserved for the funding of contractual drilling costs on behalf of the Company and its working interest partners within one year.

**Fair Value of Financial Instruments**

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, and short-term debt approximate fair value because of the short maturities of those instruments.

**Derivative Instruments**

On January 1, 2001, the Company adopted SFAS No. 133, *Accounting for Derivative Instruments and Certain Hedging Activities* and SFAS No. 138, *Accounting for Certain Derivative Instruments and Certain Hedging Activity, an Amendment of SFAS 133*. SFAS Nos. 133 and 138 require that all derivative instruments be recorded on the balance sheet at their respective fair values. See Note 6 for information regarding the Company's derivative instruments and hedging activities.

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the accompanying notes. Actual results could differ from those estimates. Changes in such estimates may affect amounts reported in future periods.

**GRYPHON EXPLORATION COMPANY**  
**NOTES TO FINANCIAL STATEMENTS—(Continued)**  
(dollars in thousands, except share related items)

**Concentration of Credit Risk**

The Company maintains cash balances with a bank and frequently exceeds federally insured limits. The Company invests its cash in money market securities, investment grade commercial paper, and U.S. Government-backed securities. The Company's joint interest partners consist primarily of independent oil and gas producers. The Company's oil and gas production purchasers consist primarily of independent marketers and major gas pipeline companies. The Company performs credit evaluations of its customers' financial condition and, if deemed necessary, obtains letters of credit and parental guarantees from selected customers. The Company has not experienced any significant losses from uncollectible accounts. All of the Company's derivative transactions have been carried out in the over-the-counter market.

**Environmental Liabilities**

Liabilities for loss contingencies, including environmental remediation costs, arising from claims, assessments, litigation, fines, and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount of the assessment and/or remediation can be reasonably estimated.

**Recently Issued Accounting Standards**

In June 2001, the Financial Accounting Standard Board issued the Statement of Financial Accounting Standards No. 143 ("SFAS 143"), "Accounting for Asset Retirement Obligations" (ARO), which requires that an asset retirement cost be capitalized as part of the cost of the related long-lived asset and allocated to expense by using a systematic and rational method. Under this Statement, an entity is not required to re-measure an ARO liability at fair value each period but is required to recognize changes in an ARO liability resulting from the passage of time and revisions in cash flow estimates. This Statement is effective for financial statements issued for fiscal years beginning after June 15, 2002. The Company expects to adopt SFAS 143 on January 1, 2003. The Company has not yet determined the impact that the adoption of SFAS 143 will have on its earnings or statement of financial position.

In October 2001, the Financial Accounting Standard Board issued the Statement of Financial Accounting Standards No. 144 ("SFAS 144"), "Accounting for the Impairment or Disposal of Long-Lived Assets". The Statement requires that long-lived assets that are to be disposed of by sale be measured at lower of book value or fair value less cost of sale. The Statement also expanded the scope of discontinued operations to include all components of an entity with operations that can be distinguished from the rest of the entity and that will be eliminated from the ongoing operations of the entity in a disposal transaction. The provisions of this Statement are effective for fiscal years beginning after December 15, 2001. The provisions of this Statement will impact any asset dispositions the Company makes after January 1, 2002.

In April 2002, the FASB issued SFAS No. 145, *Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections*. SFAS No. 145 amends existing guidance on reporting gains and losses on the extinguishment of debt to prohibit the classification of the gain or loss as extraordinary, as the use of such extinguishments have become part of the risk management strategy of many companies. SFAS No. 145 also amends SFAS No. 13 to require sale-leaseback accounting for certain lease modifications that have economic effects similar to sale-leaseback transactions. The provisions of the Statement related to the rescission of Statement No. 4 are applied in fiscal years beginning after May 15, 2002. Earlier application of these provisions is encouraged. The provisions of the Statement related to Statement No. 13 were effective for transactions occurring after May 15, 2002, with early application encouraged. The adoption of SFAS No. 145 is not expected to have a material effect on the Company's financial statements.

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In June 2002, the FASB issued SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*. SFAS No. 146 addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force (EITF) Issue 94-3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity*. The provisions of this Statement are effective for exit or disposal activities that are initiated after December 31, 2002, with early application encouraged. The adoption of SFAS No. 146 is not expected to have a material effect on the Company's financial statements.

In November 2002, the FASB issued Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness to Others, an interpretation of FASB Statement No. 5, 57 and 107 and a rescission of FASB Interpretation No. 34*. This Interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees issued. The Interpretation also clarifies that a guarantor is required to recognize, at inception of a guarantee, a liability for the fair value of the obligation undertaken. The initial recognition and measurement provisions of the Interpretation are applicable to guarantees issued or modified after December 31, 2002 and are not expected to have a material effect on the Company's financial statements. The disclosure requirements are effective for financial statements of interim and annual periods ending after December 31, 2002.

In January 2003, the FASB issued Interpretation No. 46, *Consolidation of Variable Interest Entities, an interpretation of ARB No. 51*. This Interpretation addresses the consolidation by business enterprises of variable interest entities as defined in the Interpretation. The Interpretation applies immediately to variable interest in variable interest entities created after January 31, 2003, and to variable interests in variable interest entities obtained after January 31, 2003. For nonpublic enterprises, such as the Company, with a variable interest in a variable interest entity created before February 1, 2003, the Interpretation is applied to the enterprise no later than the end of the first annual reporting period beginning after June 15, 2003. The application of this Interpretation is not expected to have a material effect on the Company's financial statements. The Interpretation requires certain disclosures in financial statements issued after January 31, 2003 if it is reasonably possible that the Company will consolidate or disclose information about variable interest entities when the Interpretation becomes effective.

**NOTE 3—Fixed Assets**

Fixed assets consisted of the following:

	<u>December 31, 2002</u>
Computers and Office Equipment	\$ 1,362
Furniture, Fixtures and Other	240
	<u>1,602</u>
Less Accumulated Depreciation	(1,144)
Fixed Assets, net	<u>\$ 458</u>

**NOTE 4—Exploration Agreements**

In 2002, Gryphon entered into an exploration agreement with an industry partner. Under the terms of the agreement, the partner acquired an option to participate at a 25% working interest level in up to seven drilling prospects generated by Gryphon in the Gulf of Mexico. During the term of the agreement, Gryphon received overhead reimbursements from this partner. In addition, Gryphon receives an increased interest in each prospect after the partner has received cumulative cash flows equal to its capital costs in each respective prospect.

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Gryphon is the operator of the prospects drilled pursuant to this agreement. Overhead reimbursements received under the agreement are credited as a recovery of general and administrative expenses. Total overhead reimbursements received in 2002 under this program and from other various industry partners were \$1,160.

During 2000 and 2001, the Company was party to an exploration agreement with an industry partner. Cheniere contributed this exploration agreement at Inception (see Note 1). Under the terms of the agreement, Gryphon's exploration partner acquired an option to participate at a 50% working interest level in any drilling prospect generated by Gryphon through August 2001 within a defined area of mutual interest in the Gulf of Mexico. During the term of the agreement, Gryphon received a management fee of \$230 per month from its partner. In addition, for each well drilled, Gryphon's partner pays a disproportionate share of the cost of leasing and of the initial test well on each prospect. Gryphon is the operator of the drilling program. A portion of the management fee payments was credited as a recovery of general and administrative expenses and the remaining portion reduced capitalized G&A expenses. Management fees received by Gryphon in 2001 totalled \$1,120. Certain provisions of this agreement, including those related to management fees, expired August 2001.

The Company intends to enter into one or more new industry partner agreements in 2003.

**NOTE 5—INCOME TAXES**

The difference between the provision for income taxes and the amount that would be determined by applying the statutory federal income tax rate to the income or loss before income taxes is set forth below:

	Year ended December 31,	
	2002	2001
Federal Income Tax Expense (Benefit) at 34%	\$(229)	\$ 28
Permanent Differences	21	16
Other	53	(46)
<b>Income Tax Provision (Benefit)</b>	<b>\$(155)</b>	<b>\$ (2)</b>

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the carrying amounts used for income tax purposes. Deferred income taxes also reflect the net tax effects of net operating loss carryforwards. The tax effects of the Company's temporary differences and carryforwards are as follows:

	December 31, 2002
Deferred Tax Assets:	
Net Operating Loss Carryforwards	\$ 7,529
Total Deferred Tax Assets	7,529
Deferred Tax Liabilities:	
Differences between Book and Tax Bases of Oil and Gas Properties, Plant and Equipment	(9,572)
Deferred Tax Liabilities, net	\$ (2,043)

There was no current income tax provision for 2002 or 2001 and no income taxes were payable during those periods.



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The Company has determined that it is more likely than not that the deferred tax assets will be realized and a valuation allowance for such assets is not required.

At December 31, 2002, the Company had net operating loss (NOL) carryforwards for tax reporting purposes of approximately \$22,144, which will expire as follows:

2020	\$ 2,170
2021	\$ 19,251
2022	\$ 723

**NOTE 6—DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES**

The Company produces and sells natural gas, crude oil and condensate. As a result, the Company's financial results can be significantly affected as these commodity prices fluctuate widely in response to changing market forces. The Company maintains a commodity-price-risk management strategy that uses derivative instruments to minimize significant, unanticipated earning fluctuations caused by commodity-price volatility. The Company does not speculate using derivative instruments.

By using derivative financial instruments to reduce exposures to changes in commodity prices, the Company exposes itself to credit risk and market risk. Credit risk is the failure of the counterparty to perform under the terms of the derivative contract. When the fair value of a derivative contract is positive, the counterparty owes the Company, which creates credit risk for the Company. When the fair value of a derivative contract is negative, the Company owes the counterparty and, therefore, it does not incur credit risk. The Company minimizes the credit risk in derivative instruments by entering into transactions with high-quality counterparties whose credit rating is investment grade.

Market risk is the adverse effect on the value of a financial instrument that results from a change in commodity prices. The market risk associated with commodity-price contracts is managed by establishing and monitoring parameters that limit the types and degree of market risk that may be undertaken.

The Company periodically enters into natural gas and crude oil option contracts for a portion of its anticipated hydrocarbon sales, to reduce the price risk associated with fluctuations in market prices. The option contracts limit the unfavorable affect that price decreases will have on hydrocarbon sales. The maximum term over which the Company is hedging exposures to the variability of cash flows for commodity price risk is 24 months.

Effective January 1, 2001, the Company adopted SFAS No. 133 and SFAS No. 138, an amendment to SFAS 133. SFAS 133 and 138 require that derivatives be reported on the balance sheet at fair value and, if the derivative is not designated as a hedging instrument, changes in fair value must be recognized in earnings in the period of change. If the derivative is designated as a hedge and to the extent such hedge is determined to be effective, changes in fair value are either (a) offset by the change in fair value of the hedged asset or liability (if applicable) or (b) reported as a component of other comprehensive income (loss) in the period of change, and subsequently recognized in earnings when the offsetting hedged transaction occurs. During 2001 and 2002, the Company did not attempt to qualify for the hedge provisions under SFAS 133 and thus has not designated its derivative transactions during those periods as hedging instruments. Accordingly, the Company accounted for the changes in market value of these derivatives through current earnings.

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As of December 31, 2002, the Company had hedged portions of its expected 2003 natural gas production as follows:

<u>Instrument</u>	<u>Volume (mmbtus)</u>	<u>Prices</u>
Swaps	2,300,000	\$3.95-\$4.08
Collars	1,320,000	floor— \$3.50/cap— \$6.00

The fair value of these derivative positions at that date was a \$1,352 liability.

**NOTE 7—EQUITY TRANSACTIONS**

At December 31, 2002, the Company had 85,000 shares of Series A preferred stock issued and outstanding. The preferred stock is convertible at the option of the holder at a rate of \$100 per share of common stock upon the occurrence of certain qualifying events. The preferred stock has voting rights as if converted. Each share has a liquidation preference of \$1,000. Dividends accrue at a rate of 8% per annum, become payable quarterly as declared, and are cumulative and payable in the event of liquidation of the Company. At December 31, 2002 and 2001, there were \$9,349 and \$3,510, respectively, of undeclared dividends in arrears.

During 2002, the Company issued four private placements of Series A preferred stock in the amounts of \$5,000, \$10,000, \$5,000, and \$10,000, which were consummated on April 22, 2002, June 17, 2002, September 3, 2002, and November 5, 2002, respectively. During 2001, the Company issued three private placements of Series A preferred stock, each in the amount of \$10,000, which closed on May 15, July 23, and November 19, 2001. As discussed in Note 1, Cheniere has a right to participate in offerings of Series A preferred stock by the Company. Cheniere elected not to participate in any of the Company's offerings during 2002 or 2001. Based upon the conversion features of the Company's Series A preferred stock, the interests of the Company's holders of Series A preferred stock would represent approximately 91%, and 80% on an as converted basis of the outstanding and issued Common Stock at December 31, 2002 and 2001, respectively.

As further discussed in Note 8, in July 2001, the Company acquired a 3D seismic data set from Cheniere. In connection with that transaction, the Company repurchased 6,740 shares of Common Stock for aggregate consideration of approximately \$418. These shares are included as treasury stock as of December 31, 2002.

In March 2002, the Company and Cheniere settled litigation which had been filed against them on a joint and several basis by a seismic company (the "Claimant"). Pursuant to this settlement, the Company made a payment to the Claimant and committed to make certain additional payments if production rights are obtained by the Company or Cheniere in the area covered by the data set licensed from the Claimant. In addition, the Company agreed to become responsible for certain contingent obligations of Cheniere associated with the Seitel data set. The maximum amount of the assumed liabilities associated with this litigation and the contingent liabilities associated with the Seitel dataset was approximately \$2,561 in the aggregate. As consideration for the Company's agreement to assume these contingent liabilities, Cheniere has transferred to Gryphon 51,400 shares of the Company's common stock which Cheniere held. Pursuant to this agreement, Cheniere has an option valid until March 16, 2003 to repurchase these shares from the Company at a cost equal to \$50 per share, subject to an escalation adjustment. At December 31, 2002, the maximum amount of the contingent obligations assumed is \$934.

Based upon the foregoing transactions, Cheniere holds an interest of approximately 9% in the Company, calculated on a fully diluted basis as of December 31, 2002.

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**NOTE 8—STOCK-BASED COMPENSATION**

In 2000, the Company established the Gryphon Exploration Company 2000 Stock Option Plan (the “Option Plan”). In 2001, the Option Plan was amended and restated. The Option Plan, as amended, allows for the issuance of options to purchase up to 186,493 shares of Gryphon common stock at an exercise price of \$100 per share. The Company has reserved an equivalent number of shares of common stock for issuance upon the exercise of options which have been granted or which may be granted. The term of options granted under the Option Plan is generally ten years. Vesting occurs over a three-year period, one third on each anniversary of the grant date. The following table summarizes the Company’s stock option activity and related information for the periods presented:

	Year ended December 31,	
	2002	2001
Outstanding at Beginning of Period	81,122	39,400
Options Granted at an Exercise Price of \$100 per share	20,332	42,722
Options Forfeited	(350)	(1,000)
<b>Outstanding at End of Period</b>	<b>101,104</b>	<b>81,122</b>
Exercisable at End of Period	40,604	13,483
Weighted Average Exercise Price of Options Outstanding	\$ 100	\$ 100
Weighted Average Exercise Price of Options Exercisable	\$ 100	\$ 100
Weighted Average Fair Value of Options Granted During the Period	\$ —	\$ —
Weighted Average Remaining Contractual Life of Options Outstanding	8.44 years	9.3 years
Weighted Average Remaining Contractual Life of Options Exercisable	8.11 years	8.8 years

The fair value of options is calculated using the Black-Scholes option-pricing model. Assumptions used for 2002 and 2001 were: no dividend yield, no volatility, risk-free interest rate of 4.3% and 3.8%, respectively, and an expected average option life of 5 years. If the Company had adopted the recognition provisions of SFAS No. 123 for 2002 and 2001, the Company’s financial statements would have not reflected a change in reported net income.

**NOTE 9—RELATED PARTY TRANSACTIONS**

Under the terms of the Contribution and Subscription Agreement dated October 11, 2000 by and among the Company, Cheniere and the other investors listed therein, Gryphon provided office space to Cheniere at no cost from Inception through December 2000. Also, pursuant to that agreement, Cheniere provided accounting and cash management services to Gryphon without charge for six months following the closing date.

In April 2001, Gryphon purchased from Cheniere a 50% working interest in a Texas offshore lease for cash consideration of \$225, and simultaneously executed a joint operating agreement which provided that Gryphon would become the operator of the lease.

In June 2001, Gryphon completed a transaction with Cheniere for the purchase of a license for 3D seismic data (the Seitel data set) granted to Cheniere by Seitel Data Ltd. As a result of this transaction, Gryphon acquired

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the rights to approximately 3,900 square miles of seismic data in the Gulf of Mexico for a total purchase price of \$3,500 (see Note 12).

In July 2001, Gryphon purchased the right arising under an agreement between JEBCO and Cheniere whereby Cheniere was to receive a seismic data license (the JEBCO data set) to approximately 3,000 square miles of 3D seismic data in the Gulf of Mexico. As part of this transaction, Gryphon also acquired 6,740 shares of Gryphon common stock from Cheniere. The aggregate purchase price of \$4,174 was allocated between seismic data and treasury stock based upon their relative fair values at date of the transaction. In June 2001, Gryphon completed a transaction with Cheniere for the purchase of a license for 3D seismic data (the Seitel data set) granted to Cheniere by Seitel Data Ltd. As a result of this transaction, Gryphon acquired the rights to approximately 3,900 square miles of seismic data in the Gulf of Mexico for a total purchase price of \$3,500 (see Note 12).

As discussed in Note 7 above, in March 2002, the Company entered into a settlement agreement to resolve litigation against Cheniere and the Company. Pursuant to the settlement, the Company agreed to assume certain obligations of Cheniere. The maximum amount of the assumed liabilities pursuant to the settlement and associated agreements was approximately \$2,561 in the aggregate. As consideration for the Company's agreement to assume these contingent liabilities, Cheniere transferred to Gryphon 51,400 shares of the Company's common stock which Cheniere held. Pursuant to this agreement, Cheniere has an option valid for one year from the date of the agreement to repurchase these shares from the Company at a cost equal to \$50 per share, subject to escalation beginning four months after the date of the stock transfer. At December 31, 2002, Cheniere had not exercised any its repurchase rights under the option agreement.

During 2000, 2001, and 2002, the Company issued nine private placements of Series A preferred stock for aggregate consideration of \$85,000. Of this amount, Warburg contributed \$84,679 and the Company's management contributed \$321 (see Note 7).

**NOTE 10—COMMITMENTS AND CONTINGENCIES**

The Company has entered into an office lease agreement with a non-cancelable term, which runs through March 2003. Future minimum lease payments are \$66 for the year ended December 31, 2003. Total rental expense for office space for 2002 and 2001 was \$286 and \$285, respectively.

At Inception, Gryphon acquired a master license agreement covering the license of approximately 8,800 square miles of 3-D seismic data in the Gulf of Mexico. In connection with the license agreement, the Company has made a commitment to reprocess certain of the seismic data and to pay a fee for such reprocessing as the reprocessed data are delivered. At December 31, 2002, the Company had met its commitments related to future deliveries of reprocessed data.

In connection with the purchase from Cheniere of the JEBCO data set (see Note 9), the Company has an obligation to pay for the related seismic data once it has been delivered to the Company, and accepted by Cheniere.

**NOTE 11—OIL AND GAS OPERATIONS**

The Company uses the full cost method of accounting for its oil and natural gas properties. Unproved oil and gas properties include costs that are excluded from proved oil and gas properties and that are not subject to

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amortization. These amounts generally represent costs of investments in unproved properties, non-producing leases, seismic data sets, and major development projects. Gryphon excludes these costs until proved reserves are found or it is determined that the costs are impaired. The costs of unproved oil and natural gas properties are reviewed at least annually to determine if impairment has occurred. Any impairment is transferred to the proved oil and gas property pool. The Company evaluates significant properties, composed primarily of costs associated with offshore leases and seismic data sets, at least annually. Non-producing leases are evaluated based on the progress of the Company's exploration program to date.

The following table summarizes the costs of unproved properties for the periods during which the costs were incurred:

	December 31,	
	2002	2001
Period that costs were incurred—		
Inception through December 31, 2000	\$ 11,025	\$ 13,422
2001	11,055	14,645
2002	14,605	—
<b>Totals</b>	<b>\$ 36,685</b>	<b>\$ 28,067</b>

**NOTE 12—SUBSEQUENT EVENTS**

On February 10, 2003, the Company entered into a three-year, reserve based, revolving credit facility. The nominal amount of the facility is \$100,000 and the initial borrowing base is \$18,000. The borrowing base will be adjusted from time to time based upon changes in the Company's oil and gas reserves. The facility is secured by substantially all of the Company's assets, consisting primarily of its oil and gas properties. Proceeds borrowed from the facility can be used to fund the Company's operations, for acquisitions, and for general corporate purposes. The facility requires quarterly interest payments based upon up floating rate indexes and includes covenants typically associated with similar credit agreements. The credit facility matures February 10, 2006. As of March 14, 2003, the Company had drawn \$5,000 under the facility.

In January 2003, the Company entered into an amendment and extension to its office lease. Pursuant to this amendment, the Company expanded its office space by approximately 40% and extended the term by seven years from March 2003. The extended term includes an option which allows the Company to terminate the lease at the end of the fifth year of the extension period. The estimated aggregate obligation of the Company pursuant to the amendment is approximately \$2,990 assuming a seven year extension or approximately \$2,170 assuming the extension is terminated at the end of year five.

**NOTE 13—RECENT ACCOUNTING DEVELOPMENTS**

In July 2003, an issue was brought before the Financial Accounting Standards Board regarding whether or not contract-based oil and gas mineral rights held by lease or contract ("mineral rights") should be recorded or disclosed as intangible assets. The issue presents a view that these mineral rights are intangible assets as defined in SFAS No. 141, "Business Combinations," and, therefore, should be classified separately on the balance sheet as intangible assets. SFAS No. 141 and SFAS No. 142, "Goodwill and Other Intangible Assets," became effective for transactions subsequent to June 30, 2001; with the disclosure requirements of SFAS No. 142 required as of January 1, 2002. SFAS No. 141 requires that all business combinations initiated after June 30, 2001 be accounted for using the purchase method and that intangible assets be disaggregated and reported

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separately from goodwill. SFAS No. 142 established new accounting guidelines for both finite lived intangible assets and indefinite lived intangible assets. Under the statement, intangible assets should be separately reported on the face of the balance sheet and accompanied by disclosure in the notes to financial statements. SFAS No. 142 does not apply to accounting utilized by the oil and gas industry as prescribed by SFAS No. 19, and is silent about whether or not its disclosure provisions apply to oil and gas companies. The Emerging Issues Task Force (EITF) has added the treatment of oil and gas mineral rights to an upcoming agenda, which may result in a change in how Gryphon classifies these assets.

Should such a change be required, the amounts related to business combinations and major asset purchases that would be classified as “intangible undeveloped mineral interest” was \$10,690 as of December 31, 2002. The amounts related to business combinations and major asset purchases that would be classified as “intangible developed mineral interest” was \$1,408 as of December 31, 2002. Intangible developed mineral interest amounts are presented net of accumulated depletion, depreciation and amortization (DD&A). Accumulated DD&A was estimated using historical depletion rates applied proportionately to the costs of the purchases conceptually classified as “intangible developed mineral interest”. The amounts noted above only include mineral rights acquired in major asset purchases, consisting primarily of amounts paid for federal and state oil & gas leases.

The numbers above are based on our understanding of the issue before the EITF: if all mineral rights associated with unevaluated property and producing reserves were deemed to be intangible assets:

- mineral rights with proved reserves and mineral rights with no proved reserves would be classified as intangible assets and would not be included in oil and gas properties on our consolidated balance sheet;
- results of operations and cash flows would not be materially affected because mineral rights would continue to be amortized in accordance with full cost accounting rules; and
- disclosures required by SFAS Nos. 141 and 142 relative to intangibles would be included in the notes to our financial statements.

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**OIL AND GAS RESERVES AND RELATED FINANCIAL DATA**  
(dollars in thousands)

**SUPPLEMENTAL OIL AND GAS DISCLOSURES (UNAUDITED)**

The following tables set forth information about the Company's oil and gas producing activities pursuant to the requirements of Statement of Financial Accounting Standards No. 69, "Disclosures About Oil and Gas Producing Activities" ("SFAS 69").

Investments in oil and gas properties are set forth below:

	<u>December 31,</u> <u>2002</u>
<b>Oil and Gas Properties:</b>	
Proved	\$ 61,583
Unproved	36,685
	<u>98,268</u>
Less Accumulated Depreciation, Depletion and Amortization	(7,261)
	<u>\$ 91,007</u>

As of December 31, 2002 and 2001, the Company's investment in oil and gas properties included \$36,685 and \$28,067, respectively in unevaluated properties, which have been excluded from amortization. Such costs will be evaluated in future periods based on management's assessment of exploration activities, expiration dates of licenses, permits and concessions, changes in economic conditions and other factors.

The Company began production of oil and gas in February 2001. The Company capitalized as oil and gas property costs approximately \$2,408 and \$2,023 of general and administrative expenses directly related to its exploration and development activities in 2002 and 2001, respectively.

The Company has made a substantial investment in acquiring, processing and reprocessing Gulf of Mexico seismic data, which cover various areas having an aggregate size of 18,000 square miles. The costs of these projects become subject to amortization on a ratable basis as prospects are identified in each of the data set project areas.

**Costs Incurred**

Costs incurred in oil and gas property acquisition, exploration, and development activities are set forth in the table below:

	<u>Year ended</u> <u>December 31,</u>	
	<u>2002</u>	<u>2001</u>
<b>Acquisition of Properties:</b>		
Proved Properties	\$ —	\$ 227
Unproved Properties	9,806	14,360
Exploration Costs	25,079	12,430
Development Costs	8,611	9,559
	<u>\$43,496</u>	<u>\$36,576</u>

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(dollars in thousands)

For the years ended December 31, 2002 and 2001 depreciation, depletion and amortization of the capitalized costs of oil and gas properties was \$1.70 and \$1.52 per mcf, respectively.

**Reserve Quantities**

The following table shows estimates of proved reserves and proved developed reserves, net of royalty interest, of natural gas, crude oil, and condensate owned at year-end and changes in proved reserves during the last two years prepared by independent petroleum engineers in accordance with the rules and regulations of the Securities and Exchange Commission. Volumes for natural gas are in millions of cubic feet (mmcf) at the official temperature and pressure bases of the areas in which the gas reserves are located. Liquid hydrocarbons, consisting of oil and condensates, are expressed in standard 42 gallon barrels (bbls). These estimates represent the Company's interest in the reserves associated with its properties. All of the Company's oil and gas reserves are located within the United States and its territorial waters.

The Company's reserves increased in 2002 and 2001 primarily from exploration and development drilling activities, offset in part by production. The Company emphasizes that the volumes of reserves shown below are estimates which, by their nature, are subject to revision. The estimates are made using all available geological and reservoir data as well as production performance data. These estimates are reviewed and revised, either upward or downward, as warranted by additional data. Revisions are necessary due to changes in assumptions based on, among other things, reservoir performance, prices, economic conditions and governmental restrictions. Decreases in prices, for example, may cause a reduction in some proved reserves due to uneconomic conditions.

	Year Ended December 31,			
	2002		2001	
	Oil (Bbls)	Gas (Mmcf)	Oil (Bbls)	Gas (Mmcf)
<b>Proved Reserves:</b>				
Beginning of Period	210,151	17,468	2,640	1,674
Revisions of Previous Estimates	(41,342)	(3,904)	(845)	(1,268)
Extensions, Discoveries and Other Additions	243,319	17,222	219,099	17,822
Production	(40,320)	(3,278)	(10,743)	(760)
End of Period	<u>371,808</u>	<u>27,508</u>	<u>210,151</u>	<u>17,468</u>
<b>Proved Developed Reserves:</b>				
Beginning of Period	192,569	13,022	2,640	1,674
End of Period	<u>165,421</u>	<u>16,332</u>	<u>192,569</u>	<u>13,022</u>

There are numerous uncertainties inherent in estimating quantities of proved reserves and in projecting future rates of production and future amounts and timing of development expenditures, including many factors beyond the control of the Company. Reserve engineering is a subjective process of estimating underground accumulations of crude oil and natural gas that cannot be measured in an exact manner, and the accuracy of any reserve estimate is a function of the quality of available data and of engineering and geological interpretation and judgment. Estimates of proved undeveloped reserves are inherently less certain than estimates of proved developed reserves. The quantities of oil and gas that are ultimately recovered, production and operating costs, the amount and timing of future development expenditures, geologic success and future oil and gas sales prices may all differ from those assumed in these estimates. In addition, the Company's reserves may be subject to



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downward or upward revision based upon production history, purchases or sales of properties, results of future development, prevailing oil and gas prices and other factors.

**Standardized Measure of Discounted Future Net Cash Flows**

The following table sets forth estimates of future cash flows from proved reserves of gas, oil and condensate which were prepared by independent petroleum engineers. The standardized measure of discounted future cash flow amounts are based upon year-end prices of \$31.35 and \$20.43 per barrel of oil (WTI—Cushing) and \$4.75 and \$2.64 per mcf of natural gas (NYMEX—Henry Hub) at December 31, 2002 and 2001, respectively. Estimated future cash inflows are reduced by estimated future development and production costs based on year-end cost levels, assuming continuation of existing economic conditions, and by estimated future income tax expense. Income tax expense is calculated by applying the existing statutory tax rates, including any known future changes, to the pre-tax net cash flows giving effect to any permanent differences and reduced by the applicable tax basis. The effect of tax credits is considered in determining the income tax expense.

The present value of future net revenues does not purport to be an estimate of the fair market value of Gryphon’s proved reserves. An estimate of fair value would also take into account, among other things, anticipated changes in future prices and costs, the expected recovery of reserves in excess of proved reserves and a discount factor more representative of the time value of money and the risks inherent in producing oil and gas. Significant changes in estimated reserve volumes or commodity prices could have a material effect on the Company’s financial statements.

Under the full cost method of accounting, a non-cash charge to earnings related to the carrying value of the Company’s oil and gas properties on a country-by-country basis may be required when prices are low. Whether the Company will be required to take such a charge depends on the prices for crude oil and natural gas at the end of any quarter, as well as the effect of both capital expenditures and changes to proved reserves during the quarter. If a non-cash charge were required, it would reduce earnings for the period and result in lower DD&A expense in future periods.

The standardized measure of discounted future net cash flows relating to proved oil and gas reserves is set forth in the following table:

	December 31,	
	2002	2001
Future Cash Inflows (Sales)	\$ 148,628	\$ 49,949
Less—Future Costs:		
Production	(8,923)	(4,499)
Development and Dismantlement	(7,288)	(2,926)
Future Net Cash Flows before Income Taxes	132,417	42,524
Less—10% Annual Discount for Estimated Timing of Cash Flow	(25,477)	(9,956)
Present Value of Future net Cash Flows before Income Taxes	106,939	32,568
Less—Present Value of Future Income Taxes	(11,728)	(3,790)
Standardized Measure of Discounted Future net Cash Flows	\$ 95,211	\$ 28,778

**GRYPHON EXPLORATION COMPANY**  
**SUPPLEMENTAL INFORMATION TO THE FINANCIAL STATEMENTS**  
**OIL AND GAS RESERVES AND RELATED FINANCIAL DATA—(Continued)**  
(dollars in thousands)

The following table summarizes the principal sources of change in the standardized measure of discounted future net cash flows:

	Year ended December 31,	
	2002	2001
Standardized Measure—Beginning of Period	\$ 28,778	\$ 9,139
Increases (Decreases)—		
Sales, net of Production Costs	(8,465)	(2,128)
Increase due to passage of time (Accretion of Discount)	3,257	975
Net Change in Sales Prices, net of Production Costs	24,104	(11,258)
Changes in Estimated Future Development Costs	122	—
Revisions of Quantity Estimates	(14,784)	(3,047)
Extensions, Discoveries and Other Additions, net of Future Production and Development Costs	69,357	34,232
Development Costs Incurred during the Period that Reduced Previously Estimated Development Cost	1,308	735
Net Change in Income Taxes	(7,938)	138
Changes in Production Rates (timing) and Other	(528)	(8)
Standardized Measure—End of Period	\$ 95,211	\$ 28,778

\*\*\* indicates material has been omitted pursuant to a Confidential Treatment Request filed with the Securities and Exchange Commission. A complete copy of this agreement has been filed separately with the Securities and Exchange Commission.

OMNIBUS AGREEMENT

by and among

FREEPORT LNG DEVELOPMENT, L.P.,

FREEPORT LNG-GP, INC.,

and

CONOCOPHILLIPS COMPANY

As of December 20, 2003

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OMNIBUS AGREEMENT  
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Omnibus Agreement (this "Agreement"), dated as of December 20, 2003 (the "Effective Date"), by and among Freeport LNG Development, L.P., a Delaware limited partnership ("Freeport LNG"), Freeport LNG-GP, Inc., a Delaware corporation and the general partner of Freeport LNG (the "General Partner"), and ConocoPhillips Company, a Delaware corporation ("COP"). Each of Freeport LNG, the General Partner and COP is sometimes referred to herein as a "Party," and all of them together are sometimes referred to herein as the "Parties."

RECITALS  
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WHEREAS, Freeport LNG intends to construct, own and operate an LNG (as defined below) terminal facility on Quintana Island, Texas capable of performing certain LNG terminalling services, including: the berthing of LNG vessels; the unloading, receiving and storing of LNG; the regasification of LNG; the storage of natural gas; and the transportation and delivery of natural gas to a pipeline interconnection point at Stratton Ridge, Texas (the "Facility");

WHEREAS, upon completion of Phase I (as defined below), the Facility is intended to have the ability to unload, store and revaporize LNG and redeliver regasified LNG at a maximum gas redelivery rate of approximately 1.75 billion standard cubic feet per day ("bcf/d"), including Peaking Gas (as defined below);

WHEREAS, Freeport LNG intends to begin construction of Phase I promptly following the issuance of the FERC Approval (as defined below);

WHEREAS, subject to the terms and conditions of this Agreement and the other Transaction Documents (as defined below), COP Lender (as defined below) intends to lend to Freeport LNG funds necessary to cover certain costs of engineering, design, procurement, construction and overhead relating to Phase I from the date of issuance of the FERC Approval to the Commercial Start Date (as defined below), and certain working capital and inventory incurred or to be incurred in connection with Phase I from and after the date of issuance of the FERC Approval, all as further described in the Loan Term Sheet (as defined below);

WHEREAS, subject to the terms and conditions of this Agreement and the other Transaction Documents, Michael S. Smith intends to sell and COP GP (as defined below) intends to purchase 50% of the issued and outstanding common stock of the General Partner;

WHEREAS, subject to the terms and conditions of this Agreement and the other Transaction Documents, beginning on the Commercial Start Date, COP LNG intends to purchase from Freeport LNG, and Freeport LNG intends to sell to COP LNG, Services (as defined below); and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of providing the terms and conditions (a) upon which Freeport LNG, the General Partner and the COP Participants (as defined below) will enter into the Loan Documents (as defined below), the TUA (as defined below) and the Stockholders Agreement (as defined below), (b) upon which Michael S. Smith and COP GP will enter into the Stock Purchase Agreement (as defined below) and (c)

that will govern the relationship among the Parties between the Effective Date and the Closing Date in respect of the transactions contemplated by this Agreement.

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

ARTICLE 1  
DEFINITIONS

As used herein, the following terms have the following meanings:

"Acceptable Vessels" has the meaning set forth in Section 7.1(b)(ii).

"Action" means any judicial or administrative action, claim, suit, hearing, demand or proceeding by or before any Governmental Entity.

"Affiliate" means with respect to a specified Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such specified Person, and for such purposes the terms "controls", "controlled by" and "common control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the voting rights in a Person; provided that in applying this definition each Party's ownership of shares in the General

Partner shall be disregarded.

"Agreement" has the meaning set forth in the preamble.

"bcf/d" has the meaning set forth in the second Whereas clause.

"Business Day" means any day excluding Saturday, Sunday and any day on which commercial banks in Houston, Texas are authorized or required to close.

"Capacity Reservation Fee" means a non-refundable payment in the amount of \$10 million to be made by COP LNG to Freeport LNG in immediately available funds.

"Channel" means the Port of Freeport channel.

"Claim" means any existing or threatened future claim, demand, suit, action, investigation, proceeding, governmental action or cause of action of any kind or character (in each case, whether civil, criminal, investigative or administrative), known or unknown, under any theory, including those based on theories of contract, tort, statutory liability, strict liability, employer liability, premises liability, products liability, breach of warranty or malpractice that is brought by or owed to a third party.

"Closing" has the meaning set forth in Section 5.1.

"Closing Date" has the meaning set forth in Section 5.1.

"Commercial Start Date" has the meaning set forth in the TUA.

"Company Pension Plans" has the meaning set forth in Section 3.2(q) (i).

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"COP" has the meaning set forth in the preamble.

"COP GP" means the Person (which shall be COP or an Affiliate of COP) designated by COP to be party to the Stock Purchase Agreement.

"COP Indemnities" has the meaning set forth in Section 6.2.

"COP Lender" means the Person (which shall be COP or an Affiliate of COP) designated by COP to be party to the Loan Documents.

"COP LNG" means the Person (which shall be COP or an Affiliate of COP) designated by COP to be party to the TUA.

"COP Participants" means COP, COP Lender, COP GP and COP LNG.

"Dispute" means any dispute, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, relating to, or connected with this Agreement, including any dispute as to the construction, validity, interpretation, termination, enforceability or breach of this Agreement, as well as any dispute over arbitrability or jurisdiction.

"DOW" means The Dow Chemical Company, a Delaware corporation.

"DOW HOA" means the Heads of Agreement, dated June 19, 2003, by and between DOW and Freeport LNG.

"DOW Option" means DOW's option under the DOW HOA to receive LNG terminalling services at the Facility based on a maximum gas redelivery rate of no less than 200 million standard cubic feet per day and no more than 500 million standard cubic feet per day, such option to be exercised pursuant to the DOW TUA.

"DOW TUA" means the LNG Terminal Use Agreement and Supplemental Agreement to be executed between DOW and Freeport LNG in accordance with the terms of the DOW HOA. The DOW TUA shall replace and supersede the DOW HOA and upon execution of the DOW TUA, the DOW HOA shall no longer be of any force or effect.

"Easement" means any easement, right-of-way, permit, servitude, license, leasehold estate or similar right held by a Person relating to real property used in such Person's business but owned by another Person.

"Effective Date" has the meaning set forth in the preamble.

"Environmental Laws" means all Laws relating to the protection, investigation or restoration of the environment, public health or safety or natural resources, or to the manufacture, processing, distribution, treatment, labeling, storage, handling, use, presence, disposal, Release or threatened Release of any Hazardous Substance, including any injury or threat of injury to persons or property relating to any Hazardous Substance.

"EPC Contract" has the meaning set forth in Section 4.2(b).

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"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Facility" has the meaning set forth in the first Whereas clause.

"Facility Site" means the real property in Brazoria County, Texas, on which the Facility and related structures and equipment are to be located.

"FERC" means the Federal Energy Regulatory Commission.

"FERC Approval" means the order of FERC granting authorization under Section 3(a) of the Natural Gas Act (available at 15 U.S.C. Section 717(c)) to Freeport LNG for Phase I.

"Freeport Benefit Plans" has the meaning set forth in Section 3.2(q)(i).

"Freeport Entities" means the General Partner and Freeport LNG.

"Freeport Financial Statements" means (a) the unaudited balance sheet of the General Partner as of March 31, 2003 and as of September 30, 2003, (b) the related statement of income of the General Partner for the three-month period ended March 31, 2003 and for the six-month period ended September 30, 2003, (c) the unaudited balance sheet of Freeport LNG as of March 31, 2003 and as of September 30, 2003, and (d) the related statement of income of Freeport LNG for the three-month period ended March 31, 2003 and for the six-month period ended September 30, 2003.

"Freeport Indemnitees" has the meaning set forth in Section 6.1.

"Freeport LNG" has the meaning set forth in the preamble.

"Freeport Material Adverse Effect" with respect to a Freeport Person means a material adverse effect on such Freeport Person's business, assets, condition (financial or otherwise), results of operations or prospects except as may be caused by general economic conditions or conditions of the LNG industry, generally.

"Freeport Persons" means the Freeport Entities and Seller.

"Full Year Property Taxes" has the meaning set forth in Section 6.4(b)(i).

"GAAP" means generally accepted accounting principles in effect in the United States from time to time.

"General Partner" has the meaning set forth in the preamble.

"Governmental Approval" means any permit, license, franchise, approval, consent, waiver, certification, qualification or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or pursuant to any applicable Law.

"Governmental Entity" means any federal, tribal, state, local or foreign government or any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative or other governmental

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functions or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing.

"GP Stock" means the issued and outstanding common stock, par value \$0.001, of the General Partner.

"Hazardous Substances" means, collectively, any substance which is identified and regulated (or the cleanup of which can be required), or exposure to which is regulated, under any Environmental Law. Without limiting the generality of the foregoing, Hazardous Substances shall include (a) "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," or "contaminants" or other similar identified designations in, or otherwise subject to regulation under, any Environmental Law, (b) asbestos and asbestos containing materials and (c) petroleum, refined petroleum products and fractions or byproducts thereof, in each case whether in their virgin, used or waste state.

"Income Tax" means any Tax in whole or in part based on or measured by net or gross income, gains or profits, and any tax (including a franchise Tax) imposed in lieu thereof or similar thereto, whether disputed or not, together with any interest, penalties, additions to Tax or additional amounts with respect thereto.

"Indemnified Person" has the meaning set forth in Section 6.5(a).

"Indemnifying Party" has the meaning set forth in Section 6.5(a).

"IRC" means the Internal Revenue Code of 1986, as amended, and regulations issued by the IRS pursuant to the Internal Revenue Code.

"IRS" means the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of Treasury.

"Knowledge" means, with respect to any Person, (a) if such Person is an individual, the actual knowledge of such Person, or (b) if such Person is other than an individual, the actual knowledge of the officers, directors and other senior management of such Person, in each case after reasonable investigation and inquiry of any officers, directors and employees of such Person and its Affiliates with supervisory responsibility over the matter in question or that are likely to have information regarding such matter.

"Law" means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree, permit, approval, concession, grant, franchise, license, agreement, requirement or other governmental restriction or any similar form of decision of, or any provision or condition of any permit, license or other operating authorization issued under any of the foregoing by, or any determination by any Governmental Entity having or asserting jurisdiction over the matter or matters in question, whether the now or hereafter in effect and in each case as amended (including all of the terms and provisions of the common law of such Governmental Entity), as interpreted and enforced at the time in question.

"Lease" means the Ground Lease and Development Agreement dated December 12, 2002, between the Partnership and Brazos River Harbor Navigation District of Brazoria County, Texas, as the same may be amended or modified from time to time.

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"Liability" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred directly or consequentially and whether due or to become due), including any Tax or other liability arising out of applicable statutory, regulatory or common law, any contractual obligation and any obligation arising out of tort.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge, claim or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities or other equity interests, any agreement to sell, preemptive right, subscription right, right of first refusal, warrant, "phantom" stock rights, purchase option, call or other agreement or commitment (including any stockholders agreement) or right of a third party with respect to such securities or other equity interests or any other limitation on the ability to transfer or to vote such securities or other equity interests.

"LNG" means liquefied natural gas.

"Loan" has the meaning set forth in the definition of Loan Term Sheet.

"Loan Documents" means the Loan Agreement between COP Lender and Freeport LNG, and any agreements executed by COP Lender (or its agent) and Freeport LNG as a condition precedent to the closing thereunder, containing the terms and conditions set forth in the Loan Term Sheet and such other terms and conditions as COP Lender and Freeport LNG may agree.

"Loan Term Sheet" means the Term Sheet attached hereto as Exhibit A, which sets forth the terms and conditions of COP Lender's loans to Freeport LNG (the "Loan").

"Losses" has the meaning set forth in Section 6.1.

"Nondisclosure Agreement" means the Nondisclosure Agreement by and between Freeport LNG and COP dated November 15, 2002 as amended or modified from time to time.

"Partnership Agreement" means the Amended and Restated Limited Partnership Agreement of Freeport LNG, dated as of February 27, 2003, as amended or modified from time to time.

"Partnership Amendment" means an amendment to the Partnership Agreement among the General Partner and the limited partners of Freeport LNG in the form attached hereto as Exhibit F.

"Partnership Leased Property" means any real property and interests in real

property leased by Freeport LNG.

"Partnership Owned Property" means any real property and interests in real property owned in fee by Freeport LNG.

"Partnership Property" means any Partnership Owned Property and any Partnership Leased Property.

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"Party" or "Parties" has the meaning set forth in the preamble.

"Peaking Gas" has the meaning set forth in the TUA.

"Permitted Liens" means all:

(a) Liens of materialmen, mechanics, repairmen, employees, contractors, operators or other similar Liens arising in the ordinary course of business incidental to construction, maintenance or operation of the applicable property;

(b) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business;

(c) Liens for Taxes or assessments not yet due or not yet delinquent or, if delinquent, that are not material or are being contested in good faith in the normal course of business for which adequate reserves have been established;

(d) Easements, servitudes, permits, surface leases and other rights in respect of surface operations, pipelines, grazing, logging, canals, ditches, reservoirs or the like; conditions, covenants or other restrictions; and Easements for streets, alleys, highways, telephone lines, pipelines, railways and other Easements, on, over or in respect of such property or Easement in each case that individually, or in the aggregate, do not have a material adverse effect on the ownership or use of such property or Easement for its intended purpose;

(e) rights reserved to or vested in any Governmental Entity authorized to control or regulate the applicable property in any manner, and all Law; and

(f) other imperfections of title or encumbrances, if any, which do not, individually or in the aggregate, materially impair the use of the assets to which they relate as contemplated by the Transaction Documents.

"Person" means any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or Governmental Entity.

"Phase I" means the construction and operation of the Facility, as authorized in the FERC Approval and any subsequent amendments or supplements thereto, so that upon completion thereof the Facility is intended to have the ability to unload, store and revaporize LNG and redeliver regasified LNG at a maximum gas redelivery rate of approximately 1.75 bcf/d including Peaking Gas.

"Pre-Closing Tax Period" shall mean any taxable period ending on or before the Closing Date and the portion ending on the Closing Date of any Straddle Period.

"Port" has the meaning set forth in Section 7.1(e).

"Property Tax" means any real, personal or intangible property Tax, whether disputed or not, together with any interest, penalties, additions to Tax or additional amounts with respect thereto.

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"Release" means any spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, emanation or migration of any Hazardous Substance in, into, onto, or through the environment (including ambient air, surface water, ground water, soils, land surface, subsurface strata, workplace or structure).

"Return" means any return, declaration, report, statement, claim for refund or information return relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

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

"Seller" means Michael S. Smith.

"Services" has the meaning set forth in the TUA.



"Services Quantity" has the meaning set forth in the TUA.

"Services Quantity Increase Agreement" means the agreement to be executed by COP LNG and Freeport LNG in the form attached hereto as Exhibit E.

"Stock Purchase Agreement" means the Stock Purchase Agreement, to be executed between COP GP and Seller, which sets forth the terms of COP GP's purchase from Seller of 50% of the GP Stock for a purchase price equal to \$9 million, attached hereto as Exhibit C.

"Stockholders Agreement" means the Stockholders Agreement to be executed by COP and Seller in the form attached hereto as Exhibit B.

"Straddle Period" shall mean a taxable period that includes, but does not end on, the Closing Date.

"Study 1" has the meaning set forth in Section 7.1(b) (ii).

"Study 2" has the meaning set forth in Section 7.1(b) (ii).

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar, including FICA), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto.

"Third Party Claim" has the meaning set forth in Section 6.5(a).

"Title Notice" has the meaning set forth in Section 7.1(e).

"Transaction Documents" means this Agreement, the Loan Documents, the TUA, the Stock Purchase Agreement, the Stockholders Agreement, the Services Quantity Increase Agreement, the Partnership Agreement (as amended by the Partnership Amendment) and all

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other documents and instruments to be executed and delivered in connection with the transactions contemplated thereby and by this Agreement.

"TUA" means the LNG Terminal Use Agreement to be executed by COP LNG and Freeport LNG, in the form attached hereto as Exhibit D, which sets forth the terms and conditions of COP LNG's purchase of Services from Freeport LNG beginning on the Commercial Start Date.

"USCG" means the United States Coast Guard for the Port of Freeport.

## ARTICLE 2 OBLIGATIONS

### 2.1 Obligations of COP, COP Lender and COP LNG.

(a) Loan. At the Closing, COP shall cause COP Lender to execute and deliver the Loan Documents and thereafter from time to time fund the Loan in accordance with, and subject to the terms and conditions of, the Loan Documents. In lieu of the Loan, COP Lender shall be entitled to fund construction of Phase I through third party financing; provided that the overall financing package shall (i) have a similar or more favorable financial impact on Freeport LNG as compared to the Loan, (ii) be subject to essentially the same terms and conditions as the Loan, including any subordination provisions, and (iii) be structured such that the \*\*\* in the DOW HOA or DOW TUA, as applicable, is not triggered.

(b) Purchase of GP Stock and Execution of Stockholders Agreement. At the Closing and in accordance with the Stock Purchase Agreement, COP GP shall (i) execute, deliver and close the transactions contemplated by the Stock Purchase Agreement, (ii) pay to Seller \$9 million in cash for 50% of the GP Stock and (iii) execute and deliver the Stockholders Agreement.

(c) Capacity Reservation Fee. Within three (3) Business Days after Freeport LNG's delivery to COP of a front-end engineering and design study (which shall not occur prior to January 5, 2004), COP LNG shall pay to Freeport LNG in cash the Capacity Reservation Fee. Freeport LNG shall have no obligation to refund to COP LNG the Capacity Reservation Fee, including as a result of the failure of Freeport LNG to obtain the FERC Approval or termination of this Agreement for any reason.

(d) TUA. At the Closing, COP shall cause COP LNG to execute and deliver the TUA.

(e) Increase in Services Quantity. At the Closing, COP LNG shall have the right but not the obligation to execute and deliver the Services Quantity Increase Agreement.

## 2.2 Obligations of Freeport LNG and the General Partner.

(a) Loan. At the Closing, Freeport LNG shall execute and deliver the Loan Documents.

(b) [Intentionally Omitted].

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(c) Execution of Partnership Amendment. Simultaneously with the execution of this Agreement, Freeport LNG and the General Partner shall cause the general partner and limited partners of Freeport LNG to execute and deliver the Partnership Amendment.

(d) Legal Opinion. Simultaneously with the execution and delivery of this Agreement, Freeport LNG and the General Partner shall cause to be delivered to COP a legal opinion of Brownstein Hyatt & Farber, P.C., which opinion shall be limited generally to the formation, good standing, power and authority of Freeport LNG and the General Partner, and such entities' execution of, and performance under, this Agreement.

(e) Sale of GP Stock and Execution of Stockholders Agreement. At the Closing and in accordance with the Stock Purchase Agreement, the General Partner shall, and shall cause Seller to (i) execute, deliver and close the transactions contemplated by the Stock Purchase Agreement, and (ii) execute and deliver the Stockholders Agreement.

(f) TUA. At the Closing, Freeport LNG shall execute and deliver the TUA.

(g) Increase in Service Quantity. At the Closing, if COP LNG has executed and delivered the Services Quantity Increase Agreement, Freeport LNG shall execute and deliver the Services Quantity Increase Agreement.

(h) Pre-FERC Approval Accrued Expenses. Before or at the Closing, Freeport LNG shall pay and/or otherwise fully satisfy all expenses accrued and indebtedness incurred for any reason prior to and through the date of initial FERC Approval. Such payment and/or satisfaction shall not be made with funds from the Loan, and shall be made from funds contributed by the partners of Freeport LNG or otherwise paid to Freeport LNG. Freeport LNG shall be entitled to a reimbursement from the proceeds of the Loan or an offset against the payment obligation contained in this Section 2.2(h) equal to any prepaid expenses paid by Freeport LNG and relating to the period after initial FERC Approval. COP acknowledges and agrees that in the event Freeport LNG \*\*\*, prior to the date of initial FERC Approval or thereafter, all costs, expenses and fees associated with such \*\*\* shall be prepaid expenses payable or reimbursable from the proceeds of the Loan. Notwithstanding the foregoing, Freeport LNG shall be not be required to pay or otherwise satisfy the loan payable to DOW from Freeport LNG Investments, LLLP (f/k/a Freeport Investments, LLC) made in connection with the DOW HOA, and such loan shall be paid in accordance with the terms thereof.

## ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of COP. In order to induce Freeport LNG and the General Partner to enter into and perform the Transaction Documents and to consummate the transactions contemplated thereby, COP hereby represents and warrants to Freeport LNG and the General Partner as follows:

(a) Organization and Qualification. COP is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and is qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification.

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(b) Authority and Validity. COP has the requisite power and authority to execute and deliver, to perform its obligations under, and to consummate the transactions contemplated by, the Transaction Documents to which it is a party. No approval of COP's stockholders is required for consummation of the transactions contemplated by the Transaction Documents. The execution and delivery by COP of, the performance by COP of its obligations under, and the consummation by COP of the transactions contemplated by, the Transaction Documents to which it is a party have been duly authorized by the requisite corporate action on its part. This Agreement is and, when executed and delivered by COP, the other Transaction Documents to which COP is a party will be, the valid and binding obligation of COP, enforceable against COP in accordance with its and their respective terms, except insofar as enforceability may be affected

by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by principles governing the availability of equitable remedies.

(c) Noncontravention. The execution, delivery and performance by COP of the Transaction Documents to which it is a party do not and will not (i) conflict with or violate any provision of its certificate of incorporation or by-laws, (ii) require any consent, approval or authorization of, or any filing with or notice to, any Person, (iii) result in any violation of or breach or default under any contract or agreement to which COP is a party or by which it is bound, (iv) violate any Law to which COP is subject, or (v) violate, conflict with or result in a default, right to accelerate or loss of rights under any order, judgment or decree to which COP is a party or by which it is bound or affected.

(d) Finders and Brokers. Neither COP nor any of its Affiliates has incurred any Liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by the Transaction Documents for which Freeport LNG or any of its Affiliates could be liable.

(e) Litigation. There are no Actions pending or, to the Knowledge of COP, threatened against COP that have questioned or could reasonably be expected to question the validity of any Transaction Document or enjoin or prohibit any action taken or to be taken pursuant to or in connection with any of the provisions of the Transaction Documents.

3.2 Representations and Warranties of Freeport LNG. In order to induce the COP Participants to enter into and perform the Transaction Documents and to consummate the transactions contemplated thereby, Freeport LNG hereby represents and warrants to the COP Participants as follows:

(a) Organization and Qualification. Freeport LNG is a limited partnership duly formed, validly existing and in good standing under the laws of its state of formation and is qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification.

(b) Authority and Validity. Freeport LNG has all requisite partnership power and authority to execute and deliver, to perform its obligations under, and to consummate the transactions contemplated by, the Transaction Documents to which it is a party. No approval of Freeport LNG's general partners or limited partners (other than approvals that have been obtained and are in full force and effect) is required for consummation of the transactions contemplated by the Transaction Documents. The execution and delivery by Freeport LNG of, the performance by Freeport LNG of its obligations under, and the consummation by Freeport

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LNG of the transactions contemplated by, the Transaction Documents to which it is a party have been duly authorized by the requisite partnership action on its part. This Agreement is and, when executed and delivered by Freeport LNG, the other Transaction Documents to which it is a party will be, the valid and binding obligation of Freeport LNG, enforceable against Freeport LNG in accordance with its and their respective terms, except insofar as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by principles governing the availability of equitable remedies.

(c) Noncontravention. The execution, delivery and performance by Freeport LNG of the Transaction Documents to which it is a party do not and will not (i) conflict with or violate any provision of the Partnership Agreement, (ii) except for the execution and delivery of the Partnership Amendment, require any consent, approval or authorization of, or any filing with or notice to, any Person, (iii) result in any violation of or breach or default under any contract or agreement to which Freeport LNG is a party or by which it is bound, (iv) violate any Law to which Freeport LNG is subject, or (v) violate, conflict with or result in a default, right to accelerate or loss of rights under any order, judgment or decree to which Freeport LNG is a party or by which it is bound or affected.

(d) No Consents. No Governmental Approval of, or registration, declaration or filing with, any Governmental Entity, or the consent or approval of any other Person, is required to be obtained or made by or with respect to any Freeport Entity or any of its Affiliates in connection with (a) the execution, delivery and performance of the Transaction Documents or the consummation of the transactions contemplated thereby or (b) the conduct of the business of the Freeport Entities following the Closing as conducted on the Effective Date; except to the extent failure to obtain such Governmental Approval could not reasonably be expected to have a Freeport Material Adverse Effect, and except those Governmental Approvals that have not been obtained, but will be obtained by the time such Governmental Approvals are required for the construction of the Facility and for which Freeport LNG has no reason to believe that any such Governmental Approvals will not be obtained in due course prior to

the time required.

(e) Finders and Brokers. Neither Freeport LNG nor any of its Affiliates has incurred any liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by the Transaction Documents for which COP or any of its Affiliates could be liable.

(f) Litigation. There are no Actions pending or, to the Knowledge of Freeport LNG, threatened against Freeport LNG that have questioned or could reasonably be expected to question the validity of this Agreement or enjoin or prohibit any action taken or to be taken pursuant to or in connection with any of the provisions of the Transaction Documents. There are no Claims pending, or to the Knowledge of each Freeport Entity, threatened against any Freeport Entity. Neither Freeport Entity is a party or subject to or in default under any judgment, order, injunction or decree of any Governmental Entity or arbitration tribunal applicable to it or any of its properties, assets, operations or business. There is no pending, or, to the Knowledge of each Freeport Entity, threatened, investigation of or affecting either Freeport Entity by any Governmental Entity. This Section 3.2(f) does not relate to matters concerning Taxes, such items being the subject of Section 3.2(m).

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(g) Absence of Undisclosed Liabilities. Neither Freeport Entity has any Liabilities that are of a nature required under GAAP to be disclosed, reflected or reserved against on the applicable Freeport Financial Statements except (a) Liabilities disclosed, reflected or reserved against on the applicable Freeport Financial Statements or (b) Liabilities arising in the ordinary course of business or as contemplated by the Transaction Documents.

(h) Absence of Changes or Events. Since September 30, 2003, there has not been any action, event or occurrence that has had or would reasonably be expected to have a Freeport Material Adverse Effect, except for circumstances or events that have affected the LNG industry generally. Since September 30, 2003, the business of each Freeport Entity has been conducted in the ordinary course and in substantially the same manner as previously conducted, and no Freeport Person has taken any action that, if taken after the date of this Agreement, would constitute a breach of any of the covenants of Freeport LNG or the General Partner set forth in Sections 4.2 and 4.3, other than those arising in the ordinary course of business or as contemplated by the Transaction Documents.

(i) Contracts. No Freeport Entity has entered into any agreement, contract or commitment which (i) would prohibit such party's execution of the Transaction Documents or performance thereunder, or (ii) was not entered into in the ordinary course of business or as contemplated by the Transaction Documents. No Freeport Entity has entered into any employment contract or agreement other than the four employment agreements previously provided to COP by Freeport LNG.

(j) Real Property. Freeport LNG has (a) good and insurable fee title to all Partnership Owned Property and (b) good and valid title to the leasehold estates in all Partnership Leased Property, in each case free and clear of all Liens, leases, assignments, subleases, Easements, covenants and other similar restrictions of any nature whatsoever, except (i) such as could not reasonably be expected to have a Freeport Material Adverse Effect, (ii) Permitted Liens, (iii) all land use (including environmental and wetlands) zoning, building and other similar restrictions.

(k) Assets Other than Real Property. The Freeport Entities, as the case may be, have good and valid title to all of the assets reflected on the balance sheets included in the Freeport Financial Statements or that were acquired after September 30, 2003, except those assets sold or otherwise disposed of for fair value since September 30, 2003 in the ordinary course of business consistent with past practice and not in violation of this Agreement.

(l) Insurance. The Freeport Entities maintain policies of fire and casualty, liability, business interruption and other forms of insurance in such amounts, with such deductibles and against such risks and losses as are reasonable for the business and assets of the Freeport Entities as conducted or owned on the Effective Date. All such policies are in full force and effect, all premiums due and payable thereon have been paid (other than retroactive or retrospective premium adjustments that are not yet, but may be, required to be paid with respect to any period ending on or prior to the Closing Date under comprehensive general liability and workmen's compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which has not been replaced on substantially similar terms prior to the date of such cancellation. To the Knowledge of each Freeport Person, the activities and operations of each Freeport Entity have been conducted in a manner so as to conform in all material respects to all applicable provisions of such insurance policies.

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(m) Taxes.

(i) All Returns required to be filed by either Freeport Entity or with respect to any Tax for which either Freeport Entity is liable or that relates to the business of either Freeport Entity have been duly and timely filed in a proper manner with the appropriate Governmental Entity, each such Return is true, correct and complete in all material respects, each Tax shown to be payable on each such Return has been timely paid in full, each Tax payable by or with respect to either Freeport Entity (or Seller, as a result of owning an interest in the General Partner) by assessment has been timely paid in the amount assessed and adequate reserves have been established on the books of the General Partner or Freeport LNG, as the case may be, for all Taxes for which the General Partner or Freeport LNG, as the case may be, is liable or that relate to the business of either Freeport Entity, but the payment of which is not yet due. Neither Freeport Entity is, and never has been, liable for any Tax payable by reason of the income or property of a Person other than a Freeport Entity. The General Partner or Freeport LNG, as applicable, has timely filed true, correct and complete declarations of estimated Tax with respect to each Freeport Entity and/or the business of each Freeport Entity in each jurisdiction in which any such declaration is required to be filed by it. No Liens for Taxes exist upon the property or other assets of either Freeport Entity, except liens for Taxes which are not yet due. Neither Freeport Entity (nor Seller, as a result of owning an interest in the General Partner) is, and never has been, subject to Tax in any jurisdiction outside of the United States. No claim has ever been made by any Governmental Entity in any jurisdiction where neither Freeport Entity (nor Seller on their behalf) files Tax returns that either Freeport Entity is or may be subject to taxation in that jurisdiction.

(ii) No litigation with respect to any Tax for which either Freeport Entity is asserted to be liable (or is asserted to relate to the business of either Freeport Entity) is pending or, to the Knowledge of either Freeport Entity, threatened and there is no basis on which any material deficiency in Tax can be asserted against either Freeport Entity, insofar as such deficiency relates to either Freeport Entity or the business of either Freeport Entity. No requests for rulings or determinations in respect of any Taxes are pending between either Freeport Entity and any Governmental Entity. No extension of any period during which any Tax may be assessed or collected and for which either Freeport Entity is or may be liable has been granted to any Governmental Entity. No audit or similar proceeding with respect to any Tax for which either Freeport Entity is or may be liable is pending or, to the Knowledge of each Freeport Entity, threatened. Neither Freeport Entity has executed any closing agreement pursuant to IRC Section 7121 (or any predecessor provision) or any similar provision of state or local law with respect to itself or Freeport LNG.

(iii) Neither Freeport Entity is, nor has been, a party to any tax allocation or sharing agreement. All amounts required to be withheld by either Freeport Entity or with respect to the business of either Freeport Entity and paid to Governmental Entities for income, social security, unemployment insurance, sales, excise, use and other Taxes (including in respect of any employees, directors and non-resident Persons) have been collected or withheld and paid to the proper Governmental Entity. The General Partner or Freeport LNG have made all deposits required by applicable Law to be made with respect to employees' withholding and other employment Taxes relating to employees of either Freeport Entity or the business of the either Freeport Entity.

(iv) Freeport LNG has been, at all times from its formation, and will be, at all times through the Closing, classified as a partnership for federal Income Tax purposes.

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The General Partner has been, at all times from its organization, and will be, classified as a corporation as defined in Treasury Regulation 301.7701-2(b)(1). The General Partner is the "tax matters partner" of Freeport LNG within the meaning of Section 6231 of the IRC and the regulations thereunder for all federal Income Tax periods of the General Partner ending on or before the Closing Date.

(n) Licenses; Permits. To the Knowledge of each Freeport Person, except for FERC Approval, each Freeport Entity shall be able to timely obtain all Governmental Approvals necessary for the ownership, operation or leasing of the Partnership Property and the General Partner's and Freeport LNG's personal property and that are necessary or useful for the conduct of the business of the Freeport Entities, except where the failure to have such Governmental Approvals would not have a Freeport Material Adverse Effect. To the Knowledge of each Freeport Person, the transactions contemplated hereby shall not adversely affect Freeport LNG's rights under any such Governmental Approvals.

(o) Compliance with Laws. To the Knowledge of each Freeport Entity, each Freeport Entity is in material compliance with all Laws, including those relating to occupational health and safety. No Freeport Entity has received any written communication since its formation that has not been satisfactorily resolved from a Governmental Entity that alleges that either Freeport Entity is

not in compliance in any material respect with any Laws, and no Freeport Entity has Knowledge of any investigation or review pending or threatened by any Governmental Entity relating to any alleged violation. This Section 3.2(o) does not relate to matters with respect to Taxes or to environmental matters, which are the subject of Section 3.2(m) and Section 3.2(p), respectively.

(p) Environmental Matters. To the Knowledge of each Freeport Person, except as would not have a Freeport Material Adverse Effect, each Freeport Entity is in compliance with all Environmental Laws.

(q) Benefit Plans.

(i) Neither Freeport Entity has any "employee pension benefit plans" (as defined in Section 3(2) of ERISA) (sometimes referred to herein as "Company Pension Plans"), "employee welfare benefit plans" (as defined in Section 3(1) of ERISA), stock option, stock purchase, deferred compensation plans or arrangements or other benefit plans maintained, or contributed to, by any Freeport Person for the benefit of any employees of either Freeport Entity (all the foregoing being herein referred to as "Freeport Benefit Plans").

(ii) Each Freeport Entity is in compliance in all material respects with the applicable provisions of ERISA and the IRC.

(iii) At no time since the inception of Freeport LNG has any Freeport Person been required to contribute to any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA) for the benefit of any employees of either Freeport Entity or incurred any withdrawal liability, within the meaning of Section 4201 of ERISA, with respect to any such multiemployer plan, which liability has not been fully paid as of the date hereof, or announced an intention to withdraw, but not yet completed such withdrawal, from any such multiemployer plan.

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(iv) No employee or former employee of either Freeport Entity will become entitled to receive from COP any bonus, retirement, severance, job security or similar benefit or any enhanced benefit as a result of the transactions contemplated hereby; provided, however, that Freeport LNG shall be entitled to pay any bonus set forth in or permitted by the four employment agreements of Freeport LNG previously provided to COP.

(v) No plan, program or arrangement maintained by any Freeport Person provides for post-retirement medical benefits, post-retirement death benefits or other post-retirement welfare benefits, except to the extent of the continuation coverage rules as provided under the provisions of Section 4980B of the IRC and Sections 601 through 608 of ERISA.

(r) Regulatory Authority. Neither Freeport Entity is regulated as a pipeline company by the State of Texas. Neither Freeport Entity is subject to regulation as (i) a "holding company," an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" or a "public utility," as each of such terms is defined in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder or (ii) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

(s) Certain Transactions. Neither Freeport Entity is a surety, guarantor or indemnitor of any indebtedness or other obligation of any other Person.

(t) Improper Payments. To the Knowledge of each Freeport Person, no employee or agent of either Freeport Entity has made any payment of funds or received or retained any funds in either case in violation of any Law.

(u) Absence of Bankruptcy Proceedings. There are no bankruptcy, reorganization or arrangement proceedings pending against, being contemplated by, or to the Knowledge of each Freeport Entity, threatened against, any Freeport Entity.

(v) Patents. The Partnership has a perpetual, non-exclusive and royalty-free license to utilize U.S. Patent Number 6,644,041 B1 in connection with the Facility.

(w) Securities. Except for the general and limited partnership interests set forth in the Partnership Agreement, there are no other equity securities or interests of Freeport LNG or any securities or interests in Freeport LNG reserved for issuance. All of the general and limited partnership interests in Freeport LNG were issued in compliance with all applicable federal and state securities laws. Freeport LNG does not directly or indirectly own any capital stock of, or other equity interests in, any corporation, partnership, limited liability company or other Person, and Freeport LNG is not a member of, or a participant in, any limited liability company, partnership, joint venture, strategic alliance or any other Person, association or business arrangement, and Freeport LNG has not entered into any agreement or commitment to do any of the

foregoing.

(x) Disclosure. No representation or warranty of Freeport LNG contained in this Agreement or any other Transaction Document, and no statement contained in any letter, certificate or other document signed by or on behalf of Freeport LNG or the General Partner and addressed or directed to any of the COP Participants or any of their representatives pursuant to any Transaction Document or in connection with the subject matter of any Transaction

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Document, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements contained herein and therein not misleading or necessary in order to fully and fairly provide the information required to be provided in any such Transaction Document, letter, certificate or other document.

(y) Updated Information. Freeport LNG may, from time to time prior to the Closing, update the representations and warranties contained in Sections 3.2(f), (g), (h), (i), (j), (k), or (l) to reflect changes arising in the ordinary course of business; if such changes in the aggregate could not reasonably be expected to result in a Freeport Material Adverse Effect, such updated information shall automatically amend the representations and warranties contained herein as of the date hereof; provided that such updated information shall not amend the representations and warranties if the action giving rise to such disclosure constitutes a breach of Section 4.2(c).

3.3 Representations and Warranties of the General Partner. In order to induce the COP Participants to enter into and perform the Transaction Documents and to consummate the transactions contemplated thereby, the General Partner hereby represents and warrants to the COP Participants as follows:

(a) Organization and Qualification. The General Partner is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and is qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification.

(b) Authority and Validity. The General Partner has the requisite power and authority to execute and deliver, to perform its obligations under, and to consummate the transactions contemplated by, the Transaction Documents to which it is a party. The General Partner's sole stockholder has approved the transactions contemplated by the Transaction Documents. The execution and delivery by the General Partner of, the performance by the General Partner of its obligations under, and the consummation by the General Partner of the transactions contemplated by, the Transaction Documents to which it is a party have been duly authorized by the requisite corporate action on its part. This Agreement is and, when executed and delivered by the General Partner, the other Transaction Documents to which it is a party will be, the valid and binding obligations of the General Partner, enforceable against the General Partner in accordance with its and their respective terms, except insofar as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by principles governing the availability of equitable remedies.

(c) Noncontravention. The execution, delivery and performance by the General Partner of the Transaction Documents to which it is a party do not and will not (i) conflict with or violate any provision of its certificate of incorporation or by-laws, (ii) require any consent, approval or authorization of, or any filing with or notice to, any Person, (iii) result in any violation of or breach or default under any contract or agreement to which the General Partner is a party or by which it is bound, (iv) violate any Law to which the General Partner is subject, or (v) violate, conflict with or result in a default, right to accelerate or loss of rights under any order, judgment or decree to which the General Partner is a party or by which it is bound or affected.

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(d) Finders and Brokers. Neither the General Partner nor any of its Affiliates has incurred any Liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by the Transaction Documents for which COP or any of its Affiliates could be liable.

(e) Litigation. There are no Actions pending or, to the Knowledge of the General Partner, threatened against the General Partner that have questioned or could reasonably be expected to question the validity of any Transaction Document or enjoin or prohibit any action taken or to be taken pursuant to or in connection with any of the provisions of the Transaction Documents.

(f) Disclosure. No representation or warranty of the General Partner

contained in this Agreement or any other Transaction Document, and no statement contained in any letter, certificate or other document signed by or on behalf of the General Partner and addressed or directed to any of the COP Participants or any of their representatives pursuant to any Transaction Document or in connection with the subject matter of any Transaction Document, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements contained herein and therein not misleading or necessary in order to fully and fairly provide the information required to be provided in any such Transaction Document, letter, certificate or other document.

(g) Updated Information. The General Partner may, from time to time prior to the Closing, update the representations and warranties contained in Section 3.3(e) to reflect changes arising in the ordinary course of business; if such changes in the aggregate could not reasonably be expected to result in a Freeport Material Adverse Effect, such updated information shall automatically amend the representations and warranties contained herein as of the date hereof; provided that such updated information shall not amend the representations and warranties if the action giving rise to such disclosure constitutes a breach of Section 4.2(c).

#### ARTICLE 4 COVENANTS

4.1 Covenant of COP. COP will use commercially reasonable efforts to assist Freeport LNG and the General Partner in obtaining the FERC Approval.

4.2 Covenants of Freeport LNG and the General Partner.

(a) Access to Information. Subject to any non-disclosure agreement to which Freeport LNG or the General Partner is a party, from the date hereof through the Closing Date, Freeport LNG and the General Partner shall, and shall cause their officers, directors, employees and agents to, afford the officers, employees, agents, representatives and advisors of the COP Participants reasonable access at all reasonable times during normal business hours to (i) Freeport LNG's officers, employees, agents, properties, books, records and contracts related to the Facility and the business and operations of Freeport LNG, and shall furnish the COP Participants all financial, operating and other data and information as any COP Participant may reasonably request with respect to the Facility and the business and operations of Freeport LNG, and (ii) Freeport LNG's properties and facilities (including the Facility Site) for purposes of

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conducting the environmental investigation contemplated by Exhibit G which is hereby incorporated by reference. Notwithstanding the foregoing, in no event will any COP Participant be given access to or copies of any data, information, records or drafts relating to or in connection with any negotiation, agreement or communication with another customer or potential customer of the Facility, except for final, completed, executed and delivered terminal use agreements with a customer. To the extent that any non-disclosure agreement limits the obligations of Freeport LNG or the General Partner under this Section 4.2(a), Freeport LNG and the General Partner shall use commercially reasonable efforts to remove the limitations of such non-disclosure agreement, including by requesting consent from the counterparty thereto for disclosures to the COP Participants.

(b) Advisory Board. From and after the Effective Date until the earlier of the Closing Date or termination of this Agreement, the General Partner shall create an advisory board comprised of six advisors, with three appointed by Freeport LNG and three appointed by COP. Such advisory board shall be consulted on (i) the form and negotiation of the Lump Sum Turnkey Agreement for the Engineering, Procurement and Construction of the Facility proposed to be entered in between Freeport LNG and Technip USA Corporation or a similarly qualified and experienced contractor (the "EPC Contract"), as well as any other agreements relating to the engineering, design or construction of Phase I, (ii) other than any terminal use agreement with another customer or potential customer of the Facility, the form and negotiation or all other significant contracts and agreements relating to Phase I, (iii) the applications for and efforts to obtain the FERC Approval and all other permits, licenses and approvals required from any Governmental Entity in connection with Phase I, (iv) all matters associated with stakeholder relations, and (v) all matters relating to the standards, policies and guidelines with respect to health and safety, engineering, design, operations and environmental matters. In addition, COP shall have the right to second an employee to act as construction manager for Freeport LNG (including the matters described in clauses (i) and (v) of this Section 4.2(b)) and another employee to assist with the matters described in clauses (ii), (iii) and (iv) of this Section 4.2(b), in each case until the earlier of the Closing Date or termination of this Agreement; provided that (x) such employees shall be under the direction and control of the General Partner and its officers, (y) such secondment shall be at no cost to Freeport LNG, and (z) subject to Section 4.2(a), such employees shall be restricted from sharing



with COP or any of its Affiliates any data, information, records or drafts as to which the COP Participants are not to be given access pursuant to Section 4.2(a).

(c) Conduct of Business. Subject to the terms of Section 4.2(b), from the Effective Date through the Closing Date, Freeport LNG and the General Partner will continue to conduct their business operations consistent with prudent business practices and otherwise in the ordinary course, including seeking to obtain, as soon as practicable, the FERC Approval and completion of the negotiation of the DOW TUA. Without limiting the foregoing, Freeport LNG shall not, and the General Partner shall cause Freeport LNG not to, take any of the following actions without COP's prior written approval (except to the extent that, if the Stockholders Agreement were in effect, such action could be taken solely by the MS Directors (as defined in the Stockholders Agreement), but in such event the Freeport Entities shall consult with COP before taking such action or causing or allowing either Freeport Entity to take such action):

(i) execute or deliver the EPC Contract;

(ii) amend, modify, terminate or waive any of its rights under the EPC Contract;

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(iii) withdraw, amend, consent to or acquiesce in any termination or material amendment of, or any other adverse action in respect of, the application for the FERC Approval or the FERC Approval, except such amendment as may be necessary to avoid termination of this Agreement under Section 7.1(b)(iii);

(iv) amend its Certificate of Incorporation or Bylaws or the Partnership Agreement, or cause its liquidation or dissolution, or fail to preserve its existence;

(v) adopt or enter into any Freeport Benefit Plan or collective bargaining agreement or employment agreement;

(vi) grant to any manager, executive officer or employee any increase in compensation or benefits, except in the ordinary course of business consistent with past practice or as may be required under existing agreements that have been provided to COP;

(vii) incur or assume any liabilities, obligations or indebtedness for borrowed money or guarantee any such liabilities, obligations or indebtedness;

(viii) permit, allow or suffer any of its assets to become subjected to any Lien, Easement, covenant or other similar restriction of any nature except in the ordinary course of business or as contemplated by the Transaction Documents;

(ix) waive any claims or rights of material value;

(x) modify, amend, terminate or waive any rights under any agreement or contract or arrangement that is material to the business of either Freeport Entity;

(xi) make or rescind any express or deemed election relating to Taxes if such action would create a material additional Liability for either Freeport Entity or COP or its Affiliates in respect of any period beginning after the Closing Date;

(xii) enter into any swap, futures or derivatives transaction;

(xiii) take any other action that would require the approval of the board of directors of the General Partner pursuant to Section 3(a)(iv) of the Stockholders Agreement if the Stockholders Agreement were in effect; or

(xiv) agree, whether in writing or otherwise, to do any of the foregoing.

(d) Exclusivity. Neither Freeport LNG nor the General Partner shall continue, engage in, solicit, initiate or encourage the sale of capacity in the Facility that COP LNG would be required to purchase according to the terms of the form of TUA attached hereto as Exhibit D.

#### 4.3 Joint Covenants.

(a) General. Each of the Parties will use commercially reasonable efforts to take such actions and to do all other things necessary, proper or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction of the closing conditions set forth in Article 5). Without limiting Freeport LNG's and

the General Partner's obligations under the preceding sentence, Freeport LNG and the General Partner shall continue to use diligent efforts to obtain the FERC Approval and, if the FERC Approval as initially issued does not meet the requirements of Section 7.1(b)(iii) or 7.1(c)(ii) to amend or modify the FERC Approval so that it meets such requirements.

(b) Confidentiality. The Non-Disclosure Agreement dated as of November 15, 2002 between the Parties and/or their Affiliates shall automatically terminate and be of no further force and effect on the Closing Date. None of the Parties will issue any press release or make any other public announcement regarding the Transaction Documents or any of the transactions contemplated thereby without the consent of the other Parties. Each Party will hold, and will cause its employees, consultants, advisors and agents to hold, in confidence the terms of the Transaction Documents and any non-public information concerning any other Party obtained pursuant to the Transaction Documents or in connection with the negotiation thereof. Notwithstanding the preceding provisions, a Party (which, for purposes of this Section 4.3(b) shall include the partners of Freeport LNG) may disclose such information to the extent required by any applicable Law (including disclosure requirements under federal and state securities laws and disclosure required in connection with any judicial or administrative proceeding of any Governmental Entity), but, except as permitted below, the Party proposing to disclose such information will first notify and consult with the other Parties concerning the proposed disclosure, to the extent reasonably feasible. The Parties acknowledge that the parent company of COP and certain partners of Freeport LNG are "public companies" subject to the disclosure requirements contained in the Securities Act and the Securities Exchange Act of 1934 as well as the requirements of any exchange on which such Person's securities are traded. Notwithstanding any other provision of this Agreement, COP and its Affiliates and such partners of Freeport LNG may disclose to their respective shareholders and the public such information as such Persons reasonably determine is necessary or appropriate to comply with their respective legal obligations or requirements, including their respective disclosure obligations. Each Party also may disclose such information to employees, consultants, advisors, agents and lenders or potential lenders whose knowledge is necessary to facilitate the consummation of the transactions contemplated by the Transaction Documents. Each Party's obligation to hold information in confidence will be satisfied if it exercises the same care with respect to such information as it would exercise to preserve the confidentiality of its own similar information. Notwithstanding the foregoing, Freeport LNG shall be free to share with any customer or prospective customer of the Facility, so long as such Person shall have executed a nondisclosure agreement substantially in the form then used in the ordinary course of business by Freeport LNG, copies of the Stockholders Agreement, redacted as mutually agreed, and those portions of the TUA dealing with shipping, scheduling and operations.

(c) Notification of Certain Matters. Between the Effective Date and the Closing Date, each Party will promptly notify the other Parties of any fact, event, circumstance or action known to the first Party the existence or occurrence of which would cause any of such Party's representations or warranties under this Agreement not to be materially correct and complete.

(d) Alternative Transaction Structure. Upon the request of any Party, the Parties shall, and shall cause their Affiliates to, work together in good faith to reach mutual agreement on an alternative structure for the transactions contemplated by the Transaction Documents, which alternative structure would provide for a \*\*\* and a \*\*\* for all the remaining capacity of the Facility (subject to the COP TUA). Without limiting the generality of the foregoing, the Parties will in good faith explore and discuss with one another whether it is in the

best interest of Freeport LNG to enter into any such \*\*\* or any other agreement with COP or one of its Affiliates, whereby COP or one of its Affiliates will provide to Freeport LNG (i) advisory services regarding the construction of Phase I and/or (ii) maintenance and operation services for the Facility. If the Parties determine one or both agreements are in the best interest of Freeport LNG, the Parties will work with one another in good faith to cause the applicable Persons to draft, negotiate and enter into such agreements on a timely basis.

ARTICLE 5  
CLOSING AND CONDITIONS TO CLOSING

5.1 The Closing. The execution and delivery of the Transaction Documents (except for the Stock Purchase Agreement, which is executed and delivered contemporaneously with the execution and delivery of this Agreement), the closing and initial funding of the Loan and the closing of the sale and purchase of 50% of the GP Stock (the "Closing") shall take place at the offices of King & Spalding LLP, 1100 Louisiana, Suite 4000, Houston, TX, within ten Business Days after the date of issuance of the FERC Approval (or, if the FERC Approval as

originally issued does not meet the requirements of Section 7.1(b)(iii) and 7.1(c)(ii), such later date as the FERC Approval is modified so that it meets such requirements) or such other time and place as the Parties may mutually agree in writing (the applicable date on which the Closing will occur is referred to herein as the "Closing Date").

5.2 COP's, COP Lender's and COP LNG's Conditions to Closing. The obligation of each of COP, COP Lender and COP LNG to consummate the transactions contemplated to be performed by it at the Closing is subject to satisfaction of the following conditions:

(a) Representations and Warranties. The representations and warranties set forth in Sections 3.2 and 3.3 qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, in each case when made and as of the Closing Date; provided that in the event that any representation and warranty is not true and correct as of the Closing as a result of any action approved by COP under Section 4.2(c), such representation and warranty shall be deemed to be true and correct as of the Closing.

(b) No Breach. Neither Freeport LNG nor the General Partner shall be in breach of or default under any of its respective covenants or obligations under any of the Transaction Documents, and no party to the Partnership Agreement shall be in breach of or default under any of its respective covenants or obligations under the Partnership Agreement, as amended by the Partnership Amendment, and no event shall have occurred which, with the giving of notice or the passage of time or both, would become such a breach or default.

(c) Absence of Litigation. No injunction, judgment, order, decree, or ruling shall be in effect that would (i) prevent, prohibit or make illegal the consummation by COP, COP Lender or COP LNG of any aspect of the transactions contemplated by the Transaction Documents or (ii) cause any of the transactions contemplated by the Transaction Documents to be rescinded or ineffective in any material respect following consummation.

(d) Transaction Documents. Each of Freeport LNG and the General Partner shall have executed (or caused to be executed) and delivered to COP, COP Lender and COP LNG each of the Transaction Documents to be executed and delivered by Freeport LNG or the General Partner as set forth in Section 2.2, and each such Transaction Document shall be in full

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force and effect and not subject to termination at such time as a result of any state of facts existing at such time.

(e) Stock Purchase Agreement. Seller shall have executed the Stock Purchase Agreement and delivered to COP GP the certificate representing 50% of the GP Stock in accordance with the Stock Purchase Agreement duly endorsed for transfer to COP GP or accompanied by a duly executed stock power effecting such transfer, and shall have taken all other actions and executed all documents as required under the Stock Purchase Agreement.

(f) Stockholders Agreement. Seller shall have executed and delivered to COP GP the Stockholders Agreement and the Stockholders Agreement shall be in full force and effect and not subject to termination at such time as a result of any state of facts existing at such time.

(g) Partnership Agreement. The Partnership Agreement, as amended by the Partnership Amendment, shall be in full force and effect and not subject to termination at such time as a result of any state of facts existing at such time.

(h) Governmental Approvals. All Governmental Approvals issued or granted to either Freeport Entity by Governmental Entities that are necessary or materially useful for the conduct of the business of the Freeport Entities shall not be materially adversely affected due to the Closing.

(i) Consents. Any third party consents or waivers obtained by the Freeport Entities that are necessary or materially useful for the conduct of the business of the Freeport Entities or to consummate the transactions contemplated by the Transaction Documents shall not be materially adversely affected due to the Closing.

(j) Conditions under Loan Documents. All conditions precedent for initial funding under the Loan Documents shall be satisfied or waived by COP Lender; provided, such conditions precedent are set forth in the Loan Term Sheet.

(k) Conditions under Stock Purchase Agreement. All conditions precedent to COP GP's obligation to close under the Stock Purchase Agreement shall have been satisfied or waived by COP GP.

(l) Certificates. Each of Freeport LNG and the General Partner shall

have executed (or caused to be executed) and delivered to COP, COP Lender and COP LNG a certificate, in a form reasonably acceptable to COP, executed by a senior officer of Freeport LNG and the chief executive officer of the General Partner, to the effect that (i) each of the conditions specified above in Sections 5.2(a) through 5.2(k) is satisfied, (ii) the requisite action has been taken by the applicable entity required for execution, delivery and performance of the Transaction Documents to which it is a party and (iii) each of the officers and authorized Persons of the applicable entity executing the Transaction Documents and such certificate is the duly elected or appointed officer or Person holding the applicable position and the signature of each such officer and Person is his or her genuine signature.

(m) Legal Opinion. Freeport LNG and the General Partner shall have delivered to the COP Participants a legal opinion from counsel to Freeport LNG in form reasonably agreed by counsel to Freeport LNG, the General Partner and COP.

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(n) Good Standings. Freeport LNG shall have delivered to COP (i) certified copies of the certificate of incorporation of the General Partner and certificate of limited partnership of Freeport LNG, certified as of a recent date by the Secretary of State of Delaware, and (ii) good standing certificates of the General Partner and Freeport LNG as of a recent date from the Secretary of State of the State of Delaware and each other state in which they are qualified to do business.

(o) Environmental Condition. Either (i) COP shall have given Freeport LNG and the General Partner notice that COP waives its right to terminate under Section 7.1(d) or (ii) April 1, 2004 shall have occurred and COP shall not have provided Freeport LNG with a notice of termination pursuant to Section 7.1(d).

(p) Title Matters. April 1, 2004 shall have occurred and COP shall not have delivered a Title Notice to Freeport LNG pursuant to Section 7.1(e) or, if such notice has been provided by April 1, 2004, Freeport LNG shall have cured the title matters set forth in the Title Notice to COP's reasonable satisfaction in accordance with Section 7.1(e).

(q) Waiver. COP may waive any condition specified in this Section 5.2 if it executes a writing so stating at or prior to the Closing or proceeds to the completion of the Closing notwithstanding that it has Knowledge of failure of any such condition.

5.3 Freeport LNG's and the General Partner's Conditions to Closing. The obligation of each of Freeport LNG and the General Partner to consummate the transactions to be performed by it at the Closing is subject to satisfaction of the following conditions:

(a) Representations and Warranties. The representations and warranties set forth in Section 3.1 qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, in each case when made and as of the Closing Date.

(b) No Breach. None of the COP Participants shall be in breach of or default under any of its respective covenants or obligations under any of the Transaction Documents, and no event shall have occurred which, with the giving of notice or the passage of time or both, would become such a breach or default.

(c) Absence of Litigation. No injunction, judgment, order, decree, or shall be in effect that would (i) prevent, prohibit or make illegal the consummation by Freeport LNG or the General Partner of any aspect of the transactions contemplated by the Transaction Documents or (ii) cause any of the transactions contemplated by the Transaction Documents to be rescinded or ineffective in any material respect following consummation.

(d) Transaction Documents. Each of the COP Participants shall have executed (or caused to be executed) and delivered to Freeport LNG and the General Partner each of the Transaction Documents to be executed and delivered by such COP Participant as set forth in Section 2.1, and each such Transaction Document shall be in full force and effect and not subject to termination at such time as a result of any state of facts existing at such time.

(e) Capacity Reservation Fee. COP LNG shall have paid the Capacity Reservation Fee.

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(f) Stock Purchase Agreement. COP GP shall have executed and delivered to Seller the Stock Purchase Agreement and paid to Seller \$9 million in immediately available funds in consideration for the transfer to COP GP of 50% of the GP Stock in accordance with the Stock Purchase Agreement.

(g) Conditions under Stock Purchase Agreement. All conditions

precedent to Seller's obligation to close under the Stock Purchase Agreement shall have been satisfied or waived by Seller.

(h) Certificates. COP shall have executed (or caused to be executed) and delivered to Freeport LNG and the General Partner a certificate, in a form reasonably acceptable to Freeport LNG and the General Partner, executed by a senior officer of each of COP, COP Lender, COP GP and COP LNG to the effect that (i) in the case of the certificate from each of COP Lender, COP GP and COP LNG, each of the representations and warranties made in Section 3.1 as to COP shall be true and correct as of the Closing Date in respect of COP Lender, COP GP or COP LNG, as the case may be, (ii) each of the conditions specified above in Sections 5.3(a) through 5.3(g) is satisfied, (iii) the requisite action has been taken by the applicable entity required for execution, delivery and performance of the Transaction Documents to which it is a party and (iv) each of the officers and authorized Persons of the applicable entity executing the Transaction Documents and such certificate is the duly elected or appointed officer or Person holding the applicable position and the signature of each such officer and Person is his or her genuine signature.

(i) Legal Opinion. COP shall have delivered to Freeport LNG and the General Partner a legal opinion of counsel to COP in form reasonably agreed by counsel to Freeport LNG, the General Partner and COP.

(j) Conditions under Loan Documents. All conditions precedent for initial funding under the Loan Documents shall be satisfied or waived by COP Lender; provided, such conditions precedent are set forth in the Loan Term Sheet.

(k) Waiver. Freeport LNG or the General Partner, as applicable, may waive any condition specified in this Section 5.3 if it executes a writing so stating at or prior to the Closing or proceeds to the completion of the Closing notwithstanding that it has Knowledge of failure of any such condition.

5.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 7.1, 7.2 and 7.3, to be satisfied if such failure was caused by such Party's failure to act in good faith or to use its commercially reasonable efforts to cause the Closing to occur.

#### ARTICLE 6 INDEMNIFICATION AND LIABILITY

6.1 Indemnification by COP. Subject to the limitations set forth in this Article 6, following the Effective Date, COP shall indemnify and hold harmless Freeport LNG and the General Partner and their respective Affiliates and the officers, directors, employees, agents, partners and representatives of each of them (collectively, the "Freeport Indemnitees"), from, against and in respect of any and all Liabilities, obligations, judgments, Liens, injunctions, charges, orders, decrees, rulings, damages, dues, assessments, losses, fines, penalties,

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injuries, deficiencies, demands, expenses, fees, costs, amounts paid in settlement (including reasonable attorneys' and expert witness fees and disbursements in connection with investigating, defending or settling any action or threatened action (collectively "Losses") to the extent arising from, relating to or otherwise in respect of (and including Losses resulting from any claim, complaint, demand, cause of action, audit, investigation, hearing, action, suit or other proceeding asserted or initiated or otherwise existing in respect of any matter) (a) any breach of any representation or warranty of COP contained in this Agreement or in any certificate delivered by COP pursuant hereto, and (b) any breach of any covenant of COP contained in this Agreement.

6.2 Indemnification by Freeport LNG. Freeport LNG shall indemnify and hold harmless each of the COP Participants and their respective Affiliates and the officers, directors, employees, agents, managers and representatives of each of them (collectively, the "COP Indemnitees") from, against and in respect of any and all Losses (other than Losses relating to Taxes, for which indemnification provisions are set forth in Section 6.4) to the extent arising from or related to or otherwise in respect of (and including Losses resulting from any claim, complaint, demand, cause of action, audit, investigation, hearing, action, suit or other proceeding asserted or initiated or otherwise existing in respect of any matter) (a) any claims made by any limited partner of Freeport LNG or any other Person (excluding COP and its Affiliates) in respect of the ownership, development, construction, operation or maintenance of the Facility at any time prior to the Closing Date, except to the extent resulting from the gross negligence or willful misconduct of any of the COP Indemnitees or the breach or default of COP under this Agreement, or (b) any breach of any representation or warranty of either Freeport Entity contained in this Agreement or in any certificate delivered by either Freeport Entity pursuant hereto, and (c) any breach of any covenant of either Freeport Entity contained in this Agreement.

6.3 [Intentionally Omitted]

6.4 Tax Indemnification.

(a) Freeport LNG shall indemnify COP and its Affiliates (including the General Partner) and each of their respective officers, directors, employees, stockholders, agents and representatives and hold them harmless from all Losses for (i) Taxes of or with respect to the General Partner or Freeport LNG for the Pre-Closing Tax Period, (ii) Taxes of Seller or any other entity (other than the General Partner) which is or has been affiliated with any Freeport Person, (iii) Taxes attributable to a breach by any Freeport Person of a representation, warranty or obligation under this Agreement or any other Transaction Document and (iv) reasonably necessary legal fees and expenses incurred by COP in enforcing its rights under clause (i), (ii) or (iii) above; provided that in the case of a Loss suffered by the General Partner itself that is described in clause (i) above, Freeport LNG shall indemnify COP only for 50% of the Loss. All indemnity payments required by this Section 6.4(a) shall be paid by Freeport LNG to COP regardless of the identity of the Person that suffered the Loss.

(b) In the case of any Straddle Period:

(i) Property Taxes of the General Partner and Freeport LNG for the Pre-Closing Tax Period shall be equal to the amount of such Property Taxes for the entire Straddle Period (the "Full Year Property Taxes") multiplied by a fraction, the numerator of

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which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and

(ii) the Taxes of the General Partner and Freeport LNG (other than Property Taxes) for the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date.

(c) Notwithstanding anything to the contrary, Freeport LNG shall be liable for and shall pay any and all Taxes arising in connection with the transfer of the GP Stock and Freeport LNG shall indemnify and hold harmless COP for any and all such Taxes.

(d) All amounts paid by Freeport LNG or the General Partner under the terms of this Section 6 shall be increased to take into account the Tax, if any, resulting from such payment.

#### 6.5 Matters Involving Third Parties.

(a) If any third party shall notify any of the Freeport Indemnitees or the COP Indemnitees (the "Indemnified Person") with respect to any matter (a "Third Party Claim") which may give rise to a claim for indemnification against any Party (the "Indemnifying Party") under this Article 6, then the Indemnified Person shall promptly notify each Indemnifying Party thereof in writing; provided, however, that failure on the part of the Indemnified Person to notify any Indemnifying Party shall not relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party is thereby materially prejudiced by such failure.

(b) The Indemnifying Party may, (i) at its own expense, participate in the defense of any claim, suit, action or proceeding covered by any of the indemnities set forth in this Article 6 and (ii) upon (x) written notice to the Indemnified Person and (y) delivering to the Indemnified Person of a written agreement that the Indemnified Person is entitled to indemnification pursuant to Sections 6.1 or 6.2 for all Losses arising out of such claim, suit, action or proceeding and that the Indemnifying Party shall be liable for the entire amount of any Loss, at any time during the course of any such claim, suit, action or proceeding, assume the defense thereof, provided that (1) the Indemnifying Party's counsel is reasonably satisfactory to the Indemnified Person, and (2) the Indemnifying Party shall thereafter consult with the Indemnified Person upon the Indemnified Person's reasonable request for such consultation from time to time with respect to such claim, suit, action or proceeding. If the Indemnifying Party assumes such defense, the Indemnified Person shall have the right (but not the obligation) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party. If, however, the representation by the Indemnifying Party's counsel of both the Indemnifying Party and the Indemnified Person would present such counsel with a conflict of interest, then such Indemnified Person may employ separate counsel (Indemnifying Party's consent to the choice of counsel is required, such consent not to be unreasonably withheld) to represent or defend it in any such claim, action, suit or proceeding and the Indemnifying Party shall pay the reasonable fees and disbursements of such separate counsel. Whether or not the Indemnifying Party chooses to defend or prosecute any such claim, suit, action or proceeding, all of the Parties hereto shall cooperate in the defense or prosecution thereof.

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(c) Any settlement or compromise made or caused to be made by the Indemnified Person or the Indemnifying Party, as the case may be, of any such claim, suit, action or proceeding of the kind referred to in this Section 6.5 shall also be binding upon the Indemnifying Party or the Indemnified Person, as the case may be, in the same manner as if a final judgment or decree had been entered by a court of competent jurisdiction in the amount of such settlement or compromise, provided that no obligation, restriction or Loss shall be imposed on the Indemnified Person as a result of such settlement without its prior written consent. The Indemnified Person will give the Indemnifying Party at least 30 days' notice of any proposed settlement or compromise of any claim, suit, action or proceeding it is defending, during which time the Indemnifying Party may reject such proposed settlement or compromise; provided that from and after such rejection, the Indemnifying Party shall be obligated to assume the defense of and full and complete liability and responsibility for such claim, suit, action or proceeding and any and all Losses in connection therewith in excess of the amount of unindemnifiable Losses which the Indemnified Person would have been obligated to pay under the proposed settlement or compromise.

6.6 Other Claims. If any Indemnified Person should have a claim against an Indemnifying Party under this Article 6 that does not involve a Third Party Claim being asserted against or sought to be collected from such Indemnified Person, the Indemnified Person shall deliver notice of such claim with reasonable promptness to the Indemnifying Party. The failure by any Indemnified Person so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which it may have to such Indemnified Person under this Article 6, except to the extent that the Indemnifying Party demonstrates that it has been materially prejudiced by such failure. If the Indemnifying Party has timely disputed its liability with respect to such claim, as provided above, the Indemnifying Party and the Indemnified Person shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved as provided in Section 9.1.

6.7 SCOPE OF INDEMNITY. IT IS THE PARTIES' INTENT THAT, EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 6.1, 6.2 AND 6.3, THE INDEMNITY OBLIGATIONS IN THIS ARTICLE 6 ARE WITHOUT REGARD TO THE CAUSES OF THE INDEMNIFIED CLAIMS, INCLUDING THE NEGLIGENCE OF ANY INDEMNIFIED PERSON, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE OR THE STRICT LIABILITY OF ANY INDEMNIFIED PERSON.

6.8 LIMITATION ON DAMAGES. NO PARTY SHALL BE LIABLE FOR, AND EACH PARTY RELEASES THE OTHER PARTIES AND THEIR RESPECTIVE INDEMNIFIED PERSONS FROM, ANY INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF ANY PARTY OR ANY INDEMNIFIED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. THE PROVISIONS OF THIS SECTION 6.8 APPLY TO INDEMNIFICATION CLAIMS UNDER SECTIONS 6.1, 6.2 AND 6.3, EXCEPT THAT THE PROVISIONS OF THIS SECTION 6.8 DO NOT APPLY TO INDEMNIFICATION CLAIMS IN RESPECT OF THIRD PARTY CLAIMS.

6.9 Effect of Knowledge. To the extent that COP has Knowledge of any breach of any representation, warranty or covenant contained in this Agreement as a result of disclosure

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made by Freeport LNG between the date hereof and the Closing Date and COP nevertheless elects to proceed to Closing, no Freeport Indemnitee shall have any Liability under this Article 6 as a result of such breach.

#### ARTICLE 7 TERMINATION

7.1 Termination of Agreement. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing as provided below:

(a) By written agreement executed by all the Parties; or

(b) By COP by giving notice to Freeport LNG or the General Partner at any time prior to the Closing in the event:

(i) Freeport LNG has not received the FERC Approval by \*\*\*;

(ii) By April 1, 2004, COP has concluded a maneuverability study addressing whether LNG vessels with (A) cargo capacity of \*\*\* cubic meters and (B) a length, beam, tonnage and draft that would be typical of such a vessel ("Acceptable Vessels") can safely utilize the Facility and turning basin and navigate the Channel at its current width of four hundred (400) feet ("Study 1") and a maneuverability study addressing whether Acceptable Vessels can safely utilize the Facility and turning basin and navigate the Channel if the Channel were widened to \*\*\* feet ("Study 2") (copies of each such study shall be provided to Freeport LNG by April 1, 2004), and Study 1 demonstrates that

Acceptable Vessels cannot safely utilize the Facility or turning basin or navigate the Channel, or, after consultation with the USCG, COP reasonably determines that such utilization or navigation will likely be prohibited by the USCG; provided, however, that if (1) Study 2 demonstrates that Acceptable Vessels can safely utilize the Facility and turning basin and navigate the Channel, (2) after consultation with the USCG, COP reasonably determines that such utilization and navigation is not likely to be prohibited by the USCG and (3) no Governmental Entity has informed COP that widening the Channel to \*\*\* feet will be prohibited, then (x) COP shall have no right to terminate this Agreement under this Section 7.1(b)(i), and (y) if COP and Freeport LNG mutually agree to widen the Channel, the project cost limit of the Loan shall be increased to \$\*\*\*; or

(iii) Freeport LNG has received the FERC Approval but it contains specific terms or conditions that effectively preclude the use of the Facility by Acceptable Vessels, and in such case Freeport LNG has not obtained a modification or amendment to such FERC Approval such that it does not contain any terms or conditions that effectively preclude such use within \*\*\* days of the issuance of the initial FERC Approval; for the avoidance of doubt, but without limiting the foregoing, a condition similar to the proposed condition in the draft environmental impact statement precluding the use of Acceptable Vessels would afford COP the right to terminate if not modified or amended within \*\*\* days of the issuance of the initial FERC Approval, but a condition similar to the proposed condition requiring a maneuverability study would not; or

(c) By Freeport LNG or the General Partner by giving notice to COP at any time prior to the Closing in the event:

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(i) Freeport LNG has not received the FERC Approval by \*\*\*;

(ii) Freeport LNG has received the FERC Approval but it contains specific terms or conditions that effectively preclude the use of the Facility by Acceptable Vessels, and in such case Freeport LNG has not obtained a modification or amendment to such FERC Approval such that it does not contain any terms or conditions that effectively preclude such use within \*\*\* days of the issuance of the initial FERC Approval; for the avoidance of doubt, but without limiting the foregoing, a condition similar to the proposed condition in the draft environmental impact statement precluding the use of Acceptable Vessels would afford Freeport LNG or the General Partner the right to terminate if not modified or amended within \*\*\* days of the issuance of the initial FERC Approval, but a condition similar to the proposed condition requiring a maneuverability study would not; or

(iii) COP LNG has failed to pay the Capacity Reservation Fee within ten (10) days from when it is due and payable to Freeport LNG; or

(d) By COP by giving notice to Freeport LNG and the General Partner at any time prior to April 1, 2004 if the results of the environmental investigations described in Exhibit G allow COP to terminate this Agreement pursuant to paragraph 3 of such Exhibit; or

(e) By COP by giving notice to Freeport LNG and the General Partner if at any time on or prior to April 1, 2004, COP has given Freeport LNG a written notice (the "Title Notice") indicating with specificity which title conditions and/or title curative actions being undertaken by the Brazos River Harbor Navigation District of Brazoria County, Texas (the "Port") or Freeport LNG with respect to the Facility Site are unsatisfactory to COP and with respect to which Freeport LNG shall have failed within \*\*\* days after such Title Notice, either through the Port or through its own actions, to (i) cure such title conditions to the reasonable satisfaction of COP, or (ii) obtain replacement real property or relocate the improvements comprising the Facility so that such replacement or relocation allows for the completion of the Facility (either as currently designed or as modified in a manner reasonably satisfactory to COP, so long as such modification does not cause construction cost overruns of greater than \$\*\*\* or a delay in completion of the Facility that could reasonably be foreseen to cause a breach under any of the Project Documents); provided that termination under this Section 7(e) shall be effective at the end of such \*\*\* day period if Freeport LNG shall have cured such title matters in accordance with this Section by such time;

(f) By Freeport LNG or the General Partner by giving notice to COP within \*\*\* days of receipt of the Title Notice from COP pursuant to Section 7.1(e); or

(g) By any Party by giving notice to the other Parties at any time prior to the Closing if the Closing has not occurred for any reason by \*\*\*.

7.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 7.1, all rights and obligations of the Parties hereunder shall terminate without any Liability of any Party to any other Party, provided, however, that (i) no termination shall relieve any Party from any Liability



arising from or relating to such Party's breach at or prior to termination and (ii) the provisions of Sections 4.3(b), 8.4, 8.8, 8.13 and 8.14 and Article 9 shall survive the termination of this Agreement.

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7.3 Termination upon Closing. Upon the completion of the Closing, this Agreement shall terminate, the agreements, covenants, indemnities, representations and warranties contained herein shall be of no further force or effect, and thereafter the Parties shall look to the other Transaction Documents for any rights, obligations and remedies to which they may be entitled or bound; provided that (a) no termination shall relieve any Party from any liability arising from or relating to such Party's breach at or prior to termination (but subject to Section 6.9) and (b) the provisions of Articles 6 and 9 and Sections 8.4, 8.5, 8.8, 8.13 and 8.14 shall survive the termination of this Agreement.

ARTICLE 8  
MISCELLANEOUS

8.1 No Third Party Beneficiaries. Except as specifically set forth herein, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, except for Indemnified Persons' rights to indemnification under Article 6.

8.2 Entire Agreement. This Agreement (including the schedules and exhibits required to be delivered pursuant to this Agreement) and each other Transaction Document constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof or thereof.

8.3 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other Parties.

8.4 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Each Party agrees to accept the facsimile signature of the other Parties and to be bound by its own facsimile signature; provided, however, that the Parties shall exchange original signatures by overnight mail.

8.5 Survival of Representations and Warranties. The representations and warranties of COP set forth in Sections 3.1(a) and (b) (first sentence only) and of Freeport LNG set forth in Sections 3.2(a) and (b) (first sentence only) and of the General Partner set forth in Sections 3.3(a) and (b) (first sentence only) survive the Closing and shall terminate on the \*\*\* anniversary of Closing. All other representations and warranties in this Agreement and in any certificate delivered pursuant hereto shall survive the Closing and shall terminate at the close of business \*\*\* following the Closing Date, except that the representations and warranties relating to Tax matters shall survive the Closing and shall terminate upon the expiration of the applicable statute of limitations.

8.6 Interpretation. In this Agreement:

(a) Headings. The headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular Article.

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(b) Singular and Plural. Reference to the singular includes a reference to the plural and vice versa.

(c) Gender. Reference to any gender includes a reference to all other genders.

(d) Article. Unless otherwise provided, reference to any Article, Section or Exhibit means an Article or Section of or Exhibit to this Agreement.

(e) Herein. The words "hereof," "herein," "hereto" and "hereunder" and words of similar meaning shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular portion or provision of this Agreement.

8.7 Notices. Any and all notices or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or made for all purposes if (a) hand delivered, (b) sent by a nationally

recognized overnight courier or (c) sent by telephone facsimile transmission (with prompt oral confirmation of receipt) as follows:

If to COP:  
-----

c/o ConocoPhillips Company  
600 North Dairy Ashford  
Houston, TX 77079  
Attn: General Manager, LNG  
Facsimile: (281) 293-4830

If to Freeport LNG:  
-----

Freeport LNG Development, L.P.  
1200 Smith Street, Suite 600  
Houston, TX 77002  
Facsimile: (713) 980-2903  
Attention: Michael S. Smith

with copies to:  
-----

Brownstein Hyatt & Farber, P.C.  
410 Seventeenth Street, 22nd Floor  
Denver, CO 80202  
Facsimile: (303) 223-1111  
Attn: Steven C. Demby, Esq.

If to the General Partner:  
-----

Freeport LNG-GP, Inc.  
1200 Smith Street, Suite 600  
Houston, TX 77002

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Facsimile: (713) 980-2903  
Attention: Michael S. Smith

with copies to:  
-----

Brownstein Hyatt & Farber, P.C.  
410 Seventeenth Street, 22nd Floor  
Denver, CO 80202  
Facsimile: (303) 223-0919  
Attn: Steven C. Demby, Esq.

or at such other address as any party may specify by notice given to the other Parties in accordance with this Section 8.7. The date of giving of any such notice shall be the date of hand delivery, the date sent by telephone facsimile, and the day after delivery to the overnight courier service.

8.8 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF TEXAS OR ANY OTHER JURISDICTION) TO THE EXTENT SUCH PROVISIONS OR RULES WOULD APPLY THE LAW OF ANOTHER JURISDICTION.

8.9 Rights and Remedies. Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

8.10 Compliance with Laws. In performance of their respective obligations under this Agreement, each Party agrees to comply with all applicable laws, statutes, rules, regulations, judgments, decrees, injunctions, writs and orders, and all interpretations thereof, of all Governmental Authorities having jurisdiction over such Party.

8.11 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent to such occurrence.

8.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other

situation or in any other jurisdiction.

8.13 Expenses. Except as otherwise expressly provided in this Agreement, each Party will pay all of its expenses, including attorneys' and accountants' fees, in connection with the negotiation of this Agreement and the Transaction Documents and the performance of its obligations and the consummation of the transactions contemplated by this Agreement and the Transaction Documents.

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8.14 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any Laws shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." All covenants, agreements, representations and warranties of a Party made herein and in the other Transaction Documents and any certificates, exhibits and schedules hereto and thereto shall be deemed to have been relied on by the other Party, notwithstanding any investigation made by or on behalf of any of the Parties or any opportunity therefor.

8.15 Specific Performance. Each Party acknowledges and agrees that each other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that, in addition to any other relief which may be available, the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy (subject to the provisions set forth in Article 9) to which it may be entitled, at law or in equity.

8.16 Attorneys' Fees. If either Party brings any suit, action, counterclaim, or arbitration to enforce the provisions of this Agreement (including without limitation enforcement of any award or judgment obtained with respect to this Agreement), the prevailing Party shall be entitled to recover a reasonable allowance for attorneys' fees, litigation expenses, and the cost of arbitration in addition to court costs.

ARTICLE 9  
DISPUTE RESOLUTION

9.1 Arbitration. Any Dispute between (a) COP, COP Lender and/or COP LNG and (b) Freeport LNG and/or General Partner (except for any dispute under the Loan Documents) shall be exclusively and definitively resolved through final and binding arbitration under the terms of Section 22.1 of the TUA, and the provisions of Section 22.1 of the TUA are hereby incorporated herein by reference in the form of the TUA attached hereto as Exhibit D and shall apply in such form, mutatis mutandis, notwithstanding any amendment, modification or termination of the TUA.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed individually or by their duly authorized officers on the date first above written.

COP: CONOCOPHILLIPS COMPANY

By: /s/ W.B. Berry  
-----  
Name: William B. Berry  
-----  
Title: EVP ConocoPhillips  
-----

Freeport LNG: FREEPORT LNG DEVELOPMENT, L.P.

By: Freeport LNG-GP, Inc.  
Its: General Partner  
  
By: /s/ Michael S. Smith  
-----  
Name: Michael S. Smith  
-----  
Title: Chief Executive Officer  
-----

General Partner: FREEPORT LNG-GP, INC.

By: /s/ Michael S. Smith

Name: Michael S. Smith

Title: Chief Executive Officer

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\*\*\* indicates material has been omitted pursuant to a Confidential Treatment Request filed with the Securities and Exchange Commission. A complete copy of this agreement has been filed separately with the Securities and Exchange Commission.

Freeport LNG Development, L.P.

Senior Secured Loans

Summary of Terms and Conditions

Certain capitalized terms used herein and not defined shall have the meanings set forth in Appendix I.

THE LOANS

Borrower:

Freeport LNG Development, L.P. (the "Borrower"), a Delaware limited liability partnership formed solely for the purpose of (i) developing, constructing, financing, owning and operating the Project, and (ii) borrowing the Loans and activities incidental thereto.

Phase 1 Loans:

The loans made by ConocoPhillips Company ("COP") or a wholly-owned subsidiary of COP (together with its successors and assigns, the "COP Lenders") will consist of senior secured loans to the Borrower of (i) up to \$\*\*\* million to finance project costs of Phase 1 of the Project, (ii) an additional amount to pay interest during construction on such loans and (iii) an additional amount to finance \*\*\*% of the cost overruns incurred in the completion of Phase 1 (the "Phase 1 Loans"), issued under a Credit Agreement (the "Credit Agreement") between the Borrower and the COP Lenders

Cost Overrun Loans:

The loans made by lenders financing \*\*\*% of any cost overruns (the "Cost Overrun Loans") on Phase 1 ("Cost Overruns") which will be either (i) lenders unaffiliated with the Borrower under facilities (the "Third Party Cost Overrun Loans") organized by the MS Directors (as defined in the Stockholders Agreement) (the "Third Party Cost Overrun Lenders"), or (ii) a wholly-owned subsidiary of COP (the "Cost Overrun COP Lender") making loans with an interest rate of the Prime Rate plus \*\*\*% per annum (the "COP Cost Overrun Loans"). The COP Cost Overrun Loans shall be payable out of the Borrower's Cash Flow as described under the caption "Flow of Funds".

Expansion Loans:

The loans made by lenders financing construction of Phase 2 of

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EXHIBIT A  
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the Project (the "Expansion Lenders") making loans to the Borrower (the "Expansion Loans") of (i) up to \$\*\*\* to finance the development and construction of Phase 2 and to refinance any Cost Overrun Loans and (ii) an additional amount to pay interest on such loans during construction of Phase 2 (the "Expansion Debt Amount"). No Cost Overrun Loans may be outstanding at the closing of the Expansion Loans.

Equity Holders:

(i) Freeport LNG-GP, Inc. ("FGP"), a Delaware corporation and the sole general partner of the Borrower, formed by Michael Smith ("Smith"), (ii) Freeport LNG Investments LLC ("FLNGI"), a Delaware limited liability company, holding 60% of the limited partnership interests in the Borrower, (iii) Cheniere LNG, Inc. ("CLNGI"), a Delaware corporation formed by Cheniere Energy, Inc., a corporation ("Cheniere Energy"), holding 30% of the limited partnership interests in the Borrower, and (iv) Contango Sundance, Inc., a Delaware corporation ("Contango LP"), a wholly-owned subsidiary of Contango ("Contango"), holding 10% of the limited partnership interests in the Borrower. FGP owns all the general partnership interests in the Borrower. Smith and COP

LNG-GP, \_\_\_ a \_\_\_\_\_, a wholly-owned subsidiary of COP ("COPLNG"), each will own 50% of the common stock of FGP as of the Closing Date.

Each direct owner of a limited or general partnership interest in the Borrower and its permitted assigns is referred to as a "Partner".

Project:

LNG terminal facility near Freeport, Texas, capable of providing certain LNG terminal services, including regassification, storage and transportation to a pipeline interconnection at Stratton Ridge, Texas.

Phase 1 of the Project means the construction and operation of the Project, as authorized in the FERC Approval and any subsequent amendments or supplements thereto, so that upon completion thereof the Project is intended to have the ability to unload, store and revaporize LNG and redeliver regasified LNG at a maximum gas redelivery rate of approximately 1.75 bcf/day including Peaking Gas (as defined in the COP TUA) ("Phase 1"). Phase 2 of the Project consists of one or more expansion(s) of the Project which expansion(s) may include any or all of the following: (a) a third LNG storage tank of double containment design and/or underground storage capacity at or near Stratton Ridge, Texas; (b) a second piled dock and unloading facilities; and (c) increased vaporization capacity to at least the MMBTU

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equivalent of \*\*\* bcf/day ("Phase 2").

COP TUA:

Terminal use agreements for the Project providing COP and its affiliates and their assignees (collectively, the "COP Shipper") rights to terminal services from the Borrower and the Project (the "COP TUA").

Facility Leases:

Subject to the Omnibus Agreement, COP Shipper (or its designee) and the Borrower may mutually agree on an arrangement whereby COP Shipper would lease from the Borrower all of its right, title and interest in the Project. That lease would require COP Shipper to grant to the Borrower the remaining capacity subject to the COP TUA. COP Shipper would retain the rights to the COP TUA. The lease would be subject to the Security Documents.

Collateral:

The following is the Collateral and relative priorities of the various lenders:

Phase 1 Loan Collateral

The obligations of the Borrower to pay principal of, interest on, and other amounts in respect of the Phase 1 Loans and to perform its other obligations (the "Phase 1 Obligations") under the Credit Agreement and the documents executed in connection therewith will be secured by (collectively, the "Phase 1 Collateral"):

- (1) a grant to Collateral Agent of a first priority lien on all real estate, leasehold estates, leases, subleases, equipment, revenues, contracts, permits, receivables, personal property, the COP TUA and all other terminal use agreements ("TUAs"), proceeds from providing terminal services and any other receivables owing to the Project in respect of the Project and all other tangible and intangible assets of the Borrower, whether now owned or hereafter acquired, including, without limitation, a mortgage on all real property associated with the Project and security documents (the "Security Documents") on other assets of the Borrower;
- (2) an assignment to the Collateral Agent of all insurance policies in respect of property loss, casualty or condemnation of or to the Project entered into in respect of the Project naming the Collateral Agent on behalf of the COP Lenders as beneficiaries; and

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- (3) a grant to the Collateral Agent of a lien on and security interest in the Borrower's interest in each of the Depositary Accounts, except as described below under "Depositary Accounts";

provided that

- (a) the Collateral Agent's lien on the COP TUA, including amounts payable (and other obligations performable) by the COP Shipper thereunder, will be a first lien, subject to no other liens, except to the extent a lien upon the royalty payment thereunder (the "COP Royalty") is granted to secure the

Third Party Cost Overrun Obligations or the Expansion Obligations.

Third Party Cost Overrun Collateral

- (b) The obligations of the Borrower to pay principal of, interest on, and other amounts in respect of the Third Party Cost Overrun Loans and to perform its other obligations under the documents executed in connection therewith (the "Third Party Cost Overrun Obligations") shall be secured by a first lien on the COP Royalty, all Phase 1 TUAs (other than the COP TUA) (the "Other Phase 1 TUAs"), including amounts payable (and other obligations performable) by each shipper (the "Other Phase 1 Shippers") thereunder and the related deposit accounts described below with the COP Lenders subordinating their lien in such assets, with the COP Lenders and the Third Party Cost Overrun Lenders executing a non-disturbance agreement granting the Other Phase 1 Shippers and Third Party Cost Overrun Lenders and their successors and assigns rights of quiet enjoyment respecting their TUAs and the Third Party Cost Overrun Lenders recognizing such related liens; and

a grant to the Collateral Agent of a lien on and security interest in the Borrower's interest in the Depository Accounts described below.

COP Cost Overrun Collateral

- (c) The obligations of the Borrower to pay principal of, interest on, and other amounts in respect of the COP Cost Overrun Loans and to perform its other obligations under the documents executed in connection therewith (the "Third Party Cost Overrun Obligations") shall be secured with pari passu lien on all security for the Phase 1 Obligations with the COP Lenders subordinating their lien in such assets as described below;

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The COP Cost Overrun Loans shall be secured by a first lien pledge (subject to no other liens) by

- . Smith of his interest in FGP;
- . FGP of its general partnership interest in the Borrower; and
- . FLNGI of its limited partnership interest in the Borrower.

Expansion Collateral

- (d) The obligations of the Borrower to pay principal of, interest on, and other amounts in respect of the Expansion Loans and to perform its other obligations under the documents executed in connection therewith (the "Expansion Obligations") may, at Borrower's option, be secured by

- . a first lien on all Phase 1 TUAs (other than the COP TUA (except the COP Royalty payable to the Borrower thereunder)) and the Phase 2 TUAs (the "Expansion TUAs"), including amounts payable (and other obligations performable) by each shipper thereunder (the "Expansion Shippers") and the related deposit accounts described below with the COP Lenders subordinating their lien in such TUAs and deposits as described below
- . a second lien upon the fixed assets of the Project,

with the COP Lenders and the Expansion Lenders executing a non-disturbance agreement granting the Expansion Shippers and such Expansion Lenders and their successors and assigns rights of quiet enjoyment respecting their TUAs and the parties recognizing such related liens; and

the Expansion Obligations may also be secured by a first lien pledge by Smith of his interest in FGP (the "Smith Interests") and with the preferential rights of the Smith Interests waived upon the exercise by the Collateral Agent of any rights to such lien with the ability of the Smith Interest to manage the TUAs securing the Expansion Debt amended to be consistent with the terms of non-disturbance agreements respecting the TUAs securing the Expansion Debt.

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Intercreditor Agreement/Non-Disturbance

The relative interests will be subject to intercreditor arrangements acceptable to the COP Lenders, the COP Cost Overrun Lender, the Third Party Cost Overrun Lenders and the Expansion Lenders. The various shippers and lenders shall recognize the lenders' rights and be provided with non-disturbance agreements that assure the respective parties continuing access to the capacity controlled by such shipper or its first lien lender, including rights of quiet enjoyment,

to manage such capacity in accordance with their TUAs and consistently with the Project's continuing operation so long as such person is not in default with respect to its obligations arising under such TUAs.

Expansion Completion Risk

Expansion completion risk will be mitigated by person having (or guaranteed by persons having) investment grade ratings without claims on the Project's assets, property, revenues or cash flows or interference with the Project's operation or the continuing availability of the Project's capacity.

Non-Recourse:

The Obligations will be obligations of the Borrower and secured by the Collateral. None of the Partners, Smith, Cheniere Energy, Contango or any other Affiliate, stockholder, partners, member, officer, director, or employee thereof will guarantee, pledge Collateral or the Obligations, except as described under the captions of "Collateral."

Phase 1 Loan Terms

Use of Proceeds:

The net proceeds of the Phase 1 Loans will be used to (a) reimburse Smith and Cheniere Energy, the Borrower and their Affiliates for certain development and construction costs incurred by or on behalf of the Borrower and its Affiliates to be mutually agreed, (b) finance a portion of the construction of the Project (which amount shall be deposited into the Construction Account), (c) pay interest on the Phase 1 Loans during construction, and (d) pay fees and approved transaction costs.

Availability:

The Borrower may borrow Phase 1 Loans until the earlier of: (a) \*\*\* and (b) the Completion Date (the "Availability Period"). Any Phase 1 Loan, once repaid, may not be reborrowed.

Interest Rate :

\*\*\*% per annum computed on the basis of a 360-day year, for the actual number of days elapsed.

Interest Payment Dates:

Interest on the Phase 1 Loans is payable monthly in arrears on the last business day of each month, commencing after the

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Closing (a "Payment Date") until principal amortization commences, at which time interest and principal shall be payable according to mortgage-style amortization.

Principal Payment:

Monthly during \*\*\* years beginning on the first Payment Date occurring after the earlier of (i) \*\*\* and (ii) the date of Completion, until Final Maturity according to mortgage-style amortization. Prepayments are applied to principal installments in inverse order of maturity and accrued interest on the amount prepaid.

Final Maturity Date of the Loans:

\*\*\* years after the earlier of (a) the Completion Date and (b) \*\*\*.

Ranking:

The Loans will be senior secured Debt of the Borrower ranking pari passu in right of payment with all other existing and future senior Debt of the Borrower, and senior in right of payment to all existing and future Debt of the Borrower that is designated as subordinate or junior in right of payment to the Loans.

Conditions Precedent to Closing and Initial Phase 1 Advance:

Closing and initial funding of the Phase 1 Loans will be subject to the following and other customary or appropriate conditions based on due diligence:

1. The EPC Contract and the guarantee by Technip-Coflexip, S.A. of the EPC Contractors' obligations under the EPC Contract for the benefit of the Borrower, shall each be in full force and effect and reasonably satisfactory in all respects to the COP Lenders including, without limitation, provisions with respect to scope of work, insurance, warranties, liquidated damages, completion deadlines, performance standards, performance testing and subcontractor approvals;
2. The Ground Lease with Brazos River Harbor Navigation District of Brazoria County, Texas (the "Brazos River Authority") shall be in full force and effect and all other documents necessary to establish control of the Project Site, together with all easements and rights-of-way (other than the easement for the pipeline from the outlet flange of the Project to the pipeline interconnection at Stratton Ridge, Texas) necessary for the

construction and operation of the Project and title (other than exceptions to title accepted by the COP Shipper pursuant to Section 7.1(e) of the Omnibus Agreement (the "Permitted Title Defects") to the Project site, shall be in full force and effect and reasonably satisfactory in all respects to the

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COP Lenders.

3. The transactions contemplated by the Omnibus Agreement shall have become effective;
4. The COP TUA, the Stockholders Agreement and the Stock Purchase Agreement shall have been executed and delivered by all parties thereto and shall be in full force and effect;
5. The closing under the Stock Purchase Agreement shall have occurred;
6. All regulatory and environmental Governmental Approvals and consents from all Governmental Authorities, and all others required for the Phase 1 Loans or to commence and conduct construction and to own and operate the Project shall be in full force and effect and not subject to appeal except to the extent failure to obtain such permits, approvals, and licenses could not reasonably be expected to have an adverse effect on the construction budget, construction schedule or operation, maintenance or ownership of the Project and except those that have not been obtained but will be obtained by the time such approvals are required for the performance by any project participant of any of its obligations respecting the Project and for which none of the Borrower or the Independent Engineer has any reason to believe that any such approvals will not be obtained in due course prior to the time required;
7. All Governmental Approvals and other consents obtained or to be obtained in paragraph 6, are free from conditions or requirements, the compliance with which could reasonably be expected to have an adverse effect on the construction budget, construction schedule, operation, maintenance or ownership of the Project or which any of the Borrower or the Independent Engineer does not reasonably expect to be able to satisfy;
8. Insurance coverages with reasonable limits and deductibles required for projects of a similar nature shall be in full force and effect;
9. Execution of documentation for the Loans and Collateral and related transactions, in form and substance satisfactory to the COP Lenders;

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10. Receipt of legal opinions from the Borrower's counsel and counsel to the General Partner and the EPC Contractor (and its guarantor) and certain other Project parties (as reasonably requested by the COP Lenders).
11. (i) No Material Adverse Effect shall have occurred and (ii) no material adverse change shall have occurred in the business, operations or condition (financial or otherwise) of the EPC Contractor (and its guarantors and sureties) and each provider of the Cost Overrun Debt (and any Acceptable Credit Support Issuer) which could reasonably be expected to have a Material Adverse Effect);
12. Representations and warranties shall be true and complete in all material respects as of the drawdown, and receipt of appropriate certificates of the Borrower and certain other Project parties to that effect;
13. No existing Default or Event of Default, and receipt of appropriate certificates of the Borrower to that effect;
14. Receipt of a capital expenditure drawdown schedule and budget ("Approved Budget") reasonably satisfactory in all respects to the COP Lenders; and
15. Neither the COP Lenders nor the Borrower shall be subject to regulation as an investment company, a gas utility, gas utility holding company or other public utility or public utility holding company by reason of the contemplated transactions.

Conditions to Advance of All Phase 1 Loans:

1. All representations and warranties of the Borrower and the General Partner in the Financing Documents shall be true and correct in all material



respects on and as of the date of the borrowing before and after giving effect to such borrowing and to the application of the proceeds therefrom, as though made on and as of such date;

2. No Default or Event of Default shall have occurred and be continuing, or would result from such borrowing;
3. Construction of the Project is proceeding such that Completion will occur on or before \*\*\*, as certified by the Independent Engineer;

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4. No cost overrun or funding shortfall that is not a Budgeted Construction Cost (including construction contingency) and is not covered by the aggregate principal amount available under the Credit Agreement (a "Projected Shortfall") has been identified as of the date of such drawing and in the event that any Projected Shortfall has been identified that is expected to occur in the next 12 months (as confirmed by the Independent Engineer), the MS Directors shall have taken any actions required under the caption "Cost Overrun Debt Trigger Events";
5. All regulatory and environmental Governmental Approval and consents from all Governmental Authorities and third parties required to commence and conduct construction and to own and operate the Project shall be in full force and effect and not subject to appeal except to the extent failure to obtain such permits, approvals, and licenses could not reasonably be expected to have an adverse effect on the construction budget, construction schedule or operation, maintenance or ownership of the Project except those that have not been obtained but will be obtained by the time such approvals are required for the performance by any project participant of any of its obligations respecting the Project and for which none of the Borrower or the Independent Engineer has any reason to believe that any such approvals will not be obtained in due course prior to the time required;
6. All Governmental Approvals and other consents obtained or to be obtained in paragraph 5, are free from conditions or requirements, the compliance with which could reasonably be expected to have an adverse effect on the construction budget, construction schedule, operation, maintenance or ownership of the Project or which any of the Borrower or the Independent Engineer does not reasonably expect to be able to satisfy;
7. The Independent Engineer shall have approved the expenditures to be paid with the proceeds of such advance.

The certifications set forth in clauses (1) and (3) through (6) above shall be confirmed by the Independent Engineer which confirmation shall be submitted with each certificate requesting

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a monthly drawdown.

Optional Redemption:

The Phase 1 Loans are subject to optional redemption only with the consent of the COP Lenders. The COP Cost Overrun Loans may be prepaid at any time without penalty or premium.

Redemption at the Option of the Lenders:

Upon the occurrence of a "Change of Control" (as defined in the Stockholders Agreement), at the COP Lenders' option, the Borrower shall redeem all of the Phase 1 Loans held by each of the COP Lenders at such time at a price equal to \*\*\*% of the outstanding principal amount of such COP Lender's Loans, plus accrued interest to the date of redemption and Premium.

Premium:

In connection with any redemption of Phase 1 Loans requiring the payment of a Premium, such Premium will be calculated as a "make-whole premium" using a discount rate equal to the applicable rate on U.S. Treasury securities, based on an interpolated final maturity equal to the remaining average life of such Phase 1 Loans, plus \*\*\* basis points.

Mandatory Redemption:

The Phase 1 Loan will be subject to mandatory redemption and ratably with other Debt to the extent of the net excess proceeds described in (1) and (2) below, at \*\*\*% of the principal amount thereof, together with the interest to the redemption date and Premium, under the following circumstances:

- (1) receipt by or on behalf of the Borrower of Loss Proceeds in connection with an Event of Loss related to the Project if the amount of such Loss Proceeds exceeds \$[ ] million or the Project is not repaired or rebuilt in accordance with an Approved Restoration Plan to the extent of such excess; or
- (2) receipt by or on behalf of the Borrower of amounts representing Performance Liquidated Damages for Phase 1 of the Project (that are not expended to cure or remediate the construction issues giving rise to such Performance Liquidated Damages, which expenditures shall be subject to the reasonable consent of the COP Lender).

Expansion Financing:

The Borrower may incur Debt in the aggregate principal amount of up to the Expansion Debt Amount so long as at such time and after giving effect to the incurrence of such Debt:

- (i) there is no Default or Event of Default;

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- (ii) an Authorized Officer of the Borrower certifies, and the Independent Engineer and Construction Advisor confirm as reasonable, that (A) the minimum Projected Debt Service Coverage Ratio for the next four consecutive fiscal quarters, commencing with the quarter in which such Debt is incurred and for each subsequent fiscal year through the Final Maturity Date of the Phase 1 Loans, will not be less than \*\*\*, (B) the average Projected Debt Service Coverage Ratio for the next four consecutive fiscal quarters, commencing with the quarter in which such Debt is incurred and for each subsequent fiscal year through the Final Maturity Date of the Phase 1 Loans, will not be less than \*\*\*, and (C) the engineering, design, procurement, contracting and construction plan for Phase 2 will not cause a breach or default under the Project Documents;
- (iii) the Completion Date for Phase 1 has occurred or the Independent Engineer has certified that he is highly confident that the Completion Date for Phase 1 will occur no later than \*\*\* notwithstanding Phase 2's construction;
- (iv) the COP Lenders shall be reasonably satisfied that (A) all reasonable risks (construction, engineering, permitings, financial, legal and other) to the timely and effective completion of Phase 2 shall have been effectively mitigated and (B) the Phase 1 Loans and the COP Lenders' rights with respect thereto (including any liens and other credit support therefor) shall not be adversely affected;
- (v) the terms of such Debt provide to the COP Lenders (A) at least 30 days notice of any default under such Debt before the Expansion Lenders may exercise any remedies respecting such Debt and at least 60 days thereafter to cure such default, subject to extension if the COP Lenders are diligently pursuing such cure, and (B) the right to purchase such Debt at any time at a cash price equal to the aggregate principal and accrued and unpaid interest outstanding plus any applicable make whole amount, whereupon the

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lenders (and their representatives) of such Debt shall assign to the COP Lenders or their representatives all of their claims, liens and other rights in connection with such Debt upon terms and conditions reasonably acceptable to the COP Lenders; and

- (vi) the Expansion Lenders and the COP Lenders shall have agreed to acceptable intercreditor arrangements.

Depository Accounts:

The following accounts (collectively, the "Depository Accounts") shall be established with the Collateral Agent pursuant to a depository agreement (the "Depository Agreement") with other accounts (if necessary to avoid commingling):

- .. Revenue Account
- .. O&M Account
- .. COP Revenue Account
- .. Expansion Revenue Account
- .. Third Party Cost Overrun Revenue Account
- .. Debt Payment Account

.. Crest Reserve Account  
.. Distribution Suspense Account  
.. Distribution Account  
.. Redemption Account  
.. Loss Proceeds Account  
.. O&M Reserve Account  
.. Major Maintenance Reserve Account  
.. Working Capital Facility Reserve Account  
.. Construction Account

The Borrower may elect, at any time, in lieu of funding any of such accounts with cash, to provide Acceptable Credit Support for which the Borrower is not the account party.

The Borrower may only withdraw funds from any Depositary Account (a) under the circumstances set forth under "Flow of Funds" below or (b) if the Borrower has caused to be issued Acceptable Credit Support in the amount of such withdrawal, which Acceptable Credit Support may be released if the conditions to the withdrawal of the applicable funds set forth under "Flow of Funds" shall have been satisfied. Monies on deposit in the Depositary Accounts will be invested in Permitted

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Investments in accordance with the terms of the Depositary Agreement.

Loss Proceeds shall be deposited in the appropriate account of the Loss Proceeds Account, subject to disbursement for repair or replacement of the assets affected, in accordance with an Approved Restoration Plan, and provided that, prior to the initial release of funds for such repair or replacement, (i) the COP Lenders receive a copy of the Approved Restoration Plan and (ii) for the initial and each subsequent release of funds, the Collateral Agent receives an executed Restoration Requisition and Independent Engineer's certificate each in form and substance reasonably satisfactory to the COP Lenders or such release is in connection with a mandatory redemption, as the case may be.

Redemption Account shall contain funds to be applied to repay Debt subject to redemption as described under "Optional Redemption" and "Mandatory Redemption."

Flow of Funds:

Proceeds of all Cost Overrun Debt shall be deposited into the Construction Account. The Contractor (its guarantor or sureties) shall deposit all payments to the Borrower under the Construction Contracts into the Construction Account. All proceeds of any capacity reservation fees shall be paid directly to the Borrower and used only to pay income taxes payable by the Partnership or Partners on such payments, to pay a \$\*\*\* million payable to Cheniere under the Partnership Agreement or to be retained by the Borrower to pay expansion, development and construction costs of the Project.

All proceeds of any drawing on the Acceptable Credit Support shall be deposited into the Depositary Account for which funding obligations such Acceptable Credit Support has been provided.

Except as otherwise described, the Borrower will provide irrevocable instructions to deposit all other available cash flow, Revenues and proceeds of business interruption insurance (collectively, "Cash Flows") into the Revenue Account.

Distinct Revenue Accounts:

COP Revenue Account:

COP Shipper shall deposit payments to the Borrower in respect of the COP TUA in a segregated account of the Revenue Account (the "COP Revenue Account"), except that, while

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Expansion Debt is outstanding, the COP Royalty shall be paid to the Expansion Revenue Account. Amounts in the COP Revenue Account shall be distributed as follows:

So long as no Event of Default has occurred and is continuing, all amounts on deposit in the COP Revenue Account will be distributed on a monthly basis in the following order of priority upon receipt of a certificate from the COP Lenders detailing the amounts to be paid:

1) to the O&M Account in an amount equal to a percentage calculated by

reference to the COP TUA (the "COP O&M Percentage") (as established from time to time in the Operating Budget) of the Operating and Maintenance Costs for such month;

- 2) to a segregated account for the payment of the next scheduled Payment Date (the "COP Debt Payment Account") in an amount equal to the Debt Service Payment due to the COP Lenders on the next Payment Date;
- 3) to the deposit reserve account, the COP O&M Percentage of the next two months' payments of the Operating and Maintenance Costs (the "O&M Reserve Account"); and
- 4) with any amounts remaining to be deposited into the Revenue Account.

Third Party Cost Overrun Reserve Accounts:

If any Third Party Cost Overrun Loans are outstanding, the Other Phase 1 Shippers shall deposit payments to the Borrower in respect of the Other Phase 1 TUAs in a segregated account of the Revenue Account (the "Third Party Cost Overrun Revenue Account"). The COP Shipper shall deposit the COP Royalty in the Third Party Cost Overrun Revenue Account. Amounts in the Third Party Cost Overrun Revenue Account shall be distributed as follows:

So long as no Event of Default has occurred and is continuing, all amounts on deposit in the Third Party Cost Overrun Revenue Account will be distributed on a monthly basis in the following order of priority upon receipt of a certificate from the Third Party Cost Overrun Lenders detailing the amounts to be paid:

- 1) to the O&M Account in an amount equal to a percentage (the "Third Party Cost Overrun O&M Percentage") (as established from time to time in the Operating Budget) of

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the Operating and Maintenance Costs for such month;

- 2) to a segregated account for the payment of the next scheduled Payment Date (the "Third Party Cost Overrun Debt Payment Account") in an amount equal to the Debt Service Payment due to the Third Party Cost Overrun Lenders on the next Payment Date;
- 3) to the O&M Reserve Account, the Third Party Cost Overrun O&M Percentage of the next two months' payments under the Operating and Maintenance Costs; and
- 4) to a segregated account for the payment of the next scheduled Payment Date (the "Third Party Cost Overrun Debt Reserve Account") in an amount equal to the Third Party Cost Overrun Debt Service Reserve Requirement, if any;
- 5) with any amounts remaining to be deposited into the Revenue Account.

Expansion Reserve Accounts:

If any Expansion Loans are outstanding, the Expansion Shippers shall deposit payments to the Borrower in respect of the Expansion TUA in a segregated account of the Revenue Account (the "Expansion Revenue Account"), the COP Shipper shall deposit the COP Royalty into the Expansion Revenue Account if Expansion Debt is outstanding, and the Other Phase 1 Shippers shall deposit payments to the Borrower in respect of the Other Phase 1 TUAs in the Expansion Revenue Account. Amounts in the Expansion Revenue Account shall be distributed as follows:

So long as no Event of Default has occurred and is continuing, all amounts on deposit in the Expansion Revenue Account will be distributed on a monthly basis in the following order of priority upon receipt of a certificate from the Expansion Lenders detailing the amounts to be paid:

- 1) to the O&M Account in an amount equal to a percentage (the "Expansion O&M Percentage") (as established from time to time in the Operating Budget) of the Operating and Maintenance Costs for such month;
- 2) to a segregated account for the payment of the next scheduled Payment Date (the "Expansion Debt Payment Account") in an amount equal to the Debt Service Payment due to the Expansion Lenders on the next

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Payment Date;

- 3) to the O&M Reserve Account, the Expansion O&M Percentage of the next two

months' payments of the Operating and Maintenance Costs (the "O&M Reserve Account"); and

- 4) to a segregated account for the payment of the next scheduled Payment Date (the "Expansion Debt Reserve Account") in an amount equal to the Expansion Debt Service Reserve Requirement, if any;
- 5) with any amounts remaining to be deposited into the Revenue Account.

Revenue Account Disbursements:

So long as no Event of Default has occurred and is continuing, all amounts on deposit in the Revenue Account will be distributed on a monthly basis in the following order of priority upon receipt of a certificate from an Authorized Officer of the Borrower detailing the amounts to be paid (taking into consideration any Acceptable Credit Support):

- 1) to the O&M Account to be used by the Borrower to pay Operating and Maintenance Costs up to an amount equal to the Operating and Maintenance Costs due in the next month; provided that a portion of the Operating and Maintenance Costs for the Project in an amount equal to the applicable Major Maintenance Reserve Requirement shall be transferred to the Major Maintenance Reserve Account (if the Independent Engineer determines that a Major Maintenance Reserve Account is necessary);
- 2) to the O&M Reserve Account up to an amount equal to Operating and Maintenance Costs for the two next succeeding months;
- 3) to the Debt Payment Account to pay principal of, interest on, and any other amounts due in respect of the Loans (to the extent not covered by the amounts in the COP Debt Payment Account, the Third Party Cost Overrun Payment Account, the Expansion Debt Payment Account), and any other senior Permitted Debt of the Borrower incurred pursuant to subclauses 1(a) through 1(d) of Appendix IV, up to an amount equal to the sum of all amounts due (i) as interest and such fees during the current quarterly

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period and (ii) as principal during the current quarterly period;

- 4) to the Working Capital Facility Reserve in an amount equal to the amounts outstanding on the Working Capital Facility;
- 5) to a segregated account (the "COP Cost Overrun Debt Payment Account") an amount up to the unpaid amounts owing on the COP Cost Overrun Obligations until the COP Cost Overrun Obligations are paid in full;
- 6) to the Crest Reserve Account up to an amount such that the balance therein equals the amount payable to Crest Investment Company under the Settlement and Purchase Agreement dated as of June 14, 2001, among Crest Investment Company ("Crest"), Cheniere Energy and the other parties thereto, as in effect on the date hereof (the "Crest Agreement"), for the current month, if any;
- 7) to the Distribution Suspense Account for further transfer as follows:
  - (i) First, prior to Completion, to the Construction Account, to fund Construction Costs;
  - (ii) in the event that the O&M Account, any Debt Payment Account, the O&M Reserve Account, the Major Maintenance Reserve Account, the Redemption Account, Debt Service Requirements, the Crest Reserve Account or the Working Capital Facility Reserve are not fully funded to the extent, if any, required, cash available in the Distribution Suspense Account shall be deposited into such accounts, as necessary, to cover any such shortfall; and
  - (iii) to the Distribution Account to make Distribution, and Restricted Payments as set forth below under the Section entitled "Distributions and Restricted Payments."

Construction Account:

The Borrower will use the proceeds of the Phase 1 Loans to repay or reimburse the Partners, the Borrower and their Affiliates for Budgeted Construction Costs incurred by or on behalf of the Borrower or its Affiliates in respect of the Project prior to the Completion Date as certified by the Independent

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Engineer. Payments under the Construction Contracts will be funded as described below with the proceeds of the Equity Contributions and other amounts deposited into the Construction Account.

Amounts will be disbursed from the Construction Account upon receipt by the Depository Bank of a certificate from an Authorized Officer of the Borrower delivered to the Depository Bank no less than seven days prior to the applicable drawdown date certifying that:

- (a) [\$\_\_\_\_\_] is requested to be drawn to pay Budgeted Construction Costs and that such Budgeted Construction Costs have been paid, are due and payable or are reasonably expected to be due and payable within the next 10 days; and
- (b) all other conditions to the advance of a Phase 1 Loan under the "Conditions to Advance of All Phase 1 Loans" shall have been satisfied.

On and from the Completion Date, excess funds on deposit in the Construction Account shall be deposited in the COP Revenue Account for distribution to the other Depository Accounts or in the order set forth under "Flow of Funds."

EPC Contractor:

Technip USA Corporation or other Person acceptable to the Lenders.

Distributions and Restricted Payments:

Distributions to the Partners and other Restricted Payments will be made quarterly, only from and to the extent of monies in the Distribution Suspense Account; provided that, on such distribution dates each of the following conditions (the "Distribution Conditions") has been satisfied:

- 1) the Project has reached Completion;
- 2) no Default or Event of Default has occurred and is continuing;
- 3) if during the Test Period, the Projected Debt Service Coverage Ratio for the 12 month period succeeding such distribution date shall each be greater than or equal to \*\*\* and the calculation thereof shall be certified by an Authorized Officer of the Borrower;

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- 4) each of the Debt Payment Accounts and related accounts (taking into account any Acceptable Credit Support) is fully funded with an amount equal to the aggregate of all amounts due in respect of the Loans and other Permitted Debt incurred pursuant to subclauses 1(a) through 1(c) of Appendix IV, including without limitation, principal, interest and fees on the Phase 1 Loans, for the current quarterly period; and
- 5) the other Depository Accounts (taking into account Acceptable Credit Support) shall have been funded to their required levels, if any, as of such date.

Monies not able to be transferred from the Distribution Suspense Account to the Distribution Account shall remain on deposit in the Distribution Suspense Account and shall be used to make required payments when monies on deposit in the other Depository Accounts are insufficient to make such payments.

Notwithstanding the foregoing, if Acceptable Credit Support is in place for any amount otherwise required to be deposited in cash in any Depository Account, the Borrower may receive distributions in an amount equal to the aggregate amount of cash in lieu of which the Borrower has placed Acceptable Credit Support.

Representations and Warranties:

The Credit Agreement shall include, subject to ongoing due diligence, the representations and warranties set forth in Appendix II hereto.

Affirmative Covenants:

The Credit Agreement shall include, subject to ongoing due diligence, the affirmative covenants of the Borrower set forth in Appendix III hereto.

Negative Covenants:

The Credit Agreement shall include, subject to ongoing due diligence, the negative covenants of the Borrower set forth in Appendix IV hereto.

Events of Default:

The Credit Agreement shall include, subject to ongoing due diligence, the Events of Default set forth in Appendix V hereto.

Remedies:

The Credit Agreement shall include all remedies provided at law and equity and other remedies customarily included in similar documents.

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Cost Overrun Debt Trigger Event:

The MS Directors (as defined in the Stockholders Agreement) will provide cost overrun financing of Phase 1 by causing capital calls to be made on the Partners or arranging for Third Party Cost Overrun Debt for \*\*\*% of any Cost Overruns on Phase 1 constituting Project Shortfalls. If they fail to so provide such arrangements supported by Acceptable Credit Support within \*\*\* days after receipt of notice that a Projected Shortfall is expected by the Independent Engineer to occur within the next 12 months, the COP Cost Overrun Lender shall provide the COP Cost Overrun Loans as described herein.

Upon Completion (as confirmed by the Independent Engineer) the obligations of the MS Directors to provide such cost overrun financing shall be terminated.

Any Third Party Cost Overrun Debt shall contain terms satisfactory to the COP Lenders, including that the terms of such Debt provide to the COP Lenders (A) at least 30 days notice of any default under such Debt before the Cost Overrun Lenders may exercise any remedies respecting such Debt and at least 60 days thereafter to cure such default, subject to extension if the COP Lenders are diligently pursuing such cure, and (B) the right to purchase such Debt at any time at a cash price equal to the aggregate principal and accrued and unpaid interest outstanding plus a make whole amount, whereupon the lenders (and their representatives) of such Debt shall assign to the COP Lenders or their representatives all of their claims, liens and other rights in connection with such Debt upon terms and conditions reasonably acceptable to the COP Lenders).

Acceptable Credit Support:

"Acceptable Credit Support" means cash pledged or any letter of credit or guarantee issued for the account of a Person other than the Borrower by financial institutions or other Person rated at least "A-" by S&P and "A3" by Moody's in respect of which the Borrower is not an obligor.

"Acceptable Credit Support Issuer" means a Person issuing or primarily obligated on any Acceptable Credit Support.

If any existing Acceptable Credit Support ceases to constitute Acceptable Credit Support or is not renewed at least 30 days before it is scheduled to expire, substitute Acceptable Credit Support meeting the requirements shall be provided within three Business Days of such event or the Collateral Agent shall be entitled to draw on such Acceptable Credit Support.

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OTHER TERMS

Documentation:

The Financing Documents shall contain terms and conditions customary for transactions of this type and be in form and substance reasonably satisfactory to the COP Lenders and the Borrower.

Tax Reporting:

Borrower and COP Lenders shall report the Phase 1 Loans and any COP Cost Overrun Loans as loan transactions for federal income tax purposes.

Governing Law:

State of New York/Texas.

Collateral Agent and Depositary Bank:

A bank or trust company located in New York to be selected by the COP Lenders in consultation with the Borrower. The institution serving as the Depositary Bank shall also serve as the Collateral Agent.

Independent Engineer:

\_\_\_\_\_.

Counsel to the COP Lenders:

Baker Botts L.L.P.

Counsel to the Borrower:

\_\_\_\_\_.

Voting:

Amendments and waivers of the definitive credit documentation and exercise of

certain remedies will require the approval of COP Lenders (the "Required Lenders") holding more than \*\*\*% of the aggregate amount of commitments and/or outstandings (as appropriate) under the Credit Agreement, provided that the consent of each COP Lender adversely affected thereby shall be required in connection with (but not limited to) the following: (a) reductions of principal, interest or fees; (b) extensions of final maturity; and (c) releases of all or substantially all of the collateral securing the Borrower's obligations under the Credit Agreement.

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#### Assignments and Participations:

The Borrower may not assign its rights or obligations under the Credit Agreement. Any COP Lender may assign, and may sell participations in, its rights and obligations under the Credit Agreement, subject (x) in the case of participations, to customary restrictions on the voting rights of the participants and (y) in the case of assignments, to such limitations as may be established by the Collateral Agent and the COP Lenders (including (i) a minimum assignment amount to be established by the Collateral Agent and the COP Lenders (or, if less, the entire amount of such assignor's commitments and outstanding obligations at such time) and (ii) an assignment fee in the amount of \$\*\*\* to be paid by the respective assignor or assignee to the Collateral Agent. Borrower agrees to take all actions reasonably requested by the COP Lenders to assist in Lenders' sale of the Phase 1 Loans.

#### Expenses and Indemnification:

The Borrower will indemnify the Collateral Agent and the COP Lenders and hold them harmless from and against all losses, costs, expenses (including reasonable fees, disbursements and other charges of counsel) and liabilities of the Collateral Agent and the COP Lenders arising out of or relating to the transaction contemplated hereby or the Credit Agreement, including any claim or any litigation or other proceeding (regardless of whether the Borrower, the Collateral Agent or any COP Lender is a party thereto) that relates to any transaction connected therewith, including the financing contemplated hereby, PROVIDED THAT NONE OF THE COLLATERAL AGENT OR ANY LENDER WILL BE INDEMNIFIED FOR ANY COST TO THE EXTENT ARISING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL NON-APPEALABLE DECISION). In addition, all out-of-pocket expenses of the Collateral Agent and the COP Lenders for enforcement costs and documentary taxes associated with the Credit Agreement are to be paid by the Borrower.

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#### Appendix I

##### Defined Terms

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"Acceptable Credit Support" has the meaning set forth under the section entitled "Acceptable Credit Support."

"Acceptable Credit Support Issuer" has the meaning set forth under the section entitled "Acceptable Credit Support."

"Acceptable Use Agreement" means a use agreement in respect of which or that (a) the counterparty of which or the credit support provider for such counterparty (including any parent of such counterparty which guarantees such counterparty's obligations) is rated at least BBB- by S&P and at least Baa3 by Moody's, (b) has a minimum term remaining at the time of determination of at least two years and (c) the pricing and commercial terms that are fair and reasonable and of the kind which would be entered into by a prudent Person in the position of the Borrower.

"Additional TUAs" has the meaning assigned to such term in the Stockholders Agreement.

"Affiliate" means, as to any Person, any subsidiary of such Person and any other Person which, directly or indirectly, controls or is controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any Person, means the possession of the power to direct or cause the direction of management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding the foregoing, no individual shall be an Affiliate of any Person solely by reason of his or her being a director, manager, officer or employee of such Person and none of COP or its Affiliates shall be deemed to be Affiliates of the Borrower



or its other Affiliates.

"Affiliate Payment" means any payments made or amounts distributed by or on behalf of the Borrower to an Affiliate of any Partner in connection with the Project pursuant to a written agreement that are not reimbursements of reasonable expenses incurred on behalf of the Borrower or reasonable consideration for services rendered to the Borrower.

"Applicable Law" means, with respect to any Person, property or matter, any of the following applicable thereto: any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, Governmental Approval, approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, in each case as amended.

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"Approved Hedging Agreements" means capacity sales, fuel supply, commodity, interest rate, contracts or other types of hedging arrangements that are in accordance with a framework to be agreed from time to time with the COP Lenders. Such framework agreement will outline the terms and conditions required for Approved Hedging Agreements. In the absence of such framework agreement, Approved Hedging Agreements shall mean any type of hedging arrangement entered into in the ordinary course of business in connection with the ownership, operation and maintenance of the Project, except for arrangements entered into for speculative purpose, including speculative transactions relating to (x) fuel procurement or sales, (y) purchase, sales or exchanges related to capacity from the Borrower or financial instruments related thereto or (x) purchase, sales or exchanges of energy or emission credits.

"Approved Restoration Plan" means a plan submitted to and approved by the Independent Engineer which provides for the repair or rebuilding of all or any portion of the Project and which is accompanied by a certificate of (A) the Independent Engineer certifying that in its professional judgment (i) such plan is reasonable and technically feasible and is reasonably expected to restore the Project to at least as good condition or state of repair as it was in prior to such Event of Loss or its original specifications, (ii) after taking into consideration the availability of Loss Proceeds and such other proceeds available for the repair or restoration of the Project, there will be adequate cash flow during the period of repair or restoration to pay all ongoing expenses as they become due, including Debt Service due on the Loans, and the Borrower's ability to pay such expenses will not be materially adversely affected following such repair and (iii) if the Project has not yet reached Completion, the repair or restoration in accordance with the plan will not materially adversely affect the construction budget or construction schedule of such Project and (B) the Borrower certifying that the repair or restoration of the Project in accordance with the plan or the operation of the Project following such repair will not violate in any material respect (x) the terms of any other Transaction Document, (y) Applicable Law or (z) any of the Project's Governmental Approvals.

"Authorized Officer" means, with respect to any Person, the chief executive officer, president, chief financial officer, general counsel, principal accounting officer or any vice president of such Person.

"Base Case Projections" means the projections of the Borrower as of the Closing Date as confirmed by, and set forth in the report of, the Independent Engineer.

"Budgeted Construction Cost" means the anticipated Construction Cost of the Project excluding the initial funding of the O&M Account, the O&M Reserve Account and the Debt Payment Accounts, as confirmed by the Independent Engineer and set forth in the construction budget as of the Closing Date and included in the Approved Budget, with some level of initial working capital as agreed between the COP Lender and the Borrower.

"Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of Texas, or a day on which banking institutions chartered by the State of Texas, or the United States, are legally required or authorized to close.

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"Capitalized Lease Liabilities" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such

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

"Cash Flows" has the meaning provided under the section entitled "Flow of Funds."

"Closing Date" means the date of the execution and delivery by the Borrower of the Phase 1 Loans.

"Completion" means confirmation by the Independent Engineer that Phase 1 of the Project has achieved "Project Completion" in accordance with a completion test for Phase 1 of the Project designed by the Independent Engineer in consultation with the Construction Advisor, the Borrower and the COP Lenders covering construction, engineering, permittings, financial, legal and other matters.

"Completion Date" means the date on which the Project has reached Completion.

"Consents" means (1) the consent and agreement between the EPC Contractor, the Borrower and the Collateral Agent dated as of the Closing Date (2) the consent and agreement between the Brazos River Harbor Navigation District, the Borrower and the Collateral Agent dated as of the Closing Date, (3) consent and agreement in respect of each of (a) an Acceptable Use Agreement with a capacity of more than \_\_\_ bcf/day, (b) any guarantee of any such Acceptable Use Agreements, (c) the \_\_\_\_\_ and (d) the \_\_\_\_\_ Agreement.

"Construction Advisor" means COP entity as construction advisor pursuant to the Construction Advisory Services Agreement.

"Construction Advisory Agreement" means the Construction Advisory Services Agreement to be entered into between the Borrower and the Construction Advisor.

"Construction Contracts" means, collectively the EPC Contract and any other agreement for the engineering, procurement, installation or construction of Phase 1 of the Project, including to construct the pipeline interconnection from the Project to Stratton Ridge, Texas.

"Construction Costs" means all payments under the EPC Contract, all operating and maintenance costs during the construction of Phase 1 and the cost of minimum volumes of LNG and gas necessary to commence normal commercial operations of the LNG terminal and pipeline for Phase 1, excluding any development or other costs for Phase 2.

"Credit Agreement" has the meaning set forth under the section entitled "Documentation."

"Debt" of any Person means, without duplication, (i) all obligations of such Person for borrowed money; (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services which purchase price is due more than six months from the date of incurrence of the obligation in respect thereof or is evidenced by a note or other instrument, except trade accounts arising in the ordinary course of business; (iii) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Person; (v) (A) all Capitalized Lease Liabilities and (B) Operating Lease Liabilities that are entered into in the ordinary course of business in an aggregate amount in excess of \$\*\*\* in rental payments annually; (vi) all net payment obligations with respect to interest rate cap agreements, interest rate swap agreements, sales of foreign exchange options and other hedging agreements or arrangements; (vii) all payment obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee; (viii) Project capacity rights, terminal use agreements, leases or other agreements of such Person or binding on its property with respect to which any payments receivable by such Person in any \*\*\* period is in excess of \*\*\*% of the projected average annual payments thereunder and weighted average life of such payment flow is not not less than, (ix) all Debt referred to in clauses (i) through (viii) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt; and (x) all Guarantees by such Person of the Debt of others. The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such Person is not liable therefor.

"Debt Service" means, for any period and Debt, the obligation to pay principal

of and interest on such Debt during such period.

"Debt Service Coverage Ratio" means for any period, without duplication, the ratio of (a) the sum of all Cash Flows of the Borrower during such period less the aggregate amount of the Operating and Maintenance Costs (including, without limitation, amounts to be deposited in the Major Maintenance Reserve Account during such period) for the Borrower for such period to (b) the sum of all principal, premium (if any) and interest due and payable with respect to the Loans and other Permitted Debt outstanding.

"Debtor Relief Law" means any applicable liquidation, dissolution, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, readjustment of debt or similar law affecting the rights or remedies of creditors generally, as in effect from time to time.

"Default" means any event or condition that, with the giving of notice, the passage of time or both, would become an Event of Default.

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"Distribution Conditions" has the meaning provided under the section entitled "Distributions."

"EPC Contract" means collectively, the engineering, procurement and construction contract to be entered into between the Borrower and the EPC Contractor for the construction of certain work on Phase 1 and the engineering, procurement and construction contract to be entered into between the Borrower for the pipeline for Phase 1.

"EPC Contractor" means Technip (USA) or another Person acceptable to the COP Lenders.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" shall mean (a) a corporation which is a member of a controlled group of corporations with the Borrower within the meaning of Section 414(b) of the Code, (b) a trade or business (including a sole proprietorship, partnership, trust, estate or corporation) which is under common control with the Borrower within the meaning of Section 414(c) of the Code or Section 4001(b)(1) of ERISA, (c) a member of an affiliated service group with the Borrower within the meaning of Section 414(m) of the Code or (d) an entity described in Section 414(o) of the Code.

"Event of Default" means an event of default under the Credit Agreement.

"Event of Loss" means an event that causes all or a material part of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, or any compulsory transfer or taking, or transfer under threat of compulsory transfer or taking, of any material part of the Project by any Governmental Authority.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Expansion Debt Amount" has the meaning assigned to such term under the caption "Expansion Loans."

"Federal Bankruptcy Code" means Title 11, Section 101 et seq. of the United States Code titled "Bankruptcy," as amended from time to time, and any successor statute thereto.

"FERC Approval" means issuance by the Federal Energy Regulatory Commission of the order granting authorization under Section 3(a) of the Natural Gas Act (available at 15 U.S.C. Section 717(c)) for Phase I, pursuant to the application filed by Freeport LNG with the Federal Energy Regulatory Commission on March 28, 2003.

"Financing Documents" means, collectively, the notes, the Credit Agreement, the Depositary Agreement, the Security Documents and any other similar or related documents executed in connection with the making of the Loans other than opinions and certificates.

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"Governmental Approval" means any action, order, authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, exemption, filing or registration by or with any Governmental Authority.

"Governmental Authority" means the government of any federal, state, municipal or other political subdivision in which the Project is located, and any other government or political subdivision thereof exercising jurisdiction over the Project or any party to any of the Project Documents, including all agencies and instrumentalities of such governments and political subdivisions.

"Guarantee" of or by any Person means any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person in any manner, whether directly or indirectly, and including any obligation of such guarantying Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation or (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Debt or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Independent Engineer" means \_\_\_\_\_ or a successor appointed pursuant to the Financing Documents.

"Intercreditor Agreement" means the Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, to be entered into among the Borrower, the Collateral Agent, the Depositary Bank, the COP Lenders, the Third Party Cost Overrun Lenders, the COP Cost Overrun Lenders and the Expansion Lenders.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement with any Person owning Debt of such Person, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever which has the substantial effect of constituting a security interest, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing and the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction, domestic or foreign.

"Loans" means, unless the context otherwise indicates, collectively, the Phase 1 Loans, the COP Cost Overrun Loans, the Third Party Cost Overrun Loans and the Expansion Loans.

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"Loss Proceeds" means all net proceeds from an Event of Loss, including, without limitation, insurance proceeds or other amounts actually received on account of an Event of Loss, but excluding proceeds of business interruption insurance.

"Major Maintenance Expenses" means all expenditures by the Borrower on regularly scheduled (or reasonably anticipated) maintenance of the Project in accordance with good industry practice and vendor and supplier requirements constituting major maintenance (including, without limitation, teardowns, turnarounds, overhauls, capital improvements, replacements and/or refurbishments of major components of the Project).

"Major Maintenance Reserve Requirement" means the aggregate of that portion of the Operating and Maintenance Costs for the Project equal to the amount the Borrower projects it will need in the succeeding \_\_\_-month period for Major Maintenance Expenses, as such amount may be adjusted from time to time based upon actual operating results. The Independent Engineer shall review such projected amounts and, if necessary, provide the Borrower with its recommendations for adjustments to such amounts.

"Material Adverse Effect" means a material adverse effect on (i) the condition (financial or otherwise), results of operation or business of the Borrower, (ii) the ability of the Borrower, any guarantor of the obligations of the Borrower under the Financing Documents, to perform its obligations under any of the Financing Documents, (iii) the validity or priority of the Liens on the Collateral, (iv) the ability of the Borrower to perform its material obligations under the Credit Agreement, the Loans or any of the other Financing Documents, or (v) the ability of the Borrower to perform its obligations under any Project Document.

"Moody's" means Moody's Investors Services, Inc.

"Mortgage" means the leasehold deed of trust, mortgage, security agreement and assignment of leases and rents, dated as of the Closing Date between the Borrower and the Collateral Agent.

"Multiemployer Plan" shall mean a plan that is a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate is making, or has an obligation to make, contributions or had made, or has been obligated to make, contributions since the Closing Date.

"O&M Agreement" means Operation and Maintenance Agreement to be entered into between the Operator and the Borrower.

"Operating Budget" means the annual budget for the Project, including Operating and Maintenance Costs, as prepared by the Operator in consultation with the Borrower.

"Operating Lease Liability" of any Person means all monetary obligations of such Person other than Capitalized Lease Liabilities under any lease of (or other arrangement conveying the right to

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use) real or personal property of such Person, or a combination thereof, and, for purposes of each Financing Document, the amount of such obligations shall be the termination value of such lease.

"Operating and Maintenance Costs" means (a) all amounts disbursed by or on behalf of the Borrower for operation, maintenance (including Major Maintenance Expenses), repair or improvement of the Project, including, without limitation, premiums on insurance policies, property and other taxes, and payments under the relevant operating and maintenance agreements, leases, royalty and other land agreements, and any other payments required under the applicable Project Documents, including the approved salaries and expenses of the Borrower's employees, or for the administration or performance of the Transaction Documents, and (b) all fees and other amounts due and owing to the Collateral Agent and Depositary Bank, provided however, that this term shall not include any Affiliate Payment, other Restricted Payment or amounts payable under the Crest Agreement or amounts paid for the development, construction and operation of Phase 2.

"Operator" means a \_\_\_\_\_ corporation.

"Partnership Agreement" means the Amended and Restated Agreement of Freeport LNG Development, L.P. dated as of February 27, 2003.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" shall mean any pension plan within the meaning of Section 3(2) of ERISA, including any multiemployer pension plan which is subject to the provisions of Title I and IV of ERISA or Section 412 of the Code and which (a) is established, sponsored, maintained or administered by the Borrower or any ERISA Affiliate or for which the Borrower or any ERISA Affiliate has an obligation to contribute or any liability or in which the Borrower or any ERISA Affiliate participates, or (b) has at any time since the Closing Date been established, sponsored, maintained, or administered on behalf of employees of the Borrower or any of its current or former ERISA Affiliates or for which the Borrower or any of its current or former ERISA Affiliates had an obligation to contribute or any liability or in which the Borrower or any of its current or former ERISA Affiliates participated.

"Performance Liquidated Damages" means any sums received by or on behalf of the Borrower pursuant to the EPC Contract pursuant to such agreement to meet the performance standards set forth in the EPC Contract.

"Permitted Debt" has the meaning set forth in paragraph (1) of Appendix IV.

"Permitted Investments" means mean, as to any Person: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities

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of not more than one (1) year from the date of acquisition by such Person; (ii) time deposits and certificates of deposit, with maturities of not more than one (1) year from the date of acquisition by such Person of any commercial bank of recognized standing having combined capital and surplus in excess of \$\*\*\* and having a rating on its commercial paper of at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's; (iii)

commercial paper issued by any Person, which commercial paper is rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and matures not more than one (1) year after the date of acquisition by such Person; (iv) investments in money market funds substantially all the assets of which are comprised of securities of the types described in clauses (i) and (ii) above, (v) United States Securities and Exchange Commission registered money market mutual funds conforming to Rule 2a-7 of the Investment Company Act of 1940 if in effect in the United States, that invest primarily in direct obligations issued by the United States Treasury and repurchase obligations backed by those obligations, and rated in one of the two the highest category by S&P and Moody's, (vi) investments in repurchase agreements having a term not more than seven (7) days for underlying securities of the types described in clauses (i) and (ii) above, and (vii) tax exempt securities rated at least A, MIG1 or VMIG1 by Moody's and A or SP-1 by S&P.

"Permitted Liens" has the meaning set forth in paragraph (2) of Appendix IV.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, trust, unincorporated association, institution, Governmental Authority or any other entity.

"Plan" shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA, subject to Title I of ERISA, which (a) is established, sponsored, maintained or administered by the Borrower or any ERISA Affiliate, or for which the Borrower or any ERISA Affiliate has an obligation to contribute or any liability or in which the Borrower or any ERISA Affiliate participates, or (b) has since the Closing Date been established, sponsored, maintained or administered for employees of the Borrower or any of its current or former ERISA Affiliates or for which the Borrower or any of its current or former ERISA Affiliates had an obligation to contribute or any liability or in which the Borrower or any of its current or former ERISA Affiliates participated.

"Pledge Agreement" means each of the pledge agreements made by and General Partner or its Affiliates in favor of the Collateral Agent.

"Project Document" means any terminal use agreement, operation and maintenance agreement, any Debt Service guarantee, the Partnership Agreement and other material constituent documents of the Borrower, engineering contract, construction contract, terminal use agreement, transportation agreement, capacity rights agreement, interconnection agreement or other material agreement related to the construction ownership, maintenance and operation of the Project.

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"Projected Debt Service Coverage Ratio" means, for any period and on any date of determination, a projection of the Debt Service Coverage Ratio for such period using only the Cash Flows from Acceptable Use Agreements with a term of at least two years remaining after the date of determination in the projection of Cash Flows and revenues.

"Project Site" means the real estate in Brazoria County, Texas, where the Project is located.

"Replacement Project Document" means one or more Project Documents that replace an existing Project Document, and contain terms and conditions that as reasonably determined in good faith by the Borrower's General Partner, in the aggregate, are not materially worse than those of the Project Document that is being replaced.

"Restricted Payment" means, with respect to any Person, (i) the declaration and payment of distributions, dividends or any other similar payment made to equity owners of such Person in cash, property, obligations or other securities, (ii) any payment of the principal of or interest on any Subordinated Debt (iii) the making of any loan, advances or other credit extension to any Affiliate or (iv) any Affiliate Payment.

"Revenues" means the revenues or income calculated on a cash basis and recognized pursuant to the terms of the relevant Project Documents.

"S&P" means Standard & Poor's Rating Group.

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

"Security Agreement" means the security and assignment agreement between the Borrower and the Collateral Agent dated as of the Closing Date.

"Security Documents" means the Pledge Agreement, the Mortgage, the Security Agreement, the Consents and any other documents necessary to create a security interest in any of the Collateral.

"Termination Event" shall mean certain events under ERISA that would reasonably be expected to result in a Material Adverse Effect.

"Test Period" means, for any distribution date, the period beginning one year prior to such distribution date and ending one year after such distribution date, provided however, that with respect to any Merchant Period, the "Test Period" shall mean the period beginning one year prior to such distribution date and ending two years after such distribution date. Computations with respect to each Test Period shall be based on projections provided by the Borrower and certified by an Authorized Officer of the Borrower and verified by the Independent Engineer regarding the rates and assumptions used by the Borrower.

"Transaction Documents" means the Financing Documents and the Project Documents.

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"Working Capital Facility" means the working capital facility pursuant to which Debt permitted by subclauses 1(d) of Appendix IV is outstanding.

All references to any agreements or laws shall include any permitted amendments, replacements or other modifications thereto.

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Appendix II

Representations and Warranties of the Borrower

The Borrower and the General Partner shall represent and warrant for the benefit of the Lenders as to the following items (with qualifications and exceptions customary for transactions of this type):

- (1) due organization, existence and good standing of the Borrower;
- (2) full power and authority of the Borrower to execute and deliver the Transaction Documents, and due authorization, execution, delivery and enforceability thereof;
- (3) the execution, delivery and performance by the Borrower of the Transaction Documents does not violate or breach (i) its certificate of limited partnership or Partnership Agreement, (ii) any Applicable Law or (iii) any other agreement to which it is a party;
- (4) no litigation, investigation or government proceeding pending, or to the best of its knowledge, threatened against or affecting the Borrower, the Project, the General Partner or the transactions contemplated by the Transaction Documents other than the FERC Approval;
- (5) no business conducted by the Borrower other than the development, construction and operation of the Project and all activities related thereto;
- (6) good, legal and valid title to all assets, subject to Permitted Liens;
- (7) the security documents create valid first priority security interests in all of the Collateral, subject to only Permitted Liens;
- (8) All regulatory and environmental Governmental Approval and consents from all Governmental Authorities and third parties required to commence and conduct construction and to own and operate the Project shall be in full force and effect and not subject to appeal except to the extent failure to obtain such permits, approvals, and licenses could not reasonably be expected to have an adverse effect on the construction budget, construction, schedule or operation or ownership of the Project except those that have not been obtained but will be obtained by the time such approvals are required for the performance by any project participant of any of its obligations respecting the Project and for which none of the Borrower or the General Partner has any reason to believe that any such approvals will not be obtained in due course prior to the time required;
- (9) All Governmental Approvals and other consents obtained or to be obtained in paragraph 8, are free from conditions or requirements, the compliance with which could reasonably be expected to have an adverse effect on the construction budget, construction schedule, operation maintenance or ownership of the Project or which any of the Borrower or the General Partner does not reasonably expect to be able to satisfy;

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(10) all factual information (which shall not include any information by way of projections, estimates or other expressions of view as to future circumstances) taken as a whole, furnished by the Borrower in writing to the Lenders was true in all material respects on the date as of which such information was furnished and under the circumstances furnished; no omission of a material fact (which representations shall not apply to any information by way of projections, estimates or other expressions of view as to future circumstances);

(11) compliance by the Borrower with all laws;

(12) the Borrower is not an investment company, a public utility or a public utility holding company and is exempt from regulation as such;

(13) compliance by it with all applicable environmental laws, rules and regulations, and no environmental claims and no releases or discharges of pollutants, except where such claim, release or discharge could not reasonably be expected to have a Material Adverse Effect;

(14) the Borrower has filed all tax returns and paid all taxes other than any thereof which are being contested in good faith for which adequate reserves (in accordance with US GAAP) are being maintained;

(15) no Event of Default has occurred and is continuing; no event of force majeure, or breach or default under any Financing Document or Project Document or other material contract has occurred and is continuing;

(16) all representations and warranties by the Borrower and to its knowledge, each other party in any Project Document are true and correct;

(17) use of proceeds of the Loans in accordance with the Credit Agreement; no use of proceeds to purchase margin stock;

(18) the Lenders have received a complete copy of each material Project Document then in effect (including all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any);

(19) to the best of the Borrower's knowledge, the services to be performed, the materials to be supplied and the easements, licenses and other rights granted or to be granted to the Borrower pursuant to the terms of the Project Documents, provide or will provide the Borrower with all rights and property interest required to enable the Borrower to obtain all services, materials or rights (including access) required for the design, construction, start-up, operation and maintenance of the Project, including the Borrower's full and prompt performance of its obligations, and full and timely satisfaction of all conditions precedent to the performance by others of their obligations, under the Project Documents, other than those services, materials or rights that reasonably can be expected to be obtainable in the ordinary course of business without material additional expenses or material delay; and

(20) the Borrower has no Plans other than those listed on the Schedule having the same number as this Section. No accumulated funding deficiency (as defined in Section 412 of the

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Code or Section 302 of ERISA) or Reportable Event has occurred with respect to any Plan which would reasonably be expected to have a Material Adverse Effect. Certain ERISA events that would reasonably be expected to have a Material Adverse Effect have not occurred.

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## Appendix III

## Affirmative Covenants of the Borrower

The Credit Agreement shall contain, without limitation, the following affirmative covenants of the Borrower, as applicable, in favor of the Lenders



(with qualifications and exceptions customary for transactions of this type:

(1) The Borrower shall furnish or cause to be furnished to the Collateral Agent and, in the case of clause (a) or (b) below, any Lender or prospective Lender upon request:

- (a) within 45 days after the end of the first three quarterly accounting periods of the Borrower, unaudited financial statements of the Borrower and each of its subsidiaries together with a certificate of an Authorized Officer of certifying (i) that such financial statements fairly present the financial condition and results of operation of the Borrower and each of its subsidiaries in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes and (ii) that no Default or Event of Default has occurred and is continuing, or, if such an event has occurred, describing the nature thereof;
- (b) within 90 days after the end of each fiscal year of the Borrower, audited financial statements of the Borrower and each of its subsidiaries together with a certificate of an Authorized Officer of the Borrower certifying that no Default or Event of Default has occurred and is continuing, or, if such an event has occurred, describing the nature thereof;
- (c) within 2 Business Days after the Borrower obtains actual knowledge of any Default or Event of Default, a written notice describing such Default or Event of Default and any action being or proposed to be taken with respect thereto;
- (d) within 2 Business Days after an Authorized Officer of the Borrower obtains actual knowledge of the occurrence of any event that could reasonably be expected to result in a Material Adverse Effect, notice of the occurrence of such event; and
- (e) within 2 Business Days after any Person makes a request therefor, a list of the current balances in each of the Depository Accounts no more frequently than monthly if no default or Event of Default exists.
- (f) all reports related to material environmental matters within a reasonable period of time after receipt thereof;
- (g) copies of all material notices delivered in connection with any Project Document or otherwise in connection with the Project within a reasonable period of time and after receipt thereof;
- (h) (i) until Completion, on a quarterly basis, copies of all construction schedules and construction budgets and copies of all quarterly reports issued by the Independent

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Engineer prior to the Completion of the Project and (ii) on an annual basis (x) at least 30 days before the beginning of each calendar year an Operating Budget for such fiscal year which is approved by the Independent Engineer (together, periodically, with evidence of compliance therewith) and (y) at least 30 days before the beginning of each calendar year after the Completion of Project, a copy of the annual operating budget for such year;

- (i) until Completion, on a quarterly basis, copies of all change orders and any document or written notice from the construction contractor requesting or recommending the initiation of a change order and any other notice, including, without limitation, notices with respect to the occurrence of a force majeure event (or event of a similar effect) under any Project Document which may result in a material increase in project costs within a reasonable period of time after receipt thereof; and
- (j) notice and details of, within 2 Business Days after an Authorized Officer of the Borrower obtains actual knowledge of, any litigation pending or threatened involving the Borrower or the Project, that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect.

(2) The Borrower shall at all times preserve and maintain in full force and effect (i) its existence as a limited partnership in good standing under the laws of its jurisdiction of formation and (ii) its qualification to do business in each other jurisdiction in which the character of properties owned or leased by it or in which the transaction of its business as conducted or proposed to be conducted makes such qualification necessary except in the case of clause (ii) where such failure to be so qualified could not reasonably be expected to have a

Material Adverse Effect.

(3) The Borrower shall maintain and renew all of the powers, rights, privileges and franchises necessary for the transaction of its business as conducted or proposed to be conducted.

(4) The Borrower shall comply with all Applicable Laws and Governmental Approvals applicable to it, and all other acts, rules, regulations, permits, orders and requirements of any legislative, executive, administrative or judicial body relating to the issuance of the Loans by the Borrower and performance by the Borrower of its obligations under the Financing Documents.

(5) The Borrower shall perform all of its covenants and agreements contained in any of the Financing Documents to which it is a party and shall take all reasonable and necessary actions to prevent the termination or cancellation of any such Financing Document.

(6) The Borrower shall preserve and maintain good and valid title to its properties and assets (subject to no Liens other than Permitted Liens) and defend its title to the Collateral against the claims of all Persons subject to Permitted Liens.

(7) The Borrower shall preserve and maintain the Liens on the Collateral and the priority thereof and, without limiting the generality of the foregoing, shall cause the Security

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Documents to which it is a party, all supplements thereto and any instruments of conveyance, transfer, assignment or further assurance, or appropriate certificates, financing statements or other statements with respect thereto, at all times to be recorded and filed and re-recorded and re-filed, in such manner and in such places as may in the reasonable opinion of counsel be required by Applicable Law in order to fully preserve and protect the rights of the Collateral Agent and Lenders.

(8) The Borrower shall pay and discharge all taxes, assessments and other governmental charges or levies imposed upon it or its property, except any charges or levies (i) being diligently contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.

(9) The Borrower shall at all times keep proper books and records of all of its business and financial affairs in order to permit the preparation of financial reports in accordance with GAAP.

(10) The Borrower shall permit the Collateral Agent, the Depositary Bank or any duly authorized agent or representative thereof (including the Independent Engineer) from time to time during normal business hours to conduct reasonable inspections and examinations at all reasonable times of the books and records and properties of the Borrower provided that a representative of the Borrower shall at all times have the opportunity to be present.

(11) The Borrower shall use the proceeds of the Loans in accordance with the Financing Documents.

(12) The Borrower shall retain a nationally recognized independent accounting firm and authorize such firm to communicate directly with the Collateral Agent provided that a representative of the Borrower shall at all times have the opportunity to be present during such communications.

(13) The Borrower shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all Government Approvals required at any time (i) in connection with the operation of the Borrower's business and (ii) to execute and deliver the Financing Documents to which it is a party and to perform its obligations thereunder.

(14) The Borrower shall cause all Cash Flows to be deposited into the Revenue Account and disbursed therefrom in accordance with the "Flow of Funds" set forth herein.

(15) The Borrower shall maintain and operate the Project in good working order and condition in accordance with the Project Documents.

(16) The Borrower shall obtain and maintain necessary insurance in amounts, with limits and deductibles, on terms and conditions and with appropriate carriers as is customary for others similarly situated, including, without limitation, business interruption insurance and title insurance so long as such insurance remains available on commercially reasonable terms and conditions. The Collateral Agent, on behalf of the holders of the Loans, shall be named as the sole loss payee in insurance policies in respect of property

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the Project, and as additional insured in respect of all other insurance policies. Within 120 days after the end of each year, the Borrower shall provide the Collateral Agent with a certificate of an Authorized Officer that summarizes the Borrower's insurance then in effect and states that such insurance satisfies the requirements of this provision.

(17) The Borrower shall perform and observe its covenants and obligations under all Project Documents and take all necessary action to prevent the termination or cancellation of any Project Documents to which it is a party except where the Borrower has entered into a Replacement Project Document and all necessary third party consents related thereto;

(18) The Borrower shall cause all Loss Proceeds to be deposited into the Loss Proceeds Account and all payments from the EPC Contractor (its guarantors and sureties) to be deposited in the Depository Accounts as set forth under the caption "Flow of Funds."

(19) The Borrower shall cause construction of Project to be carried out with diligence and continuity (subject to interruptions provided for in the Construction Contracts and force majeure) in accordance with material approvals and the Construction Contracts.

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Appendix IV

Negative Covenants of the Borrower

The Credit Agreement shall contain, without limitation, the following negative covenants of the Borrower in favor of the Lenders (with qualifications and exceptions customary for transactions of this type):

- (1) The Borrower shall not create or incur or suffer to exist any Debt except the following (such Debt, "Permitted Debt"):
- (a) Debt incurred in respect of the COP Loans, or any other COP Financing Document;
  - (b) Cost Overrun Debt for Phase 1;
  - (c) Debt to fund Phase 2 of the Project up to an aggregate principal amount of the Expansion Debt Amount, so long as after giving effect to the incurrence of such Debt the conditions described above under "Expansion Financing" shall have been satisfied.
  - (d) After Completion, Debt to finance the reasonable cost of the construction, installation or acquisition of equipment or facilities required by applicable law for the continued operation of the Project in accordance with applicable laws so long as the Projected Debt Service Coverage Ratio for each subsequent fiscal year through the Maturity Date of the Phase 1 Loan will not be less than \*\*\*;
  - (e) After Completion, Debt under an unsecured revolving credit facility issued to third parties in an aggregate principal amount not to exceed \$\*\*\* million outstanding at any time; and
  - (f) renewals, extensions, replacements and refinancings of any Permitted Debt that does not increase the outstanding principal amount.
- (2) The Borrower shall not create or suffer to exist or permit any Lien upon or with respect to any of its properties except the following Liens (such Liens, "Permitted Liens"):
- (a) Liens specifically permitted or required by, or created by, any Transaction Document;
  - (b) Liens to secure Permitted Debt under clauses (a) - (c) as limited herein; provided that the holder of such Permitted Debt, or a representative thereof, shall have entered into an intercreditor agreement;
  - (c) Liens for taxes, assessments or governmental charges which are either not yet due or which are being diligently contested in good faith by

appropriate proceedings and for which adequate reserves are established in accordance with GAAP;

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- (d) Mechanic's or materialmen's Liens secured by bonds for which the Borrower is not liable;
- (e) Liens arising by operation of law;
- (f) Deposits or pledges to secure statutory obligations or appeals, release or attachments, stay of execution or injunction, or for purposes of like general nature in the ordinary course of business;
- (g) Other Liens incidental to the conduct of the Borrower's business which were not incurred in connection with the borrowing of money or the obtaining of advances or credit (other than vendor's liens for accounts payable in the ordinary course of business), and which do not in the aggregate materially impair the use thereof in the operation of the Borrower's business;
- (h) the Permitted Title Defects;
- (i) defects, easements, rights of way, restriction, irregularities, encumbrances and clouds on title and statutory Liens which do not materially impair the property affected and that do not materially impair the value of the security interests granted under the Security Documents;
- (j) Liens for worker's compensation, unemployment insurance or other social security or pension obligations;
- (k) legal or equitable encumbrances deemed to exist because of the existence of any litigation or other proceeding if brought in good faith provided that such encumbrances shall be canceled by bonding or otherwise within 5 Business Days after their creation; and
- (l) any renewals, extensions, replacements and refinancing of any of the foregoing.

(3) The Borrower shall not contingently or otherwise be or become liable, directly or indirectly, in connection with any Guarantee or Debt except as contemplated by the Transaction Documents.

(4) The Borrower shall not engage in any activities other than those contemplated by the Credit Agreement and the other Transaction Documents, and activities related thereto or the ownership, construction and operation of the Project and all related activities thereto.

(5) The Borrower shall not enter into any transaction of merger or consolidation, change its legal form, liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), discontinue its business or purchase or acquire all or substantially all of the assets of any Person.

(6) The Borrower shall not sell, transfer, assign, hypothecate, pledge, lease, sublease or otherwise dispose of (in one transaction or in a series of transactions) any of its assets, except (a) assets that in a single transaction or a series of related transactions do not have a fair market

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value in excess of \$\*\*\* million in the aggregate (unless replaced by assets which are necessary and useful, as certified by the Independent Engineer, to the Borrower's business), (b) assets sold in the ordinary course of business, (c) assets that are obsolete and not integral to the business of the Borrower, or (d) as otherwise permitted or contemplated by the Transaction Documents.

(7) The Borrower shall not form or have any subsidiaries, make investments, loans or advances or acquire the stock, obligations or securities of any Person, except that the Borrower may (a) create, and make investments in, subsidiaries as necessary in connection with transactions contemplated by the Transaction Documents, and (b) make Permitted Investments.

(8) The Borrower shall not enter into any transaction or series of related transactions, whether or not in the ordinary course of business, with any affiliate of the Borrower which is not on terms and conditions at least as favorable as would be obtained in a comparable arm's-length transaction with a

Person other than an affiliate of the Borrower, except that the Borrower may perform its obligations under and engage in the transactions contemplated by the Transaction Documents.

(9) The Borrower shall not make any Restricted Payments other than as permitted under the Depositary Agreement and the Credit Agreement.

(10) Subject to (5) above, the Borrower shall not assign any of its rights or obligations under any Financing Document.

(11) The Borrower shall not amend its certificate of limited partnership, Partnership Agreement or any other constitutive document; provided that the Borrower may convert to a limited liability limited partnership.

(12) The Borrower shall not take any action which will cause it to be an "investment company" as defined in the Investment Company Act of 1940, as amended or a public utility or public utility holding company.

(13) The Borrower shall not elect to be treated as an association taxable as a corporation for federal income tax purposes.

(14) The Borrower shall not enter into any additional Project Document (other than Additional TUAs) other than (i) as contemplated by the Transaction Documents or activities permitted thereby or (ii) those that could not reasonably be expected to have a Material Adverse Effect.

(15) The Borrower (or any Affiliate thereof) shall not amend, cancel or terminate any Project Document (unless contemplated by such Project Document) (other than Additional TUAs).

(16) The Borrower shall not accept Completion of the Project until an Authorized Officer of the Independent Engineer shall have delivered to the Collateral Agent a certificate confirming that Completion has occurred.

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EXHIBIT A  
LOAN TERM SHEET

(17) The Borrower shall not enter into capacity sales contracts or other types of hedging arrangements other than Acceptable Use Agreements or Approved Hedging Agreements.

(18) Initiate or approve any change orders (other than those included in the Budgeted Construction Costs) under the Construction Contracts unless the Borrower certifies that such change order (i) is in accordance with sound engineering practice, (ii) is not reasonably expected to materially and adversely affect the operation or reliability of the Project, and (iii) if implemented, is not reasonably expected to materially delay the Completion Date, and (iv) in the case of change orders which exceed \$\_\_\_\_\_ individually or, when aggregated with all change orders not included in the Budgeted Construction Costs exceed \$\_\_\_\_\_ in the aggregate, the Independent Engineer provides written confirmation of its concurrence with such certification.

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LOAN TERM SHEET

Appendix V

Events of Default under the Credit Agreement

The following events shall constitute Events of Default (with qualifications and exceptions customary for transactions of this type):

(1) The Borrower shall fail to pay any principal of, premium, if any, or interest on any Security when the same becomes due and payable, whether by scheduled maturity or required prepayment or redemption or by acceleration or otherwise within 2 days after the date such payment is due except if it is determined that the COP Shipper shall have unlawfully failed to make the corresponding payment of such amounts under the COP TUA;

(2) The Borrower shall fail to pay any unscheduled and undisputed cost, charge or other sum due under any of the Financing Documents within 10 days after the date the Borrower receives notice that such payment is due;

(3) Any representation or warranty made by the Borrower in the Credit Agreement or in any other Financing Document to which it is a party, or any representation, warranty or statement in any certificate, financial statement or other document furnished is incorrect when made or deemed to be made;

(4) The Borrower shall fail to perform or observe any covenant under the

Credit Agreement relating to maintenance of existence, incurrence of Debt, creation of Liens, issuance of guarantees, business activities, fundamental changes, sales of assets or Restricted Payments;

(5) The Borrower shall fail to perform or observe any of its covenants contained in the Credit Agreement (other than those referred to in clause (4) immediately above) and such failure shall continue uncured for 30 or more days from the date the Borrower obtains actual knowledge of such failure;

(6) The Borrower shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, Collateral Agent or liquidator of itself or all or a substantial part of its property, (b) admit in writing its inability or be generally unable to pay its debts as such debts become due, (c) make a general assignment for the benefit of its creditors, (d) commence a voluntary case under the Federal Bankruptcy Code, (e) file a petition seeking to take advantage of any other Debtor Relief Law, (f) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code or any other Debtor Relief Law or (g) take any action for the purpose of effecting any of the foregoing;

(7) A proceeding or case shall be commenced without the application or consent of the Borrower in any court of competent jurisdiction, seeking (a) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of its debts or (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower or any other party to a material Project Document or all or a substantial part of its property under any Debtor Relief

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Law and such proceeding or case shall continue undismissed, or any order, judgment or decree approving any of the foregoing shall be entered and continue unstayed and in effect for a period of 60 or more consecutive days, or any order for relief against the Borrower or any other party to a material Project Document shall be entered in any involuntary case under the Federal Bankruptcy Code or any other Debtor Relief Law;

(8) Any Security Document shall cease to be in full force and effect in any material respect or any Lien purported to be granted thereby shall cease to be a valid and perfected Lien in favor of the Collateral Agent for the benefit of the Lenders on the Borrower Collateral described therein with the priority purported to be created thereby;

(9) The Cost Overrun Debt, Expansion Debt or other Debt of the Borrower outstanding in excess of \$\*\*\* (other than Debt incurred pursuant to the Credit Agreement) is in payment default or shall be required to be prepaid, or shall be declared to be due and payable, other than by regularly scheduled required repayment, prior to the stated maturity thereof, as the result of the acceleration of the stated maturity thereof following an event of default thereunder (subject to the applicable grace periods thereunder) or an event occurs that, with the passage of time or giving of notice, permits the holders of the Cost Overrun Debt, Expansion Debt or other Debt outstanding in excess of \$\*\*\* to be prepaid or to be declared due and payable other than by regularly scheduled required repayment;

(10) One or more final and non-appealable judgment or judgments for the payment of money in excess of \$\*\*\* not fully covered by insurance shall be entered against the Borrower and shall remain unpaid or unstayed for a period of 30 or more consecutive days;

(11) Any Acceptable Credit Support ceases to be valid and binding and in full force and effect and any party thereto fails to make any required payments pursuant to its Acceptable Credit Support within 3 days of the date when due;

(12) Commitments respecting any required Cost Overrun Debt and any required Acceptable Credit Support therefor are not in effect.

(13) EPC Contractor fails to comply with its obligations pursuant to the EPC Contract and such failure is not cured within 10 days and could reasonably be expected to have a Material Adverse Effect;

(14) Any Governmental Approval required for the operation of the Project is revoked, terminated, withdrawn or ceases to be in full force and effect if such revocation, termination, withdrawal or cessation could reasonably be expected to have a Material Adverse Effect; provided that no such event shall be a Event of Default if the Borrower diligently pursues in good faith and (x) obtains an additional Governmental Approval in substitution therefor or replacement thereof or (y) causes such Governmental Approval to be reissued, or until such time as such cure cannot reasonably be achieved;

(15) Failure by any party to comply with any covenants under the Project Documents to which it is a party, subject to applicable cure periods, the result in the judgment of the COP Lenders which is a Material Adverse Effect; provided that the Borrower may cure such Event of

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EXHIBIT A  
LOAN TERM SHEET

Default by entering into a Replacement Project Document and the necessary third party consents related thereto;

(16) All or a material part of the Project is destroyed or suffers a material actual loss or material damage and an Approved Restoration Plan does not exist in respect thereof within 90 days of such destruction or loss;

(17) Any material Project Document ceases to be valid and binding and in full force and effect in any material respect, any third party thereto denies that it has any liability or obligation under any material Project Document and such third party ceases performance thereunder, or any third party is in default under such Project Document (subject to any applicable grace period), and in each case such cessation or default has resulted or would reasonably be expected to result in a Material Adverse Effect and such circumstance remains uncured for 30 days; provided that the Borrower may cure such Event of Default by entering into a Replacement Project Document and the necessary third party consents related thereto;

(18) Phase 1 of the Project fails to reach Completion by \*\*\*; or

(19) the Borrower or any General Partner breaches any of its representations, warranties, covenants or other obligations under the COP TUA, the Omnibus Agreement, the Stock Purchase Agreement or the Stockholder Agreement, any Project Document or other documents executed in connection therewith.

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EXHIBIT B  
-----  
FORM OF STOCKHOLDERS AGREEMENT

See attached.

EXHIBIT C  
-----  
FORM OF STOCK PURCHASE AGREEMENT

See attached.

Exhibit D

\*\*\* indicates material has been omitted pursuant to a Confidential Treatment Request filed with the Securities and Exchange Commission. A complete copy of this agreement has been filed separately with the Securities and Exchange Commission.

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LNG TERMINAL USE AGREEMENT

between

[CONOCOPHILLIPS \_\_\_\_\_]

and

FREEPORT LNG DEVELOPMENT, L.P.

dated [\_\_\_\_\_] , 2004

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LNG TERMINAL USE AGREEMENT

This LNG TERMINAL USE AGREEMENT (the "Agreement"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2004 (the "Effective Date"), is made by and between [ConocoPhillips \_\_\_\_\_], a company incorporated under the laws of [\_\_\_\_\_] with its principal office at [\_\_\_\_\_] ("Customer"); and FREEPORT LNG DEVELOPMENT, L.P., a Delaware limited partnership with a place of business at 1200 Smith Street, Suite 600, Houston, Texas, U.S.A. 77002 ("FLNG").

RECITALS

WHEREAS, FLNG intends to construct, own and operate an LNG terminal facility near Freeport, Texas capable of performing certain LNG terminalling services, including: the berthing of LNG vessels; the unloading, receiving and storing of LNG; the regasification of LNG; the storage of natural gas; and the transportation and delivery of natural gas to a pipeline interconnection point at Stratton Ridge, Texas;

WHEREAS, Customer will purchase LNG for importation into the United States natural gas market and desires to purchase such LNG terminalling services from FLNG; and

WHEREAS, FLNG desires to make such LNG terminalling services available to Customer and to Other Customers in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto and for the mutual covenants contained herein, FLNG and Customer hereby agree as follows:

ARTICLE 1  
DEFINITIONS

In addition to any terms or expressions defined elsewhere in this Agreement, the terms or expressions set forth below shall have the following meanings in this Agreement:

1.1 "Actual FOC" means fixed operating costs and maintenance capital actually incurred by FLNG acting as a Reasonable and Prudent Operator; provided that the amount of fixed operating costs shall be reduced by (a) any insurance proceeds (including proceeds from business interruption insurance) received by FLNG which have the effect of offsetting fixed operating costs, (b) any bonuses paid to employees of FLNG to the extent that such bonuses are based on or attributable to distributions to any of FLNG's limited partners, (c) any New Taxes and New Regulatory Costs borne by FLNG pursuant to Section 4.4, (d) any permitting, engineering, development, financing, design and environmental remediation costs paid to third parties which costs are directly related to the development of any modification that significantly expands the Freeport Facility; (e) Awards; and (f) all indemnities, liabilities, and other damages arising from any arbitral award, expert determination, judgment, or settlement payable by FLNG to any Indemnitee (as defined

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in the Partnership Agreement of FLNG). For the avoidance of doubt, Actual FOC shall not include capital expenditures (other than maintenance capital) and debt service incurred by FLNG.

1.2 "Adverse Weather Conditions" means weather and sea conditions actually experienced at the Freeport Facility that are sufficiently severe either: (a) to prevent an LNG vessel from proceeding to berth, or unloading or departing from berth, in accordance with one or more of the following: (i) regulations published by a Governmental Authority, (ii) an Approval, or (iii) an order of a Pilot; or (b) to cause an actual determination by the master of an LNG Vessel that it is unsafe for such vessel to berth, unload or depart from berth.

1.3 "Affiliate" means a Person (other than a Party) that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, and for such purposes the terms "control", "controlled by" and other derivatives shall mean the direct or indirect ownership of more than fifty percent (50%) of the voting rights in a Person.

1.4 "Aggregate Actual Capacity" means the sum of Customer Actual Capacity in a Contract Year plus the aggregate contracted quantity of LNG and any

quantities of LNG received by FLNG in excess of such contracted quantity at the Freeport Facility for the account of each Other Customer in such Contract Year.

- 1.5 "Aggregate Contracted Capacity" means the sum of the Maximum LNG Reception Quantity plus the aggregate quantity of LNG contracted at the Freeport Facility for the account of each Other Customer in such Contract Year.
- 1.6 "Agreement" means this agreement, together with the Annexes and Exhibits attached hereto, which are hereby incorporated into and made a part hereof, as the same may be hereafter amended.
- 1.7 "Alternate \*\*\*" shall have the meaning set forth in Section 3.3(c) (ii).
- 1.8 "Approvals" means all consents, authorizations, licenses, waivers, permits, approvals and other similar documents from or by a Governmental Authority.
- 1.9 "Arrival Location" shall have the meaning set forth in Section 9.5(a).
- 1.10 "Awards" means all indemnities, liabilities, and other damages arising from any arbitral award, expert determination, judgment, or settlement paid by FLNG to Customer under this Agreement or paid by FLNG under an LNG terminalling services agreement with Other Customers, such indemnities, liabilities, and other damages being determined after deduction of any insurance proceeds received by FLNG which have the effect of offsetting such Awards.
- 1.11 "Awards Installment" shall have the meaning set forth in Section 4.1(a) (i)e.
- 1.12 "Base Rate" means: (a) the interest rate per annum equal to (i) the prime rate (sometimes referred to as the base rate) for corporate loans as published by The Wall Street Journal in the money rates section on the applicable date, or (ii) in the event The Wall Street Journal

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ceases or fails to publish such a rate, the prime rate (or an equivalent thereof) in the United States for corporate loans determined as the average of the rates referred to as prime rate, base rate or the equivalent thereof, quoted by Chase Manhattan Bank, Citibank and Bank of New York, or any successor thereof, for short term corporate loans in New York on the applicable date; plus (b) \*\*\* percent (\*\*\*%). The Base Rate shall change as and when the underlying components thereof change, without notice to any Person.

- 1.13 "British Thermal Unit" or "BTU" means the amount of heat required to raise the temperature of one (1) avoirdupois pound of pure water from 59.0 degrees Fahrenheit to 60.0 degrees Fahrenheit at an absolute pressure of 14.696 pounds per square inch.
- 1.14 "Budgeted FOC" means fixed operating costs (including maintenance capital) pursuant to the Operating Budget (as such term is defined under that certain Stockholders Agreement dated as of the date hereof between Freeport LNG-GP, Inc., a Delaware corporation, Michael S. Smith and Customer, as amended from time to time); (a) any insurance proceeds (including proceeds from business interruption insurance) received by FLNG which have the effect of offsetting fixed operating costs, (b) any bonuses paid to employees of FLNG to the extent that such bonuses are based on or attributable to distributions to any of FLNG's limited partners, (c) any New Taxes and New Regulatory Costs borne by FLNG pursuant to Section 4.4, (d) any permitting, engineering, development, financing, design and environmental remediation costs paid to third parties which costs are directly related to the development of any modification that significantly expands the Freeport Facility; (e) Awards; and (f) all indemnities, liabilities, and other damages arising from any arbitral award, expert determination, judgment, or settlement payable by FLNG to any Indemnitee (as defined in the Partnership Agreement of FLNG). For the avoidance of doubt, Budgeted FOC shall not include capital expenditures (other than maintenance capital) and debt service incurred by FLNG.
- 1.15 "Build-Up Period" means the period of time commencing on the Commercial Start Date and ending on the day prior to the Plateau Inception Date.
- 1.16 "Business Day" means any day other than a weekend day or U.S. Federal banking holiday in Houston, Texas.
- 1.17 "C Ratio" means the ratio that the Customer Actual Capacity bears to the Aggregate Actual Capacity.
- 1.18 "Cargo" means a quantity of LNG expressed in MMBTU carried by an LNG Vessel in relation to which FLNG will render Services hereunder.

- 1.19 "Central Time" means Central Time Zone, as adjusted for Daylight Saving Time and Standard Time.
- 1.20 "Claims" shall have the meaning set forth in Section 10.2 of this Agreement.
- 1.21 "Commercial Start Date" shall have the meaning set forth in Section 7.2.

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- 1.22 "Contract Year" means each annual period starting on October 1 and ending on September 30 during the Term of this Agreement; provided, however, that (a) the first Contract Year shall commence on the Commercial Start Date and end on the following September 30, and (b) the last Contract Year shall commence on October 1 immediately preceding the last day of the Term and end on the last day of the Term as set forth in Section 7.1.
- 1.23 "Crest Contract" means that certain Settlement and Purchase Agreement dated as of June 14, 2001 by and among Cheniere Energy, Inc., a Delaware corporation, CXY Corporation, a Texas corporation, Crest Energy, L.L.C., a Texas limited liability company, Crest Investment Company, a Texas corporation, FLT, and Jamal Daniel.
- 1.24 "Crest Installment" shall have the meaning set forth in Section 4.1(a)(i)d.
- 1.25 "Crest Payment" means the amount estimated to be payable by FLT for the following month pursuant to Section 1.03(a) of the Crest Contract.
- 1.26 "Crest Reconciliation" shall have the meaning set forth in Section 4.1(a)(i)d.
- 1.27 "Cubic Meter" means a volume equal to the volume of a cube each edge of which is one (1) meter.
- 1.28 "Customer" means [ConocoPhillips \_\_\_\_\_], unless and until substituted in whole by an assignee by novation in accordance with Article 19, whereupon such assignee shall become Customer for all purposes.
- 1.29 "Customer Actual Capacity" means the aggregate quantity of LNG received at the Freeport Facility for the account of Customer in a Contract Year.
- 1.30 "Customer LNG Receipt Schedule" shall have the meaning set forth in Section 5.1(f).
- 1.31 "Customer's LNG" means, for the purposes of Services, LNG received at the Receipt Point for Customer's account.
- 1.32 "Customer's Inventory" means, at any given time, the quantity in MMBTUs that represents LNG and Gas (whether or not such Gas is Regasified LNG or Gas derived or produced from sources other than Regasified LNG) held for Customer's account. For the avoidance of doubt, Customer's Inventory shall be determined after deduction of Retainage in accordance with Sections 3.1(b)(ii) and 4.2.
- 1.33 "\*\*\*\*" shall have the meaning set forth in Section 4.1(a)(i)a.
- 1.34 "\*\*\*\*" shall have the meaning set forth in Section 4.1(a)(i)a.
- 1.35 "Delivery Point" means the point of interconnect between the Freeport Facility Pipeline and a Downstream Pipeline at Stratton Ridge, Texas.

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- 1.36 "Dispute" means any dispute, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, relating to, or connected with this Agreement, including any dispute as to the construction, validity, interpretation, termination, enforceability or breach of this Agreement, as well as any dispute over arbitrability or jurisdiction.
- 1.37 "Downstream Pipeline" means all Gas pipelines downstream of the Delivery Point which transport Gas from the Freeport Facility.
- 1.38 "Effective Date" means the date set forth in the preamble of this Agreement.
- 1.39 "Expected Receipt Quantity" means, with respect to a given Cargo, Customer's reasonable estimate of the quantity of LNG (in MMBTUs) that such Cargo is expected to unload at the Freeport Facility, taking into consideration (a) the expected composition of the Cargo anticipated to be loaded at the Loading Port, (b) the expected loaded volume of such Cargo, (c) the natural boil-off, and fuel gas used by the vessel in excess of

natural boil-off, expected during shipment of the Cargo, (d) the anticipated time required from the commencement of loading of such Cargo to the completion of unloading of such Cargo and (e) the anticipated quantity of heel to be retained by such Cargo. For purposes of this Agreement, the term "Expected Receipt Quantity" shall be the estimate set forth in the notice delivered pursuant to Section 5.1(b)(ii), as may be subsequently amended pursuant to Section 9.4(a).

- 1.40 "Excess Reception Fee" shall have the meaning set forth in Section 4.1(c).
- 1.41 "Fee" shall have the meaning set forth in Section 4.1.
- 1.42 "FERC" means the Federal Energy Regulatory Commission or a successor regulatory agency.
- 1.43 "FLNG" means Freeport LNG Development, L.P., unless and until substituted by an assignee by novation in accordance with Article 19, whereupon such assignee shall become FLNG for all purposes.
- 1.44 "FLNG Component" shall have the meaning set forth in Section 4.1(a)(i)b.
- 1.45 "FLT" means Freeport LNG Terminal, LLC, a Delaware limited liability company, and its successors and assigns.
- 1.46 "FOC Installment" shall have the meaning set forth in Section 4.1(a)(i)c.
- 1.47 "FOC Ratio" means the ratio calculated for any given Contract Year, determined as follows:
- (a) the sum of the Maximum LNG Reception Quantity for such Contract Year plus any quantities of LNG received under Section 3.1(d) in excess of the Maximum LNG Reception Quantity (the "Customer Contracted Capacity"); divided by
  - (b) the Aggregate Contracted Capacity;
- provided, however, that for each Contract Year during the Build-up Period such ratio shall in no event exceed two thirds (2/3).
- 1.48 "FOC Reconciliation" shall have the meaning set forth in Section 4.1(a)(i)c.
- 1.49 "Force Majeure" shall have the meaning set forth in Section 17.1.
- 1.50 "for Customer", "for Customer's account", "on behalf of Customer" or other phrases containing similar wording shall include LNG delivered to the Freeport Facility at Customer's direction or LNG delivered to the Freeport Facility by a Temporary Customer, as the context may require, as well as Customer's Inventory derived therefrom.
- 1.51 "Freeport Facility" means the following FLNG facilities in Freeport, Texas used to provide Services hereunder, as such facilities will be constructed and modified from time to time in accordance with this Agreement: (a) the LNG receiving terminal facility as further described in Section 8.1(b) (including the port, berthing and unloading facilities, LNG storage facilities, and regasification facilities, together with equipment and facilities related thereto); and (b) the Freeport Facility Pipeline.
- 1.52 "Freeport Facility Lease" means that certain Ground Lease and Development Agreement between Brazos River Harbor Navigation District of Brazoria County, Texas and FLNG dated as of December 12, 2002, as amended from time to time.
- 1.53 "Freeport Facility Marine Operations Manual" shall have the meaning set forth in Section 9.2.
- 1.54 "Freeport Facility Pipeline" means the pipeline approximately nine (9) miles in length and at least thirty-six (36) inches with a maximum allowable operating pressure of no less than 1440 psig which is constructed and operated as a part of the Freeport Facility to (a) interconnect with one or more Downstream Pipelines at Stratton Ridge, Texas and (b) transport to the Delivery Point either Regasified LNG and/or Gas stored in one or more Gas Storage Facilities.
- 1.55 "Freeport Services Manual" shall have the meaning set forth in Section 3.5.
- 1.56 "\*\*\*\*" means the internet based computer system used by FLNG to communicate with Customer and Other Customers regarding the scheduling of LNG terminalling services at the Freeport Facility.
- 1.57 "Gas" means any hydrocarbon or mixture of hydrocarbons consisting

predominantly of methane which is in a gaseous state.

- 1.58 "Gas Storage Facility" means an underground Gas storage facility near Stratton Ridge, Texas owned, operated, contracted or otherwise made available to FLNG or one or more

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of its Affiliates for the purposes of storing Gas solely for the account of Customer and Other Customers.

- 1.59 "Governmental Authority" means, in respect of any country, any national, regional, state, or local government, any subdivision, agency, commission or authority thereof (including any maritime authorities, port authority or any quasi-governmental agency) having jurisdiction over a Party, the Freeport Facility, a Gas Storage Facility, Customer's Inventory, an LNG Vessel, a Transporter, or a Downstream Pipeline, as the case may be, and acting within its legal authority.
- 1.60 "GPA" shall have the meaning set forth in Annex I.
- 1.61 "Gross Heating Value" means the quantity of heat expressed in BTUs produced by the complete combustion in air of one (1) cubic foot of anhydrous gas, at a temperature of 60.0 degrees Fahrenheit and at an absolute pressure of 14.696 pounds per square inch, with the air at the same temperature and pressure as the gas, after cooling the products of the combustion to the initial temperature of the gas and air, and after condensation of the water formed by combustion.
- 1.62 "Guarantee" means the Guarantee executed and dated as of the date hereof given by Guarantor to FLNG guaranteeing the obligations of Customer under this Agreement, a true and correct copy of which is attached as Exhibit A. [NOTE: PROVISIONS REGARDING GUARANTEE TO BE DELETED IF CONOCOPHILLIPS COMPANY EXECUTES THIS AGREEMENT AS CUSTOMER]
- 1.63 "Guarantor" means ConocoPhillips Company, a Delaware corporation.
- 1.64 "Henry Hub Price" shall mean, with respect to any month, the final settlement price in dollars per MMBTU for the NYMEX Henry Hub Natural Gas futures contract for Gas to be delivered during such month, such final price to be based upon the last trading day for the contract for such month; provided, however that if the publication which contains the NYMEX Henry Hub Natural Gas futures contract settlement prices ceases to be published for any reason, the Parties shall select a comparable index to be used in its place that maintains the intent and economic effect of the original index.
- 1.65 "Incremental Costs" shall have the meaning set forth in Section 4.1(b).
- 1.66 "International LNG Terminal Standards" means, to the extent not inconsistent with the express requirements of this Agreement, the international standards and practices applicable to the design, equipment, operation or maintenance of LNG receiving and regasification terminals, established by the following (such standards to apply in the following order of priority): (i) a Governmental Authority having jurisdiction over FLNG; (ii) the Society of International Gas Tanker and Terminal Operators ("SIGTTO"); and (iii) any other internationally recognized non-governmental agency or organization with whose standards and practices it is customary for Reasonable and Prudent Operators of LNG receiving and regasification terminals to comply. In the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail.
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- 1.67 "International LNG Vessel Standards" means, to the extent not inconsistent with the expressed requirements of this Agreement, the international standards and practices applicable to the ownership, design, equipment, operation or maintenance of LNG vessels established by the following (such standards to apply in the following order of priority): (i) a Governmental Authority; (ii) the International Maritime Organization; (iii) SIGTTO; and (iv) any other internationally recognized non-governmental agency or organization with whose standards and practices it customary for Reasonable and Prudent Operators of LNG vessels to comply. In the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail.
- 1.68 "Liabilities" means all liabilities, costs, claims, disputes, demands, suits, legal or administrative proceedings, judgments, damages, losses and expenses (including reasonable attorneys' fees and other reasonable costs of litigation or defense), and any and all fines, penalties and assessments of, or responsibilities to, Governmental Authorities.

- 1.69 "Liquids" means liquid hydrocarbons capable of being extracted from LNG at the Freeport Facility, consisting predominately of ethane, propane, butane and longer-chain hydrocarbons.
- 1.70 "Loading Port" means the port at which a Cargo is loaded on board an LNG Vessel.
- 1.71 "Loan Agreement" means that certain Loan Agreement executed as of the date hereof between FLNG and [INSERT NAME OF COP LENDER], as in effect on the date hereof.
- 1.72 "LNG" means Gas in a liquid state at or below its boiling point at a pressure of approximately one (1) atmosphere.
- 1.73 "LNG Suppliers" means, in relation to performance of the obligations of FLNG and Customer under this Agreement, those Persons who agree in writing pursuant to an LNG purchase and sale agreement to supply or sell LNG to Customer or a Temporary Customer for delivery to the Freeport Facility.
- 1.74 "LNG Supply Project" means a Person (other than Customer or an Affiliate of Customer) engaged in supplying LNG originating from \*\*\*, provided that Customer or its Affiliate directly or indirectly controls more than \*\*\* percent (\*\*\*) of the voting rights in such Person.
- 1.75 "LNG Vessel" means an ocean-going vessel suitable for transporting LNG that Customer, a Temporary Customer, or an LNG Supplier uses for transportation of LNG to the Freeport Facility.
- 1.76 "Major Customer" means Customer and any Other Customer whose terminal use agreement entitles such Other Customer to berth, unload and deliver at the Freeport Facility quantities of LNG greater than \*\*\* MMBTUs per Contract Year for a contractual term of at least \*\*\* years.

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- 1.77 "Major Customer Allocation Priority" shall have the meaning set forth in Section 17.7.
- 1.78 "\*\*\* " shall have the meaning set forth in Section 3.3(b).
- 1.79 "Maximum LNG Reception Quantity" means 390,550,000 MMBTUs per Contract Year; provided, that:
- (a) during the Build-Up Period, the Maximum LNG Reception Quantity shall be \*\*\* MMBTUs, provided that for the first Contract Year, the Maximum LNG Reception Quantity shall be prorated based upon the ratio that the number of days during such Contract Year bears to three hundred sixty-five (365); and
  - (b) for the last Contract Year, the Maximum LNG Reception Quantity shall be prorated based upon the ratio that the number of days during such Contract Year bears to three hundred sixty-five (365).
- 1.80 "\*\*\* " shall have the meaning set forth in Section 3.3(c).
- 1.81 "MMBTU" means 1,000,000 BTUs.
- 1.82 "Non-Major Customer" means any Other Customer other than a Major Customer.
- 1.83 "NOR Window" shall have the meaning set forth in Section 9.5(b)(ii).
- 1.84 "Notice of Readiness" or "NOR" shall have the meaning set forth in Section 9.5.
- 1.85 "Other Customers" means, from time to time, Persons (other than Customer and Temporary Customers) purchasing LNG terminalling services from FLNG similar to the Services.
- 1.86 "Party" and "Parties" means FLNG and Customer, and their respective successors and assigns.
- 1.87 "Payment Period" shall have the meaning set forth in Section 4.1.
- 1.88 "Peaking Gas" shall have the meaning set forth in Section 3.1(b)(iii).
- 1.89 "Person" means any individual, corporation, partnership, trust, unincorporated organization or other legal entity, including any Governmental Authority.
- 1.90 "Pilot" means any Person engaged by Transporter to come onboard an LNG Vessel to assist the master in pilotage, mooring and unmooring of such LNG Vessel and to assist in coordinating the unloading of LNG at the Freeport Facility.

1.91 "Pipeline Standards" means, to the extent not inconsistent with the express requirements of this Agreement, the standards and practices applicable to the design, equipment, operation or maintenance of Gas pipelines, established by the following (such standards to apply in the following order of priority): (i) a Governmental Authority having jurisdiction over FLNG; and (ii) any other nationally recognized non-

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governmental agency or organization with whose standards and practices it is customary for Reasonable and Prudent Operators of U.S. Gas pipelines to comply. In the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail.

1.92 "Plateau Inception Date" means October 1, 2009.

1.93 "Port Charges" means all charges of whatsoever nature (including rates, tolls, and dues of every description) in respect of an LNG Vessel entering or leaving the Freeport Facility, including charges imposed by fire boats, tugs and escort vessels, the U.S. Coast Guard, a Pilot, and any other Person assisting an LNG Vessel to enter or leave the Freeport Facility. For purposes of this Agreement, the term "Port Charges" shall include Port Use Fees and Thru-put Fees (as such terms are defined under the Freeport Facility Lease) but shall exclude the Initial Bonus Payment, Base Rent, the Additional Rent and any shortfall in the Thru-Put Guaranty Payment (as such terms are defined under the Freeport Facility Lease).

1.94 "psig" means pounds per square inch gauge.

1.95 "Reasonable and Prudent Operator" means a Person seeking in good faith to perform its contractual obligations, and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions.

1.96 "Receipt Point" means the point at the Freeport Facility at which the flange coupling of the Freeport Facility's receiving line joins the flange coupling of the LNG unloading manifold on board an LNG Vessel.

1.97 "Regasified LNG" means Gas derived from the conversion of LNG (received by FLNG at the Receipt Point) from its liquid state to a gaseous state.

1.98 "Release Notice" shall have the meaning set forth in Section 6.2(b)(i)c.

1.99 "Reservation Fee" shall have the meaning set forth in Section 4.1(a).

1.100 "Retainage" shall have the meaning set forth in Section 4.2.

1.101 "Scheduled Unloading Window" means, for any applicable Contract Year, an Unloading Window allocated either to Customer or any Other Customer pursuant to Article 5.

1.102 "Scheduling Period" means a Contract Year plus the three (3) month period immediately following such Contract Year.

1.103 "Scheduling Representative" means the individual appointed by Customer in accordance with Section 5.4.

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1.104 "Services" shall have the meaning set forth in Section 2.1, as expanded from time to time in accordance with Section 2.2.

1.105 "Services Quantity" shall have the meaning set forth in Section 3.1(b).

1.106 "Services Unavailability" shall have the meaning set forth in Section 4.3.

1.107 "Sole Opinion" means an opinion, judgment or discretion of a Party that is not intended to be capable of being challenged in any legal or arbitral proceeding whatsoever.

1.108 "Standard Cubic Foot" means the quantity of Gas, free of water vapor, occupying a volume of one (1) Actual Cubic Foot at a temperature of 60.0 degrees Fahrenheit and at an absolute pressure of 14.696 pounds per square inch. For purposes of this Section 1.108, "Actual Cubic Foot" means a volume equal to the volume of a cube whose edge is one (1) foot.

1.109 "Storage" means the retention by FLNG of Customer's Inventory for a period of time in tanks or other facilities at the Freeport Facility (including the Freeport Facility Pipeline) or in a Gas Storage Facility.



- 1.110 "Substantial Completion" means completion of the Freeport Facility so that it is ready to be used for its intended purpose, with (a) the contractor under the engineering, construction and procurement contract for the Freeport Facility having achieved all minimum acceptance requirements for "Substantial Completion" under such contract and (b) all Approvals necessary to commence operations of the Freeport Facility having been received by FLNG.
- 1.111 "Taxes" means all customs, taxes, royalties, excises, fees, duties, levies, sales and use taxes and value added taxes, charges and all other assessments, which may now or hereafter be levied or imposed, directly or indirectly, by a Governmental Authority, except Port Charges.
- 1.112 "Temporary Customer" shall have the meaning set forth in Section 6.2(a).
- 1.113 "Temporary Release" shall have the meaning set forth in Section 6.2(a).
- 1.114 "Temporary Release Inventory" means, at any given time, the quantity in MMBTUs that represents (a) the LNG received at the Receipt Point for Temporary Customer's account; and (b) Gas, whether or not such Gas is Regasified LNG or Gas derived or produced from sources other than Regasified LNG, held for Temporary Customer's account.
- 1.115 "Term" shall have the meaning set forth in Section 7.1.
- 1.116 "Transporter" means any Person who owns or operates an LNG Vessel.
- 1.117 "Unloading Window" means a forty-eight (48) hour window starting at 6:00 a.m., Central Time on a specified day and ending forty-eight (48) consecutive hours thereafter

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during which FLNG would make available berthing and LNG unloading services at the Freeport Facility to either Customer or one of the Other Customers.

## ARTICLE 2 SERVICES AND SCOPE

### 2.1 Services to be Provided by FLNG

During the Term and subject to the provisions of this Agreement, FLNG shall, acting as a Reasonable and Prudent Operator, make available the following services to Customer (such available services being herein referred to as the "Services") in the manner set forth in Article 3:

- (a) the berthing of LNG Vessels at the Freeport Facility;
- (b) the unloading and receipt of LNG from LNG Vessels at the Receipt Point;
- (c) the regasifying of LNG held in Storage;
- (d) Storage of Customer's Inventory;
- (e) the transportation and delivery of Gas in the Freeport Facility Pipeline to the Delivery Point (it being acknowledged that FLNG may, at its option, cause Gas to be redelivered to Customer from sources other than Regasified LNG); and
- (f) other activities directly related to performance by FLNG of the foregoing.

### 2.2 Additional Services

From time to time during the Term, the representatives of FLNG and Customer may supplement this Agreement in accordance with Section 26.1 to provide that FLNG will also make available services to Customer in addition to the Services set forth in Section 2.1 (including bunkering services).

### 2.3 Activities Outside Scope of this Agreement

For greater certainty, the Parties confirm that the following activities, inter alia, are not Services provided by FLNG to Customer and, therefore, such activities are outside of the scope of this Agreement:

- (a) harbor, mooring and escort services, including those relating to tugs, service boats, fire boats, and other escort vessels;
- (b) the construction, operation, ownership, maintenance, repair and removal of facilities downstream of the Delivery Point;

- (c) the transportation of Gas beyond the Delivery Point;

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- (d) the marketing of Gas and all activities related thereto; and
- (e) the removal, marketing and transportation of Liquids and all activities related thereto. For the avoidance of doubt, FLNG reserves the right to separate and/or extract Liquids from LNG upstream of the Delivery Point, provided that such separation does not result in Gas failing to meet the quality specifications at the Delivery Point required under Section 11.3.

ARTICLE 3  
SALE AND PURCHASE OF SERVICES

3.1 Services Quantity

- (a) Purchase and Sale of Services. During each Contract Year, FLNG shall make available to Customer, and Customer shall purchase and pay for (in respect of the Payment Period) an amount equal to the Fee, the Services Quantity.
- (b) Services Quantity. The quantity of Services (the "Services Quantity") FLNG shall make available to Customer during a Contract Year, and for which Customer shall purchase and pay for (in respect of the Payment Period) pursuant to Section 3.1(a), shall consist of the following:
- (i) Unloading of LNG. FLNG shall make the Freeport Facility available during Unloading Windows to allow berthing, unloading and receipt of Customer's LNG in a quantity up to the Maximum LNG Reception Quantity;
- (ii) Storage of Customers' Inventory. FLNG shall cause Customer's Inventory, net of Retainage, to be held temporarily in Storage until redelivered in accordance with Section 3.1(b)(iii) below; and
- (iii) Redelivery of Gas at Delivery Point. Subject to the provisions of this Agreement, including Sections 3.3(a), 3.3(b) and 3.3(c), FLNG shall, on a daily basis, make Gas from Customer's Inventory available to Customer at the Delivery Point at the rate nominated by Customer pursuant to Section 5.2(c), which nominated rate shall be no less than the \*\*\* and no more than the \*\*\*; provided, however, that FLNG shall, on a daily basis, make Gas in excess of the \*\*\* ("Peaking Gas") available to Customer at the Delivery Point in the quantities determined pursuant to Sections 5.2(a) and 5.2(b)(iv), but subject to the allocation under Section 3.3(d).
- (c) Expiration of Services Quantity. Notwithstanding any other term or condition of this Agreement but subject to Section 10.7, if Customer does not use any portion of the Services Quantity made available to Customer pursuant to the terms of this Agreement, including any portion of the Services Quantity not used in

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connection with a Temporary Release, Customer's right to such unused portion of the Services Quantity shall expire.

- (d) Excess Reception. Notwithstanding the provisions of Section 3.1(b)(i), FLNG may, in its Sole Opinion, allow berthing, unloading and receipt of Customer's LNG in quantities in excess of the Maximum LNG Reception Quantity. Any such reception by FLNG of quantities in excess of the Maximum LNG Reception Quantity shall be subject to the Parties' prior agreement upon a temporary increase in the \*\*\* for a specified period of time in order to allow Customer to receive redelivery of such excess quantities within a reasonable time. The berthing, unloading and receipt of such quantities in excess of the Maximum LNG Reception Quantity shall not be construed to alter or release the obligations of the Parties under this Agreement except that Customer shall pay the Excess Reception Fee for such excess quantities and except as otherwise provided in the preceding sentence.

3.2 Customer's Use of Services Quantity

Customer shall be entitled to use the Services Quantity in whole or in part by itself, or may contract with one or more third parties for a Temporary Release of such Services Quantity pursuant to the terms and conditions of Section 6.2.

### 3.3 Gas Redelivery

- (a) No Pre-Delivery Right. On any given day during a Contract Year, Customer shall not be entitled to receive quantities of Gas in excess of Customer's Inventory.
- (b) \*\*\*. For purposes of this Agreement, the term "\*\*\*\*" means the quotient of (i) the \*\*\* divided by (ii) \*\*\*.
- (c) \*\*\*. For purposes of this Agreement, the term "\*\*\*\*" means, for any day in which Customer is nominating pursuant to Section 5.2(c) (a "Nomination Day"), the lesser of:
- (i) the quotient of (a) the sum of (x) \*\*\*, plus (y) \*\*\*, divided by (b) the number of days from and including the Nomination Day until the first day of Customer's next Scheduled Unloading Window; or
  - (ii) the "Alternate Minimum Gas Redelivery Amount" as notified pursuant to Section 5.2(a), such amount being the quotient of:
    - a. the sum of: (x) \*\*\* plus, (y) \*\*\*; plus (z) the aggregate of the following, calculated for each Cargo expected to arrive in such month at the Freeport Facility for Customer's account after the twentieth (20/th/) day of the relevant month: (A) the quantity in MMBTUs of \*\*\* divided by (B) the number of \*\*\*, and multiplied by (C) the number of \*\*\*, from and including the last day of the

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applicable Scheduled Unloading Window to and including the \*\*\*; divided by

b. \*\*\*.

provided, however, if the Expected Receipt Quantity for a particular Cargo scheduled to be delivered to the Freeport Facility in the following month exceeds \*\*\* MMBTUs, then FLNG shall have the right, in its notice under Section 5.2(a), to require \*\*\* to allow Other Customers to unload at the Freeport Facility their respective LNG contractual quantity on a \*\*\* over the Contract Year.

- (d) Peaking Gas. FLNG shall give due consideration to the notices provided to it by Customer and Other Customers electing to nominate quantities of Peaking Gas (the "Nominees") pursuant to Sections 5.2(c) and 5.2(d) and shall allocate such Peaking Gas among the Nominees as follows:
- (i) First, to each Nominee in an amount not to exceed the lesser of (a) the quantity of Peaking Gas nominated by such Nominee, and (b) the product of (x) the quantity of \*\*\*, multiplied by (y) a fraction, the numerator of which is such Nominee's \*\*\*, and the denominator of which is the aggregate \*\*\* of all Nominees;
  - (ii) Second, if any excess quantity of Peaking Gas remains available, then to each Nominee with unfulfilled nominations for such Peaking Gas in an amount not to exceed the lesser of (a) the quantity of Peaking Gas nominated by such Nominee and not received under the prior allocation, and (b) the product of (x) the excess quantity of \*\*\* multiplied by (y) a fraction, the numerator of which is the Nominee's \*\*\*, and the denominator of which is the aggregate \*\*\* of all Nominees with unfulfilled nominations for such \*\*\*; and
  - (iii) Third, if any excess quantity of Peaking Gas remains available, then by repeating the allocation in Section 3.3(d) (ii) until the entire quantity of Peaking Gas made available by FLNG has been allocated or all nominations for such Peaking Gas have been filled.

### 3.4 Failure to Take Delivery of Gas at Delivery Point

If on any day Customer fails to take redelivery of any Gas at the Delivery Point at the rate nominated by Customer pursuant to Article 5 and such failure is for reasons other than the inability of a Downstream Pipeline to take delivery of Customer's Gas, such inability being not reasonably within the control of Customer, then FLNG may, at its option, take title to same free and clear of any Claims, and sell or otherwise dispose of such Customer's Inventory using good faith efforts to obtain the best available prices and to minimize costs. Customer shall indemnify, defend and hold harmless FLNG, its Affiliates, and their respective directors, officers, members and employees, for the actual

and reasonable costs incurred by FLNG as a result of such sale or other disposition by FLNG. FLNG shall credit to Customer's account the net proceeds from the sale or other disposition of Customer's Inventory to which it takes title hereunder, minus transportation costs, third party charges, and an administrative fee of U.S. \$0.05 per MMBTU; provided, however, that if the amount of the credit exceeds the amount due to FLNG under the next monthly statement, then FLNG agrees to pay any such excess amount to Customer within five (5) Business Days after delivery of such monthly statement.

### 3.5 Freeport Services Manual

Acting as a Reasonable and Prudent Operator, FLNG shall develop and maintain a single services manual applicable to Customer and all Other Customers which contains detailed implementation procedures necessary for performance of this Agreement and agreements with Other Customers with regard to the matters set forth in Exhibit B attached hereto (but excluding the matters governed by the Freeport Facility Marine Operations Manual). In developing such a manual, FLNG shall provide Customer with a preliminary draft of the same (the "Preliminary Services Manual"). If Customer desires to consult with FLNG regarding the contents of the Preliminary Services Manual, Customer shall, no later than fifteen (15) days from delivery of said manual by FLNG, request to meet with FLNG by providing notice thereof to FLNG, and FLNG shall, no later than thirty (30) days after receipt of such notice, meet with Customer to discuss said manual. If (a) Customer does not submit the foregoing notice to FLNG on a timely basis or (b) Customer and FLNG meet pursuant to such a notice and are able during such meeting to agree upon revisions to the draft, then such draft, as so revised (and as amended from time to time), shall constitute the "Freeport Services Manual". If Customer and FLNG meet pursuant to the foregoing notice and are unable during such meeting to agree upon revisions to the Preliminary Services Manual, then FLNG shall determine, while using its reasonable efforts to accommodate Customer's views, the Freeport Services Manual. In the event FLNG intends to amend the Freeport Services Manual, then FLNG shall follow the procedure set forth above in relation to the Preliminary Services Manual. FLNG shall deliver to Customer and all Other Customers a copy of the Freeport Services Manual and any amendments thereto promptly after they have been finalized or amended, as the case may be. Customer shall comply, and shall cause its Scheduling Representative to comply, with such Freeport Services Manual in all respects. FLNG will undertake to develop a Freeport Services Manual that is consistent with this Agreement; however, in the event of a conflict between the terms of this Agreement and the Freeport Services Manual, the terms of this Agreement shall control.

## ARTICLE 4 COMPENSATION FOR SERVICES

### 4.1 Fee

Customer shall, as full compensation for the performance by FLNG of its obligations under this Agreement (including the provision of Peaking Gas), bear the Retainage and

pay to FLNG the sum of the following components (such sum collectively referred to as the "Fee") in respect of the period from the later of the Commercial Start Date or Substantial Completion until the end of the Term (the "Payment Period"):

- (a) Reservation Fee.
  - (i) A monthly reservation fee (the "Reservation Fee") consisting of the following:
    - a. \*\*\*
    - b. A monthly amount (the "FLNG Component"), calculated as the product of:
      - (x) the quotient of the Maximum LNG Reception Quantity divided by twelve (12); multiplied by
      - (y) U.S. \$0.05;
    - c. A monthly installment in relation to certain fixed operating costs of FLNG (the "FOC Installment") that is subject to adjustment in accordance with a yearly reconciliation (the "FOC Reconciliation"), wherein the FOC Installment and the FOC Reconciliation are calculated as

follows:

- (x) The FOC Installment shall equal the product of the FOC Ratio multiplied by the Budgeted FOC for the following month; and
- (y) The FOC Reconciliation shall equal the positive or negative difference between (i) the product of the FOC Ratio multiplied by the Actual FOC attributable to the prior year and (ii) the sum of all FOC Installments attributable to and paid for the prior year;

d. A monthly installment (the "Crest Installment") that is subject to adjustment in accordance with a yearly reconciliation (the "Crest Reconciliation"), wherein the Crest Installment and the Crest Reconciliation are calculated as follows:

- (x) The Crest Installment shall equal the product of the C Ratio multiplied by the Crest Payment; and
- (y) The Crest Reconciliation shall equal the positive or negative difference between (i) the product of (a) the actual amount paid by FLT to Crest Investment Company under the Crest Contract and attributable to the prior year multiplied by (b) the C Ratio and (ii) the sum of all Crest Installments attributable and paid for the prior year;

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e. A monthly payment equal to all Awards incurred in the prior month (the "Awards Installment"), but excluding Awards under LNG terminalling services agreements with Other Customers;

(ii) The \*\*\*, the FLNG Component, the FOC Installment and the Crest Installment shall be payable monthly in advance. The Awards Installment shall be payable monthly in arrears. The FOC Reconciliation and the Crest Reconciliation shall be payable annually in arrears in March of each year;

(b) Incremental Costs. The following incremental costs (the "Incremental Costs") payable in arrears:

(i) the actual electric power cost associated with the Services provided hereunder to Customer, calculated as an amount equal to the product of (x) all electric power costs incurred at the Freeport Facility and all Gas Storage Facilities during the applicable period times (y) a fraction, the numerator of which is Customer's LNG received at the Freeport Facility during such period and the denominator of which is the quantity of LNG received at the Freeport Facility during such period for the account of Customer and all Other Customers (provided, however, that FLNG shall use reasonable efforts to (x) minimize all such electric power costs, and (y) obtain the best commercial rates for electric services available at the location of the Freeport Facility given the intended use of the Freeport Facility and its twenty-four (24) hour operation);

(ii) the actual amount of all reasonable incremental direct costs, if any, incurred by FLNG for berthing an LNG Vessel after sunset at the Freeport Facility;

(iii) the actual amount of all reasonable incremental direct costs, if any, incurred by FLNG when an LNG Vessel arrives more than three (3) hours after the ETA set forth in the Third Notice delivered pursuant to Section 9.4(c) (iii), provided that if such a delay is directly caused by a Governmental Authority or a Force Majeure, then fifty percent (50%) of such reasonable incremental direct costs; and

(iv) excess berth fees, if any, under Section 9.9(b) (iii); and

(c) Excess Reception Fee. An excess reception fee (the "Excess Reception Fee") if, in any Contract Year, FLNG receives quantities of LNG for Customer's account in excess of the Maximum LNG Reception Quantity, payable in arrears upon Customer exceeding the Maximum LNG Reception Quantity. The Excess Reception Fee shall equal an amount equal to U.S. \$\*\*\* per MMBTU received by FLNG in excess of the Maximum LNG Reception Quantity.

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#### 4.2 Retainage

For purposes of this Agreement, the term "Retainage" means the aggregate of (a) the product of (i) the actual amount of all LNG used as fuel for the Freeport Facility multiplied by (ii) a fraction, the numerator of which is Customer Actual Capacity and the denominator of which is Aggregate Actual Capacity, and (b) Customer's allocable portion of all other unavoidable actual losses in Gas and LNG inventory at the Freeport Facility in connection with performance of the Services, including losses from Gas Storage, such allocable portion to be based on the ratio that the Customer Actual Capacity for a Contract Year bears to the Aggregate Actual Capacity for such Contract Year.

#### 4.3 Services Unavailability

If some or all of the Services are unavailable to Customer on any day (or portion of a day) during the Term as a result of (a) an unexcused failure of FLNG, (b) Force Majeure, or (c) an unscheduled curtailment or temporary discontinuation of Services pursuant to Section 18.2 (collectively a "Services Unavailability"), the Parties agree that the Reservation Fee shall \*\*\*. For the avoidance of doubt, the foregoing is without prejudice to the fact that Customer shall not be obligated to pay the Reservation Fee other than in respect of the Payment Period.

#### 4.4 New Regulatory Costs or Taxes

If, subsequent to the Effective Date:

- (a) FERC or any other Governmental Authority as a result of change in law or regulation requires FLNG to incur any material cost not originally foreseen at the time of this Agreement ("New Regulatory Costs"); or
- (b) any Governmental Authority imposes any new material Taxes on the Services or increases materially the rate of existing Taxes on the Services ("New Taxes") other than Taxes on the capital revenue or income derived by FLNG;

then the Parties shall meet with a view to agreeing on amendments to this Agreement with respect to the equitable allocation of such New Regulatory Costs and/or New Taxes by and among the Parties and Other Customers. If the Parties fail to reach agreement within ninety (90) days of the commencement of such negotiations, either Party shall have the right within thirty (30) days thereafter to request arbitration pursuant to Article 22 to allocate the effect of New Regulatory Costs or New Taxes between the Parties and Other Customers. The arbitrators shall determine a method by which the effects thereof may be equitably allocated among the Parties and the Other Customers. The arbitrators shall be authorized to modify this Agreement in accordance with their resolution of such allocation. The terms "equitable allocation" or "equitably allocated" under this Section 4.4 shall take into account the timing of when FLNG incurs New Regulatory Costs and/or New Taxes, the portions of LNG terminalling services contracted by Customer and by Other Customers with FLNG, the remaining duration of the Term and of the term of the

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terminal use agreement with each Other Customer, and the useful life of any capital items installed or upgraded as a result of the event that gave rise to the New Regulatory Cost or New Tax.

#### 4.5 Services Provided to Other Customers

- (a) Identity of Other Customers. FLNG shall from time to time inform Customer of the identity of all Other Customers who have signed with FLNG terminal use agreements having a term of at least \*\*\* years.
- (b) No Representation or Warranty. Customer acknowledges that (a) the compensation paid by Customer from time to time for Services may be less than, or more than, the price paid by Other Customers for the same or similar LNG terminalling services, and (b) FLNG makes no representations or warranties to Customer in this regard.
- (c) Terminal Use Agreements with Other Customers. In its negotiation of terminal use agreements with Other Customers, FLNG shall use best efforts to include shipping, scheduling and operational provisions that are consistent in all material respects with the provisions in Article 5, Article 8, Article 9, Article 10 and Article 11 herein.

#### 4.6 Relief from Certain Payments for Annual Shortfall

- (a) Relief from Payment for Annual Shortfall. If Customer's LNG for a Contract Year is less than the Maximum LNG Reception Quantity for such

Contract Year, the amounts paid by Customer under Section 4.1(a)(i) shall be adjusted (pursuant to the provisions of Sections 4.6(b) and 4.6(c)) to relieve Customer from paying U.S. \$0.05 on any Annual Shortfall. For purposes of this Section 4.6, an "Annual Shortfall" shall mean the positive quantity in MMBTUs resulting after applying the following formula:

$$\text{Annual Shortfall} = \text{Maximum LNG Reception Amount for Contract Year} - \text{Available LNG for the Contract Year}$$

- (b) Monthly Reduction of FLNG Component. Notwithstanding Section 4.6(a) but subject to Section 4.6(c), Customer shall be entitled to a reduction in the FLNG Component for any month if Customer delivers a certificate signed by an authorized representative of Customer confirming that a Monthly Shortfall occurred in the immediately prior month (the "QS Month"). For purposes of this Section 4.6(b), a "Monthly Shortfall" shall mean the positive quantity in MMBTUs resulting after applying the following formula:

$$\text{Monthly Shortfall} = (\text{Maximum LNG Reception Amount for Contract Year} / 12) - \text{Available LNG for the QS Month}$$

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Upon timely receipt of the aforementioned certificate, the FLNG Component for the QS Month shall be reduced by the product of the Monthly Shortfall multiplied by U.S.\$ 0.05. Such reduction in the FLNG Component shall be reflected as a credit to Customer in the monthly statement issued under Section 12.1 as follows: (i) if such certificate is received on or before the fifth (5/th/) day of the month immediately following the QS Month, the credit to Customer for such difference shall be reflected in the next monthly statement issued by FLNG; or (ii) if such certificate is received after the fifth (5/th/) day of the month immediately following the QS Month, the credit to Customer for such difference shall be reflected in the monthly statement issued by FLNG in the month following the month in which the certificate was received, provided that such certificate was received prior to thirty (30) days the end of the Contract Year.

- (c) Annual Reconciliation. If one or more reductions in the FLNG Component occurred during the Contract Year under Section 4.6(b), then within sixty (60) days after the end of the Contract Year, Customer shall deliver to FLNG a detailed statement, confirmed by an independent auditing firm appointed by Customer, of the amount of the Annual Shortfall. In the event Customer is unable within a reasonable time to cause an independent auditing firm to issue such a confirmation for a commercially reasonable price, then Customer shall not be required to obtain such confirmation but shall make sufficient information available to FLNG to enable FLNG to determine the accuracy of such detailed statement. The sum of all FLNG Components for such prior Contract Year shall be adjusted via a reconciliation (the "Annual Shortfall Reconciliation"), which shall equal the positive or negative difference between (i) the sum of all FLNG Components for such Contract Year (as adjusted pursuant to Section 4.6(b)) and (ii) the sum of all FLNG Components for such Contract Year which should have been payable as a result of the Annual Shortfall confirmed by the independent auditing firm. The Annual Shortfall Reconciliation shall be reflected as a charge or credit, as the case may be, to Customer in the monthly statement issued by FLNG under Section 12.1.

- (d) Available LNG. For purposes of this Section 4.6, "Available LNG" means \*\*\*

(i) \*\*\*

(ii) \*\*\*

\*\*\*. For the purposes of this Section 4.6, quantities of LNG attributable to a Temporary Release or to an assignment of a portion of the Services Quantity under Section 19.2 shall be deemed to be Available LNG. Notwithstanding this Section 4.6(d), Available LNG shall be deemed to equal the Maximum LNG Reception Amount for each Contract Year during the Build-Up Period. For the avoidance of doubt, the above determination of Available LNG shall at all times include Customer's LNG.

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## 5.1 Customer LNG Receipt Schedule

- (a) FLNG Deliverables. Not later than one hundred twenty (120) days prior to the beginning of each Scheduling Period, FLNG shall provide to the Scheduling Representative a non-binding written assessment of the dates of any planned maintenance to or modifications of the Freeport Facility for such Scheduling Period and the expected impact of such activities on the availability of Services. FLNG shall use reasonable efforts to limit the number of days of any planned maintenance to or modifications of the Freeport Facility.
- (b) Notice from Scheduling Representative. Not later than one hundred five (105) days prior to the beginning of each Scheduling Period, the Scheduling Representative shall notify FLNG of the following:
- (i) a programming schedule for the unloading of (x) up to the Maximum LNG Reception Quantity over the course of the next Contract Year as well as (y) up to \*\*\* percent (\*\*\*) of the Maximum LNG Reception Quantity for the next succeeding Contract Year (such percentage to be adjusted to reflect any partial Contract Year) over the course of the last three months of the Scheduling Period, which schedule shall specify, for each Unloading Window, the proposed arrival date (the "Arrival Date") of the applicable LNG Vessel and which Arrival Date must (x) result in a delivery pattern whereby deliveries in any given month do not materially exceed \*\*\*, (y) the result in deliveries in any given month \*\*\*, and (z) take into consideration the planned maintenance and modification dates furnished to Customer by FLNG as set forth in Section 5.1(a); and
- (ii) for each Arrival Date proposed pursuant to Section 5.1(b)(i), the name of the LNG Vessel expected to deliver LNG to the Freeport Facility (if the identity of the LNG Vessel is known to Customer at such time), the Expected Receipt Quantity, and the anticipated quality (expressed in terms of Gross Heating Value) of the LNG to be delivered at the Receipt Point during the Scheduling Period.
- (c) Notices from Other Customers. Customer acknowledges that Other Customers will submit similar notices to FLNG regarding the matters provided for in Section 5.1(b)
- (d) Preliminary Receipt Schedule. \*\*\* shall take into consideration the notices that it receives from the Scheduling Representative and the Other Customers and, not later than ninety (90) days prior to the beginning of each Scheduling Period, \*\*\* shall issue to \*\*\* via the \*\*\* (or via an alternative \*\*\* if the \*\*\* is unavailable) a preliminary receipt schedule for such Scheduling Period (the "\*\*\*

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Preliminary Receipt Schedule") In issuing a \*\*\* Preliminary Receipt Schedule for a particular Scheduling Period, \*\*\* shall not alter, absent \*\*\* request, any Scheduled Unloading Window allocated to \*\*\* for the last \*\*\* months of the Customer LNG Receipt Schedule for the prior Scheduling Period. Customer may propose to FLNG to change any such Scheduled Unloading Window, and FLNG agrees to give due consideration to, and use reasonable efforts to accommodate, such change. The \*\*\* Preliminary Receipt Schedule shall set forth (i) \*\*\* and (ii) \*\*\* for purposes of changes pursuant to Section 5.1(h).

- (e) Other \*\*\* Preliminary Receipt Schedules and Mutual Cooperation. \*\*\* acknowledges that \*\*\* will issue to \*\*\* via the \*\*\* a preliminary receipt schedule similar to the \*\*\* Preliminary Receipt Schedule described in Section 5.1(d), but customized for each such \*\*\* ("\*\*\* Preliminary Receipt Schedules"). \*\*\* also acknowledges that conflicts will occur in the preparation of the Preliminary Receipt Schedule and \*\*\* Preliminary Receipt Schedules because of the joint use of the Freeport Facility among Customer and Other Customers. Accordingly, the Parties agree to cooperate with each other to resolve any such conflict.
- (f) Consultation; Customer LNG Receipt Schedule. If the Scheduling Representative desires to consult with \*\*\* regarding the contents of the \*\*\* Preliminary Receipt Schedule, the Scheduling Representative shall, no later than fifteen (15) days from the issuance of the \*\*\* Preliminary Receipt Schedule, request to meet with \*\*\* by providing notice thereof (the "Consultation Notice") to \*\*\*, and \*\*\* shall, no later than fifteen (15) days after receipt of the Consultation Notice, meet with the Scheduling Representative to discuss the \*\*\* Preliminary Receipt Schedule. If (i) the Scheduling Representative does not submit a Consultation Notice to \*\*\* on a timely basis or (ii) the Scheduling Representative and \*\*\* meet pursuant to a Consultation Notice and are able during such meeting to agree upon revisions to the \*\*\*



Preliminary Receipt Schedule, then such \*\*\* Preliminary Receipt Schedule, as so revised (and as updated from time to time for such Scheduling Period by \*\*\* via the \*\*\*, such updates to be made in accordance with this Agreement and the Freeport Services Manual), shall constitute the "Customer LNG Receipt Schedule". If the Scheduling Representative and \*\*\* meet pursuant to a Consultation Notice and are unable during such meeting to agree upon revisions to the \*\*\* Preliminary Receipt Schedule, then \*\*\* shall determine, while using its reasonable efforts to accommodate Customer's views, the Customer LNG Receipt Schedule with the understanding that, for purposes of such determination, no Major Customer shall be given any preference in scheduling over any other Major Customer but Major Customers shall be given preferential consideration in scheduling over Non-Major Customers. FLNG shall issue via the \*\*\* (or via an alternative \*\*\* if the \*\*\* is unavailable) the Customer LNG Receipt Schedule no later than sixty (60) days prior to the first day of the Scheduling Period. The Customer LNG Receipt Schedule shall set forth (i) \*\*\* and (ii) \*\*\*.

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- (g) Other Customer LNG Receipt Schedules. Customer acknowledges that FLNG shall issue to each Other Customer a final receipt schedule similar to the Customer LNG Receipt Schedule described in Section 5.1(f) but customized for each such Other Customer (such schedules referred to as "Other Customer LNG Receipt Schedules").
- (h) Adjustment to Scheduling Periods. Upon written request by the Customer, FLNG shall use reasonable efforts to modify the time periods expressly set forth in Sections 5.1(a), 5.1(b), 5.1(d), and 5.1(f) to allow Customer to interface these periods with corresponding time periods for scheduling agreed upon by Customer and its LNG Suppliers. For purposes of this Section 5.1(h), FLNG shall be deemed to have used reasonable efforts if FLNG rejects Customer's request because it determines, acting as a Reasonable and Prudent Operator, that any such modification would infringe on the rights of Other Customers.
- (i) Customer Changes to Customer LNG Receipt Schedule. The Parties agree as follows:
- (i) Subject to the terms of this Section 5.1(i), at any time following the issuance of the Customer LNG Receipt Schedule, the Scheduling Representative may submit to FLNG a written request to change a Scheduled Unloading Window to an Unloading Window that is not presently allocated to Customer or Other Customers and which FLNG is making available to Customer and Other Customers under the Customer LNG Receipt Schedule (such request to change, an "Customer Open Window Request"). Customer understands that (x) Other Customers shall also have the right to submit to FLNG similar scheduling requests (each an "Other Customer Open Window Request"), (y) \*\*\* and (z) \*\*\* as soon as possible but not later than 5:00 p.m., Central Time of the Business Day following the date of receipt by FLNG of the applicable Open Window Request. Upon accepting an Open Window Request, FLNG shall notify Customer and Other Customers thereof via the \*\*\* (or via an alternative electronic means of transmitting written communications if the \*\*\* is unavailable). Notwithstanding anything herein to the contrary, Customer shall use its reasonable efforts to keep to a minimum the number of Customer Open Window Requests it submits to FLNG.
- (ii) Subject to the terms of this Section 5.1(i), at any time following the issuance of the Customer LNG Receipt Schedule, the Scheduling Representative may submit to FLNG a written request to change a Scheduled Unloading Window to a forty-eight (48) hour period that is unavailable to Customer under the Customer LNG Receipt Schedule (such change, a "Change Request"). Customer acknowledges that any Change Request will (x) \*\*\* and (y) \*\*\*. Accordingly, FLNG shall \*\*\*, any Change Request and shall notify Customer thereof via the \*\*\* (or via an alternative electronic means of transmitting written communications if the \*\*\* is unavailable) within three (3) Business Days of its receipt of a

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Change Request. Notwithstanding anything herein to the contrary, Customer shall use \*\*\* to keep to a minimum the number of Change Requests it submits to FLNG, and FLNG shall use its reasonable efforts to accommodate Customer's Change Requests.

- (j) Other Modifications Due to Services Availability. If, for any Scheduled Unloading Window, Customer is unable, due to a Services Unavailability, to berth and unload an LNG Vessel, each affected

Scheduled Unloading Window allocated to Customer during such period shall be \*\*\*, to the extent affected. Except as otherwise provided in Section 5.1(i), the Customer LNG Receipt Schedule shall be considered firm and shall not be subject to change by FLNG; provided, however, that FLNG \*\*\*, with preference to Major Customers, if such Services Unavailability caused the \*\*\* of one or more Scheduled Unloading Windows allocated to Customer and/or Other Customers, in order to maximize efficient usage of the Freeport Facility to assist Customer and Other Customers to unload quantities of LNG which would otherwise have been unloaded at the Freeport Facility during such cancelled Scheduled Unloading Windows. Moreover, in the event of a Services Unavailability, FLNG shall make reasonable efforts to \*\*\* of redelivery of Gas for Customer and Other Customers to maximize efficient usage of the Freeport Facility to assist Customer and Other Customers to \*\*\* which would otherwise have been received at the Delivery Point during such Services Unavailability.

## 5.2 Gas Delivery Procedure

- (a) Preliminary Nomination Schedule. Not later than the fifteenth (15<sup>th</sup>/) day of each month, commencing the month immediately prior to the Commercial Start Date, FLNG shall provide to the Scheduling Representative a nomination schedule (the "Preliminary Nomination Schedule") that sets forth, for each day of the ensuing month, the following:

- (i) the \*\*\*; and
- (ii) all \*\*\* which, at the time of notification of the Preliminary Nomination Schedule, FLNG acting as a Reasonable and Prudent Operator \*\*\* from the Freeport Facility; provided, however, that FLNG shall not be obligated to offer or deliver \*\*\* to Customer or Other Customers to the extent that a Reasonable and Prudent Operator would not obligate itself to do so under similar circumstances and conditions.

For the avoidance of doubt, FLNG shall be obligated to make available to Customer the quantities of \*\*\* notified in the Preliminary Nomination Schedule, as allocated pursuant to Section \*\*\*.

- (b) Daily Records. Commencing on the Commercial Start Date, FLNG shall, on each Business Day by the time specified in the Freeport Services Manual, post on

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the \*\*\* for access by Customer certain daily records (the "Daily Records"), including the following:

- (i) Customer's Inventory held as of 11:59 p.m., Central Time on the day preceding the posting of the Daily Records;
- (ii) the estimated quantity of Customer's Inventory expected to be held in Storage as of 11:59 p.m., Central Time on the Business Day on which the Daily Records are posted, taking into account expected receipts and deliveries during such Business Day;
- (iii) if applicable, the estimated quantity of Customer's Inventory expected to be held in Storage as of 11:59 p.m., Central Time on any non-Business Day occurring between the Business Day on which the Daily Records are posted and the next Business Day, taking into account expected receipts and deliveries during such Business Days; and
- (iv) either (x) the total quantity of \*\*\*, if any, which FLNG acting as a Reasonable and Prudent Operator has determined on such Business Day will be \*\*\* on the Business Day following the posting of the Daily Records or (y) if such posting falls on a Business Day that precedes any non-Business Day, the total quantity of \*\*\*, if any, which FLNG acting as a Reasonable and Prudent Operator has determined on such Business Day \*\*\*; provided, however, that FLNG shall not be obligated to offer or deliver \*\*\* to Customer or Other Customers to the extent that a Reasonable and Prudent Operator would not obligate itself to do so under similar circumstances and conditions; provided, however, that the total quantity posted on the Daily Records may be no less than those provided pursuant to Section 5.2(a) (ii).

- (c) Gas Nomination. Commencing on the Commercial Start Date, the Scheduling Representative shall, on each Business Day by the time specified in the Freeport Services Manual, nominate the quantities of Gas (including Peaking Gas, if available) that Customer desires to be delivered to it at the Delivery Point on the next Business Day and any intervening days that are not Business Days (such next day(s))

hereinafter referred to as a "Delivery Date") by providing notice thereof (the "Nomination Notice") to FLNG. Subject to Section 3.3(a), the quantities nominated by the Scheduling Representative in a Nomination Notice shall in no event be less than the \*\*\* nor more than the \*\*\*, except in the case of nominations of \*\*\* where the Scheduling Representative must, in the Nomination Notice, request the \*\*\* as well as the quantities of \*\*\* requested by Customer for delivery. In the event FLNG does not receive a Nomination Notice on a timely basis, the Scheduling Representative shall be deemed to have nominated the \*\*\*.

- (d) Variations in Daily Redelivery Rates. FLNG shall use reasonable efforts to designate in the Freeport Services Manual certain blocks of time during a day on which Customer and Other Customers may elect to vary the rates by which FLNG

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is to redeliver Gas nominated for a given day without exceeding the total quantity of Gas nominated. If FLNG chooses to designate such blocks of time and Customer desires to vary its rates, Customer shall, in a Nomination Notice, set forth the specific quantities of Gas to be redelivered by FLNG during such blocks.

- (e) Other Customer Nomination Notices. Customer acknowledges that Other Customers shall provide to FLNG notices similar to the Nomination Notice described in Section 5.2(c).
- (f) Allocation of \*\*\*; \*\*\* Notice. Customer understands that if quantities of \*\*\* are made available to Customer and Other Customers pursuant to Sections 5.2(a) and 5.2(iv), each of Customer and the Other Customers shall have the option to nominate all or any portion of such quantities through the notices provided for in Sections 5.2(c) and 5.2(d). FLNG shall allocate such \*\*\* as provided in Section \*\*\* and, for any given day, shall notify Customer of the quantities of \*\*\* allocated to Customer within the time specified in the Freeport Services Manual.

### 5.3 Standard

FLNG shall act as a Reasonable and Prudent Operator in performing the scheduling activities required by this Article 5.

### 5.4 Scheduling Representative

By no later than one month prior to the Commercial Start Date, Customer shall appoint an individual to act as Scheduling Representative for the purposes of this Article 5; provided, however, that Customer shall have the right to change the identity of the Scheduling Representative at any time by notice to FLNG. Unless otherwise stated herein, Customer hereby authorizes the Scheduling Representative to do and perform any and all acts for and on behalf of Customer with regard to scheduling matters provided for in this Article 5.

### 5.5 Scheduling Coordination Among Customer and Other Customers

Customer shall have the right to request FLNG to arrange a joint meeting with Other Customers with respect to any matter in relation to the performance of this Article 5. FLNG shall use reasonable efforts to organize such a meeting, provided that FLNG may elect to include additional Other Customers if \*\*\*. If the Other Customers invited by FLNG agree to participate in such a joint meeting between Customer, Other Customers and FLNG, the joint meeting shall be held as soon as possible. Unless otherwise agreed, any such joint meeting shall be held in Houston, Texas or by telephone, as appropriate.

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## ARTICLE 6 RELEASE OF SERVICES

### 6.1 General

Customer may assign (a) all or a part of the Services Quantity as a Temporary Release in accordance with Section 6.2, or (b) all or a part of the Services Quantity in accordance with Article 19.

### 6.2 Temporary Release

- (a) General. Customer may from time to time assign part of the Services Quantity in writing to a third party (a "Temporary Customer") on a temporary basis for not more than the remainder of the then existing Scheduling Period (each such partial assignment referred to herein as a "Temporary Release"). Customer shall have the right to

have ongoing at any given time up to \*\*\* Temporary Releases for each  
\*\*\* MMBTUs of Maximum LNG Reception Quantity.

- (b) Conditions. A Temporary Release shall be subject to the following conditions:
- (i) Notice and Consent. No Temporary Release shall be permitted, or shall become effective, unless and until:
    - a. The proposed Temporary Release is consistent with the terms and conditions of this Agreement;
    - b. The Services Quantity that Customer seeks to assign by way of a proposed Temporary Release includes only Scheduled Unloading Windows under the Customer LNG Receipt Schedule;
    - c. Customer has (x) delivered to FLNG a written notice in the form set forth in the Freeport Services Manual (a "Release Notice") disclosing in sufficient detail the terms and conditions of the proposed Temporary Release relevant to the Services Quantity for FLNG to be able to carry out its obligations under this Article 6, including the proposed effective date and expiration date of the Temporary Release but excluding any sensitive pricing information related thereto, and (y) furnished to FLNG all information reasonably requested by FLNG with respect to such Temporary Release; and
    - d. Except as otherwise provided below, FLNG has consented to the Temporary Release by executing the Release Notice, such consent not to be unreasonably withheld or delayed; provided, however, that a Temporary Release to an Affiliate of Customer or an LNG Supply Project that complies in all respects with the  
  
provisions of Sections 6.2(b) (i)a through 6.2(b) (i)c shall not require the consent of FLNG.
  - (ii) Temporary Releases for Subsequent Scheduling Periods. Notwithstanding the requirement in Section 6.2(a) that a proposed Temporary Release relate to the then existing Scheduling Period, in order to assist Customer in its long-term business planning, Customer shall be entitled to submit to FLNG from time to time Temporary Releases for subsequent Scheduling Periods. Subject to the same consent rights (if any) set forth in Section Section 6.2(b) (i)d, FLNG shall execute a Release Notice for such Temporary Release for a subsequent Scheduling Period.
  - (iii) Authorization. Following the execution by FLNG of the Release Notice, FLNG shall be authorized to perform the specified portion of the Services Quantity for Temporary Customer, subject to the provisions of this Agreement. In relation to a Temporary Release, Temporary Customer shall be fully authorized to act on behalf of Customer, and FLNG shall be entitled to rely on the nominations, notices and other submissions communicated to FLNG by the Temporary Customer in relation to the Temporary Release as if such nominations, notices and other submissions had been made by Customer itself. In the event of a conflict between the terms of the nominations, notices and other submissions issued by the Temporary Customer in relation to the Temporary Release and those issued by Customer, the terms issued by Customer shall control.
  - (iv) No Effect on \*\*\*. For the avoidance of doubt, a Temporary Release shall in no event increase the \*\*\*.
  - (v) Performance. Commencing on the Release Date and continuing through the expiration or termination of the Temporary Release,
    - (i) FLNG shall perform the Services assigned to Temporary Customer under the Temporary Release, and
    - (ii) Customer shall cause Temporary Customer to perform, for the benefit of FLNG, all requirements and obligations of Customer under this Agreement in relation to the Temporary Release.
  - (vi) Expiration of Temporary Release. Except as otherwise provided herein, FLNG shall render Services to Temporary Customer for the period set forth in the Temporary Release (such period herein referred to as the "Temporary Term"). Customer shall ensure that the Temporary Release Inventory is reduced to zero (0) MMBTUs as of the last day of the Temporary Term. In the event that the Temporary Release Inventory is not reduced to zero (0) MMBTU on last day of the Temporary Term, the Temporary Release Inventory remaining thereafter shall be deemed solely as

Customer's Inventory.

- (vii) Remedial Actions. In the event Temporary Customer's actions are inconsistent with the requirements of this Agreement, FLNG shall provide

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written notice thereof to Customer. Customer shall (x) inform FLNG within five (5) days of its receipt of FLNG's notice of the remedial actions it intends to take to cause Temporary Customer's actions to be consistent with the requirements of this Agreement, and (y) cause Temporary Customer to be in compliance herewith within thirty (30) days after delivery of FLNG's notice. In the event Customer is unable to cause Temporary Customer to be in compliance herewith, FLNG may terminate the Temporary Release by written notice to Customer.

- (viii) Customer Responsibility. Customer shall ensure that each Temporary Release is performed in a manner consistent with the Release Notice and the terms and provisions of this Agreement. Notwithstanding anything in this Article 6 to the contrary, FLNG shall invoice Customer in accordance with the provisions of Section 12.1 for the Fee attributable to a Temporary Release, and Customer shall pay, or cause to be paid, the Fee attributable to a Temporary Release. No Temporary Release or anything in this Section 6.2 shall relieve Customer of any responsibility or liability under this Agreement. Customer shall remain liable to FLNG for all obligations of Customer and Temporary Customer in connection with any Temporary Release, and in this regard Customer shall be fully responsible to FLNG for the performance of the Temporary Release.
- (ix) No Third Party Beneficiary. A Temporary Customer is not intended to be, and shall not be construed to be, a third-party beneficiary of this Agreement, nor shall a Temporary Release, or anything contained in this Agreement, create any contractual or quasi-contractual relationship or obligation between any Temporary Customer and FLNG.

ARTICLE 7  
TERM

7.1 Term

- (a) Initial Term. Subject to the provisions of this Agreement, the term of this Agreement (the "Term") shall consist of the Initial Term and, if applicable, any Extension Term. The initial term of this Agreement (the "Initial Term") shall commence on the later of the Effective Date or the Commercial Start Date, and shall continue thereafter until February 28, 2033 (the day on which the initial term of the Freeport Facility Lease expires).
- (b) Extensions. Except as otherwise provided herein, at the expiration of the Initial Term, Customer shall have the right to up to six (6) additional ten (10) year extension terms (each an "Extension Term"), the first of which shall commence on March 1, 2033 and continue until February 28, 2043. If Customer desires to extend this Agreement by any Extension Term, Customer must notify FLNG's of its good faith desire to elect the applicable Extension Term at least four (4) years

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prior to the expiration of the then current term. Notwithstanding the foregoing, Customer shall not have the right to elect an Extension Term in the event the Freeport Facility Lease is either not in effect at the time of its election notice or will not be in effect during the period of any such Extension Term

7.2 Commencement of Deliveries

In accordance with the procedure set forth in this Section 7.2, FLNG shall notify Customer of the date on which Services for Customer will commence at the Freeport Facility (the final date so notified being the "Commercial Start Date"). The Commercial Start Date shall be a date within the period from April 1, 2007 to March 31, 2008 (such period being the "First Window Period"). The First Window Period shall be narrowed pursuant to the following provisions:

- (a) No later than December 1, 2006, FLNG shall notify Customer of a two hundred seventy (270) day window ("Second Window Period") falling within the First Window Period for the Commercial Start Date; provided

that if FLNG fails to give timely notice of same, the Second Window Period shall be the latest possible two hundred seventieth (270/th/) day window period within the First Window Period;

- (b) No later than ninety (90) days in advance of the first day of the Second Window Period, FLNG shall notify Customer of a one hundred eighty (180) day window ("Third Window Period") falling within the Second Window Period for the Commercial Start Date; provided that if FLNG fails to give timely notice of same, the Third Window Period shall be the latest possible one hundred eighty (180) day window period within the Second Window Period;
- (c) No later than sixty (60) days in advance of the first day of the Third Window Period, FLNG shall notify Customer of a ninety (90) day window ("Fourth Window Period") falling within the Third Window Period for the Commercial Start Date; provided that if FLNG fails to give timely notice of same, the Fourth Window Period shall be latest possible ninety (90) day window period within the Third Window Period;
- (d) No later than thirty (30) days in advance of the first day of the Fourth Window Period, FLNG shall notify Customer of a sixty (60) day window ("Fifth Window Period") falling within the Fourth Window Period for the Commercial Start Date; provided that if FLNG fails to give timely notice of same, the Fifth Window Period shall be the latest possible sixty (60) day period within the Fourth Window Period;
- (e) No later than fifteen (15) days in advance of the first day of the Fifth Window Period, FLNG shall notify Customer of a thirty (30) day window ("Sixth Window Period") falling within the Fifth Window Period for the Commercial Start Date; provided that if FLNG fails to give timely notice of same, the Sixth

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Window Period shall be the latest possible thirty (30) day period within the Fifth Window Period;

- (f) No later than seven (7) days in advance of the first day of the Sixth Window Period, FLNG shall notify Customer of a fifteen (15) day window ("Final Window Period") falling within the Sixth Window Period for the Commercial Start Date; provided that if FLNG fails to give timely notice of same, the Final Window Period shall be the latest possible fifteen (15) day period within the Fifth Window Period; and
- (g) No later than three (3) days in advance of the first day of the Final Window Period, FLNG shall notify Customer of the Commercial Start Date falling within the Final Window Period; provided that if FLNG fails to give timely notice of same, the Commercial Start Date shall be the latest possible day in the Final Window Period.

The Commercial Start Date shall be the date so notified, regardless of whether any unloading of Customer's LNG at the Freeport Facility actually occurs on such date.

### 7.3 Delay Caused by Force Majeure

Should an event of Force Majeure occur that has the effect of delaying the Commercial Start Date, then the Commercial Start Date shall be postponed or delayed to fully address the effects of such event.

### 7.4 Construction Progress Reports

Beginning on April 1, 2004 and every quarter thereafter until the Commercial Start Date, FLNG shall furnish to Customer an interim progress report (collectively the "Progress Reports") specifying the progress since the last report and the expected progress towards completing the construction, testing and operational start-up of the Freeport Facility. Each Progress Report shall include the status and progress of all construction, an update of the construction schedule, and any other information which Customer has reasonably requested in writing in advance to enable Customer to evaluate the status and progress of construction, testing and operational start-up of the Freeport Facility.

## ARTICLE 8 FREEPORT FACILITY

### 8.1 Freeport Facility

- (a) Standard of Operation. By the Commercial Start Date, FLNG shall cause the Freeport Facility to be constructed and commissioned. On and after the Commercial Start Date, FLNG shall at all times provide, maintain and operate (or cause to be provided, maintained and operated) the Freeport Facility in accordance with the following: (i) International LNG Terminal Standards; and (ii) to the extent not

inconsistent with International LNG Terminal Standards, such good and prudent practices as are generally followed in the LNG industry by

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Reasonable and Prudent Operators of LNG receiving and regasification terminals. On and after the Commercial Start Date, FLNG shall at all times provide, maintain and operate (or cause to be provided, maintained and operated) the Freeport Facility Pipeline in accordance with (i) Pipeline Standards; and (ii) to the extent not inconsistent with Pipeline Standards, such good and prudent practices as are generally followed by Reasonable and Prudent Operators of U.S. Gas pipelines.

- (b) Facilities to be Provided. Without limiting Section 8.1(a), the Freeport Facility shall include the following:
- (i) appropriate systems for communications with LNG Vessels;
  - (ii) berthing facilities capable of receiving an LNG Vessel having a displacement of no more than 150,000 tonnes, an overall length of no more than 1,050 feet, a beam of no more than 165 feet, and a draft of no more than 42 feet, which LNG Vessels can safely reach, fully laden, and safely depart, and at which LNG Vessels can lie safely berthed and unload safely afloat;
  - (iii) lighting sufficient to permit unloading operations (other than berthing or departing berth) by day or by night, to the extent permitted by Governmental Authorities (it being acknowledged, however, that FLNG shall in no event be obligated to allow nighttime berthing operations at the Freeport Facility if FLNG determines, acting as a Reasonable and Prudent Operator, that such operations during nighttime hours could pose safety or operational risks to the Freeport Facility, an LNG Vessel, or a third party);
  - (iv) unloading facilities capable of receiving LNG at a rate of no less than 10,000 Cubic Meters per hour when the pressure at the Receipt Point is at least 5.6 bars (gauge), with three (3) unloading arms each having a reasonable operating envelope to allow for ship movement and manifold strainers of sixty (60) mesh;
  - (v) a vapor return line system of sufficient capacity to transfer to an LNG Vessel quantities of Gas necessary for the safe unloading of LNG at required rates, pressures and temperatures;
  - (vi) facilities allowing ingress and egress between the Freeport Facility and the LNG Vessel by (x) representatives of Governmental Authorities for purposes of unloading operations; and (y) an independent surveyor for purposes of conducting tests and measurements of LNG on board the LNG Vessel in accordance with Annex I;
  - (vii) LNG storage facilities with a total gross capacity of at least three hundred twenty thousand (320,000) Cubic Meters of LNG;
  - (viii) LNG regasification facilities with a total daily capacity of at least 1,605,000 MMBTUs; and
  - (ix) the Freeport Facility Pipeline with a total daily capacity at the Delivery Point of at least 2,140,000 MMBTUs, with suitable interconnections with Downstream Pipelines capable of accepting such volumes.

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If FLNG elects, in its Sole Opinion, to also provide Gas Storage Facilities, such facilities shall be made available in the quantities determined by FLNG from time to time. In addition, FLNG shall have the right, but not the obligation, to from time to time expand the Freeport Facility or to construct or acquire other facilities in order to perform the Services or any other mode of LNG, Gas, or energy-related services.

- (c) Facilities Not Provided. For the avoidance of doubt, services and facilities not provided at the Freeport Facility include the following: (i) facilities and loading lines for liquid or gaseous nitrogen to service an LNG Vessel; (ii) facilities for providing bunkers; and (iii) facilities for the handling and delivery to the LNG Vessel of ship's stores, provisions and spare parts.

## 8.2 Compatibility of Freeport Facility with LNG Vessels

- (a) Freeport Facility. Customer acknowledges that it is familiar with the general specifications and locations for the LNG berthing and unloading facilities of the Freeport Facility as of the date hereof. After the date hereof, Customer shall ensure, at no cost to FLNG except as set forth in Section 8.2(b), that each of the LNG Vessels is fully compatible with the Freeport Facility. Should an LNG Vessel fail materially either to be compatible with the Freeport Facility, or to be in compliance with the provisions of Article 9, Customer shall not employ such LNG Vessel until it has been modified to be so compatible or to so comply.
- (b) Modifications. The Parties agree that, after the date hereof, FLNG shall be entitled to modify the Freeport Facility, its specifications or the location of the berthing and unloading facilities in any manner whatsoever, provided that (i) such modifications do not render the Freeport Facility incompatible with an LNG Vessel, (ii) such modifications, once finalized, do not reduce the Services Quantity and (iii) such modifications do not otherwise conflict with FLNG's obligations under this Agreement. Notwithstanding the foregoing, FLNG may make such modifications in a manner that would render it incompatible with an LNG Vessel provided that:
- (i) such modification is made pursuant to a change in International LNG Terminal Standards; or
- (ii) the LNG Vessel is capable of being modified to maintain compatibility with the Freeport Facility and, in connection with a modification (other than pursuant to paragraph (i) above), FLNG

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reimburses Customer for the reasonable actual costs incurred by Customer in causing Transporter to modify the LNG Vessel to maintain compatibility with the Freeport Facility as so modified; provided, further, that Customer shall use its reasonable efforts to minimize costs to be borne by FLNG hereunder, shall notify FLNG reasonably in advance of the nature and expected cost of all such LNG Vessel modifications by Transporter, and shall certify to FLNG the actual amount and detail of all costs incurred for which such reimbursement from FLNG is requested.

## 8.3 Customer Inspection Rights

On and after the Commercial Start Date and upon obtaining FLNG's prior written consent, which consent shall not be unreasonably withheld or delayed, a reasonable number of Customer's designated representatives (including LNG Suppliers and Temporary Customers) may from time to time inspect the operation of the Freeport Facility so long as such inspection occurs from 8:00 a.m. to 5:00 p.m. on a Business Day. Any such inspection shall be at Customer's sole risk and expense. Customer (and its designees) shall carry out any such inspection without any interference with or hindrance to the safe and efficient operation of the Freeport Facility. Customer's right to inspect and examine the Freeport Facility shall be limited to verifying FLNG's compliance with FLNG's obligations under this Agreement and shall not entitle Customer to make direct requests to FLNG regarding any aspect of the Freeport Facility. No inspection (or lack thereof) of the Freeport Facility by Customer hereunder, or any requests or observations made to FLNG or its representatives by or on behalf of Customer in connection with any such inspection, shall (a) modify or amend FLNG's obligations, representations, warranties and covenants under this Agreement or under any agreement or instrument contemplated by this Agreement; or (b) constitute an acceptance or waiver by Customer of FLNG's obligations under this Agreement.

## ARTICLE 9 TRANSPORTATION AND UNLOADING

### 9.1 LNG Vessels

- (a) Customer to Cause LNG Vessels to Comply. Customer shall be responsible for the transportation of LNG from the Loading Port to the Freeport Facility. In this regard, Customer shall cause each LNG Vessel to comply with the requirements of this Article 9 in all respects.
- (b) Approvals and Documentation. Each LNG Vessel shall comply with the regulations of, and obtain all Approvals required by, Governmental Authorities to enable such LNG Vessel to enter, leave and carry out all required operations at the Freeport Facility. Each LNG Vessel shall at all times have on board valid documentation satisfactory to FLNG evidencing all such Approvals. Each LNG Vessel shall comply fully



Safe Operation of Ships and Pollution Prevention effective July 1, 1998, and at all times be in possession of a valid safety management certificate.

- (c) Fireboats, Escort Vessels and Port Charges. Customer shall arrange for, or cause the appropriate Person to arrange for, such number and types of fireboats and escort vessels as are required by Governmental Authorities to attend the LNG Vessel so as to permit safe and efficient movement of the LNG Vessel within the maritime safety areas located in the approaches to and from the Freeport Facility. Customer shall pay all Port Charges directly to the appropriate Person.
- (d) Requirements. Each LNG Vessel must satisfy the following requirements:
- (i) Specifications. Except as otherwise mutually agreed in writing by the Parties, each LNG Vessel shall be compatible with the specifications of the Freeport Facility identified in Section 8.1(b). Notwithstanding the foregoing, in the event an LNG Vessel is compatible with the specifications set forth in Section 8.1(b) or otherwise acceptable to FLNG, but a Governmental Authority or Pilot prohibits or otherwise hinders the utilization of such LNG Vessel, Customer's obligations under this Agreement shall not be excused or suspended by reason of Customer's inability (pursuant to the foregoing) to use such a vessel as an LNG Vessel.
- (ii) LNG Vessel Capacity. Except as otherwise agreed in writing by FLNG, each LNG Vessel shall have an LNG cargo containment capacity of no less than one hundred twenty thousand (120,000) Cubic Meters, determined at the time of loading of LNG.
- (iii) Condition of the LNG Vessel. Each LNG Vessel shall be (x) fitted in every way for the safe loading, unloading, handling and carrying of LNG in bulk at atmospheric pressure; and (y) tight, staunch, strong and otherwise seaworthy with cargo handling and storage systems (including instrumentation) necessary for the safe loading, unloading, handling, carrying and measuring of LNG in good order and condition. The location of the unloading manifold shall allow a safe margin for movement of the arms within the operating envelope.
- (iv) Classification Society. Each LNG Vessel shall at all times be maintained in class with any of the American Bureau of Shipping, Lloyds Register for Shipping or Det Norske Veritas or any other classification society that is mutually agreeable to the Parties.
- (v) Construction. Each LNG Vessel shall have been constructed to all applicable International LNG Vessel Standards (including the International Code For the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk).
- (vi) Operation and Maintenance. Each LNG Vessel shall comply with, and shall be fully equipped, supplied and maintained to comply with, all applicable International LNG Vessel Standards. Unless approved by FLNG in writing, which approval shall not be unreasonably withheld or delayed, an LNG Vessel shall be prohibited from engaging in any maintenance, repair or in-water surveys while berthed at the Freeport Facility. Each LNG Vessel shall comply fully with the guidelines of any Governmental Authority of the United States, including the National Oceanographic and Atmospheric Administration (NOAA), in relation to actions to avoid strikes in U.S. waters with protected sea turtles and cetaceans (e.g., whales and other marine mammals) and with regard to the reporting of any strike by the LNG Vessel which causes injury to such protected species.
- (vii) Crew. The officers and crew of each LNG Vessel shall have the ability, experience, licenses and training commensurate with the performance of their duties in accordance with internationally accepted standards as adopted on first-class LNG-carrying vessels and as required by Governmental Authorities and any labor organization having jurisdiction over the LNG Vessel or her crew. Without in any way limiting the foregoing:
- a. all shipboard personnel shall hold valid certificates

of competence in accordance with the requirements of the law of the flag state of the LNG Vessel and any requirements of the laws of the United States of America;

- b. the master, chief engineer, chief mate and cargo engineer (and such other officers of the LNG Vessel having responsibilities associated with the preparation of the LNG Vessel for unloading) shall be trained and certified to a standard customary for an operator of a first-class LNG vessel of the type and tonnage of the LNG Vessel and in compliance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;
- c. the master, chief engineer, all cargo engineers, and all deck officers shall be fluent in written and oral English and shall maintain all records and provide all reports with respect to the LNG Vessel in English, and there shall otherwise be on board sufficient personnel with a good working knowledge of the English language to enable cargo handling and unloading to be carried out efficiently and safely and to enable communications between the LNG Vessel and those unloading the LNG Vessel to be carried out quickly and efficiently; and

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- d. none of the LNG Vessel's master, officers or crew shall, while serving on the LNG Vessel, abuse the use of drugs or alcohol, and Transporter shall maintain a written policy to such effect, such policy to meet or exceed the standards of the Oil Companies International Marine Forum's Guidelines for the Control of Drugs and Alcohol Aboard Ship, 1995, as amended from time to time. If any master, officer or crew member abuses the use of drugs or alcohol, such individual shall be dismissed from service on the LNG Vessel.
- (viii) Communications. Each LNG Vessel shall have communication equipment complying with applicable regulations of Governmental Authorities and permitting such LNG Vessel to be in constant communication with the Freeport Facility and with other vessels in the area (including fireboats, escort vessels and other vessels employed in port operations).
- (ix) Pumping Time. Provided that the Freeport Facility supplies a suitable vapor return line meeting the requirements of Section 8.1(b) (v), then:
- a. an LNG Vessel with an LNG cargo containment capacity less than or equal to one hundred forty thousand (140,000) Cubic Meters shall be capable of unloading LNG in a maximum of fifteen (15) hours; and
  - b. an LNG Vessel with an LNG cargo containment capacity greater than one hundred forty thousand (140,000) Cubic Meters shall be capable of unloading LNG in the number of hours derived after applying the following formula:

$$15 + x = \text{maximum LNG unloading time (in hours)}$$

where:

y = the LNG cargo containment capacity of the LNG Vessel in excess of 140,000 Cubic Meters; and

x = y/10,000 Cubic Meters

Time for connecting, cooling, stripping and disconnecting, and cooling of liquid arms shall not be included in the computation of pumping time.

## 9.2 Freeport Facility Marine Operations Manual

Acting as a Reasonable and Prudent Operator, FLNG shall develop and maintain a single marine operations manual that governs activities at the Freeport Facility, applies to all LNG Vessels and vessels used by Other Customers, and is consistent with International LNG Vessel Standards (but excluding the matters governed by the Freeport Services Manual). In developing such a manual, FLNG shall provide Customer with a preliminary

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draft of the same (the "Preliminary Marine Operations Manual"). If Customer desires to consult with FLNG regarding the contents of the Preliminary Marine Operation Manual, Customer shall, no later than fifteen (15) days from delivery of said manual by FLNG, request to meet with FLNG by providing notice thereof to FLNG, and FLNG shall, no later than thirty (30) days after receipt of such notice, meet with Customer to discuss said manual. If (a) Customer does not submit the foregoing notice to FLNG on a timely basis or (b) Customer and FLNG meet pursuant to such a notice and are able during such meeting to agree upon revisions to the draft, then such draft, as so revised (and as amended from time to time), shall constitute the "Freeport Facility Marine Operations Manual". If Customer and FLNG meet pursuant to the foregoing notice and are unable during such meeting to agree upon revisions to the Preliminary Marine Operations Manual, then FLNG shall determine, while using its reasonable efforts to accommodate Customer, the Freeport Facility Marine Operations Manual. In the event FLNG intends to amend the Freeport Facility Marine Operations Manual, then FLNG shall follow the procedure set forth above in relation to the Preliminary Marine Operations Manual. FLNG shall deliver to Customer and all Other Customers a copy of the Freeport Facility Marine Operations Manual and any amendments thereto promptly after they have been finalized or amended, as the case may be. Customer shall comply, and shall cause its Scheduling Representative to comply, with such Freeport Facility Marine Operations Manual in all respects. FLNG will undertake to develop a Freeport Facility Marine Operations Manual that is consistent with this Agreement; however, in the event of a conflict between the terms of this Agreement and the Freeport Facility Marine Operations Manual, the terms of this Agreement shall control.

### 9.3 LNG Vessel Inspections; Right to Reject LNG Vessel

(a) Inspections. During the Term, on prior reasonable notice to Customer, FLNG may, at its sole risk, send its representatives (including an independent internationally recognized maritime consultant) to inspect during normal working hours any LNG Vessel as FLNG may consider necessary to ascertain whether the LNG Vessel complies with the provisions of this Agreement. FLNG shall bear the costs and expenses in connection with any inspection conducted hereunder. Any such inspection may include, as far as is practicable having regard to the LNG Vessel's operational schedule, examination of the LNG Vessel's hull, cargo and ballast tanks, machinery, boilers, auxiliaries and equipment; examination of the LNG Vessel's deck and engine scrap/rough and fair copy/official log books; review of records of surveys by the LNG Vessel's classification society and relevant Governmental Authorities; and review of the LNG Vessel's operating procedures and performance of surveys, both in port and at sea. Any inspection carried out pursuant to this Section 9.3(a): (i) shall not interfere with, or hinder, any LNG Vessel's safe and efficient construction or operation; and (ii) shall not entitle FLNG or any of its representatives to make any request or recommendation directly to Transporter except through Customer. No inspection (or lack thereof) of an LNG Vessel hereunder shall (i) modify or amend Customer's obligations, representations, warranties and covenants under this Agreement or under any agreement or instrument contemplated by this Agreement; or (ii) constitute an acceptance or waiver by FLNG of Customer's obligations under this Agreement.

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(b) Right to Reject LNG Vessel. Without prejudice to any other rights and remedies arising hereunder or by law or otherwise, FLNG shall have the right to reject any LNG Vessel that Customer intends to use to deliver LNG to the Freeport Facility if such LNG Vessel does not comply materially with the provisions of this Agreement, provided that:

- (i) neither the exercise nor the non-exercise of such right shall reduce the responsibility of Customer to FLNG in respect of such vessel and her operation, nor increase FLNG's responsibilities to Customer or third parties for the same; and
- (ii) Customer's obligations under this Agreement shall not be excused or suspended by reason of Customer's inability (pursuant to the foregoing) to use a vessel as an LNG Vessel.

### 9.4 Advance Notices re LNG Vessel and Cargoes

(a) Changes in Expected Receipt Quantity. If, subsequent to issuing the notice required under Section 5.1(b)(ii) herein, Customer has reason to foresee a change in the Expected Receipt Quantity for a particular Arrival Date, Customer shall immediately provide notice thereof to FLNG and include in such notice Customer's new estimate of the Expected Receipt Quantity. To the extent such new estimate increases the Expected Receipt Quantity contained in any prior notice, FLNG shall use reasonable endeavors to accept such larger quantity but

shall at all times retain the right not to accept such new estimate if, in its Sole Opinion, such new estimate will result in excess inventory at the Freeport Facility.

- (b) LNG Vessel Nomination. As soon as possible but no later than five (5) days prior to the scheduled loading date for a Cargo, Customer shall notify FLNG of the information specified below:
- (i) name of LNG Vessel and, in reasonable detail, the age, dimensions, specifications, operator, safety record, and condition of such LNG Vessel;
  - (ii) name of Loading Port;
  - (iii) expected departure date of LNG Vessel from Loading Port;
  - (iv) estimated arrival date at the Freeport Facility; and
  - (v) any changes in the Expected Receipt Quantity since Customer's prior notice.

Moreover, if the vessel that Customer proposes to use as an LNG Vessel has not, within the immediately preceding Contract Year, delivered LNG to the Freeport Facility, Customer shall notify FLNG thereof at least sixty (60) days prior to the first day of the applicable Scheduled Unloading Window.

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- (c) LNG Vessel Movements. With respect to each Cargo of LNG to be delivered hereunder, Customer shall give, or cause the master of the LNG Vessel to give, to FLNG the following notices:
- (i) A first notice ("First Notice"), which shall be sent upon the departure of the LNG Vessel from the Loading Port and which shall set forth the time and date that loading was completed, the volume (expressed in Cubic Meters) of LNG loaded on board the LNG Vessel, the estimated time of arrival of the LNG Vessel at the Arrival Location ("ETA"), any operational deficiencies in the LNG Vessel that may affect its performance at the Freeport Facility or berth;
  - (ii) A second notice ("Second Notice"), which shall be sent ninety-six (96) hours prior to the ETA set forth in the First Notice, stating the LNG Vessel's then ETA. If, thereafter, such ETA changes by more than six (6) hours, Customer shall give promptly, or cause the master of the LNG Vessel to give promptly, to FLNG notice of the corrected ETA;
  - (iii) A third notice ("Third Notice"), which shall be sent twenty-four (24) hours prior to the ETA set forth in the Second Notice (as corrected), confirming or amending such ETA. If, thereafter, such ETA changes by more than three (3) hours, Customer shall give promptly, or cause the master of the LNG Vessel to give promptly, to FLNG notice of the corrected ETA;
  - (iv) A fourth notice ("Final Notice"), which shall be sent twelve (12) hours prior to the ETA set forth in the Third Notice (as corrected), confirming or amending such ETA. If, thereafter, such ETA changes by more than one (1) hour, Customer shall give promptly, or cause the master of the LNG Vessel to give promptly, to FLNG notice of the corrected ETA; and
  - (v) An NOR, which shall be given at the time prescribed in Section 9.5 below.
- (d) Characteristics of Cargoes. With the First Notice, Customer shall notify FLNG, or cause FLNG to be notified, for FLNG's information only, of the following characteristics of the LNG comprising its Cargo as determined at the time of loading:
- (i) Gross Heating Value per unit;
  - (ii) molecular percentage of hydrocarbon components and nitrogen;
  - (iii) average temperature; and
  - (iv) density at loading.

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- (e) Right to Reject Certain Quantities. Without prejudice to any other rights and remedies arising hereunder or by law or otherwise,

FLNG shall for any reason (including limitations in LNG Storage) have the right to reject unloading of any quantities of LNG on board an LNG Vessel that exceed by more than five percent (5%) the Expected Receipt Quantity for such Cargo as specified in, whichever applicable, (i) the notice delivered pursuant to Section 5.1(b)(ii) and utilized by FLNG for the purposes of determining Customer LNG Receipt Schedule or (ii) any subsequent notice delivered pursuant to Section 9.4(a) and accepted by FLNG.

#### 9.5 Notice of Readiness

- (a) Issuance. Subject to any applicable restrictions, including any nighttime transit restrictions imposed by Governmental Authorities or Pilots or any other reasonable timing restrictions imposed by FLNG, the master of an LNG Vessel or its agent shall give to FLNG its NOR to unload (berth or no berth) upon arrival of such LNG Vessel at the specific location off the Freeport Facility designated for such purposes in the Freeport Facility Marine Operations Manual (such location referred to as the "Arrival Location").
- (b) Effectiveness. An NOR given under Section 9.5(a) shall become effective as follows:
  - (i) For an LNG Vessel arriving at the Arrival Location at any time before 6:00 a.m., Central Time on the first day of the Scheduled Unloading Window allocated to such LNG Vessel, an NOR shall be deemed effective at the earlier of (x) 6:00 a.m., Central Time on the first day of such Scheduled Unloading Window; or (y) the time unloading commences;
  - (ii) For an LNG Vessel arriving at the Arrival Location at any time between the period of 6:00 a.m., Central Time on the first day of the Scheduled Unloading Window allocated to such LNG Vessel and two (2) hours before sunset, Central Time on the second day of such Scheduled Unloading Window (such period referred to as the "NOR Window"), an NOR shall become effective at the time of its issuance; or
  - (iii) For an LNG Vessel arriving at the Arrival Location at any time after the expiration of the NOR Window, an NOR shall become effective upon FLNG's notice to the LNG Vessel that it is ready to receive the LNG Vessel at berth.

#### 9.6 Berthing Assignment

- (a) General Rule. FLNG shall determine the berthing sequence of all LNG Vessels and other vessels at the Freeport Facility in order to ensure compliance with the Customer LNG Receipt Schedule and the Other Customer LNG Receipt

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Schedules. If an LNG Vessel arrives not ready to unload for any reason, FLNG may refuse to allow it to berth.

- (b) Timely Arrival. FLNG shall berth an LNG Vessel arriving before or during its NOR Window at the first opportunity that FLNG determines such LNG Vessel will not interfere with unloading by any other scheduled vessel but in no event later than two (2) hours prior to sunset at the Freeport Facility on the second day of the Scheduled Unloading Window allocated to such LNG Vessel (hereinafter referred to as the "Berthing Deadline"); provided, however, that if FLNG does not berth such LNG Vessel by the Berthing Deadline, Customer's sole recourse and remedy for FLNG's breach thereof is demurrage pursuant to Section 9.7(c).
- (c) Late Arrival. FLNG shall berth an LNG Vessel arriving after its NOR Window at the first opportunity that FLNG reasonably determines such LNG Vessel will not interfere with unloading by any scheduled vessel.

#### 9.7 Unloading Time

- (a) Allotted Unloading Time. The allotted unloading time for each LNG Vessel ("Allotted Unloading Time") shall be thirty-six (36) hours, subject to extensions for:
  - (i) reasons attributable to Customer, a Pilot, a Governmental Authority, the LNG Vessel or its master, crew, owner or operator;
  - (ii) Adverse Weather Conditions;
  - (iii) Force Majeure;

- (iv) unscheduled curtailment or temporary discontinuation of operations at the Freeport Facility in accordance with Section 18.2;
  - (v) occupancy of the berth by an LNG vessel that arrived at berth at the Freeport Facility no later than two (2) hours prior to sunset on the second day of the Scheduled Unloading Window allocated to such vessel, which shall result in an extension of no more than nine (9) hours;
  - (vi) failure to send the Final Notice; and
  - (vii) nighttime transit restrictions.
- (b) Actual Unloading Time. The actual unloading time for each LNG Vessel ("Actual Unloading Time") shall commence when the NOR is effective and shall end when the unloading and return lines of the LNG Vessel are disconnected from the Freeport Facility's unloading and return lines.
- (c) Demurrage at the Freeport Facility. The Parties agree as follows:

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- (i) In the event Actual Unloading Time exceeds Allotted Unloading Time (including any extension in accordance with Section 9.7(a)) ("Demurrage Event"), FLNG shall pay to Customer as liquidated damages demurrage in United States dollars (which shall be prorated for a portion of a day) determined in accordance with the rate set out in the following table:

LNG Vessel Cargo Capacity	Demurrage Rate in \$/day
Less than 120,000 Cubic Meters	Rate to be established by agreement
120,000 Cubic Meters or greater up to, but not including, 160,000 Cubic Meters	\$ 55,000
160,000 Cubic Meters or greater up to, but not including, 200,000 Cubic Meters	\$ 65,000
200,000 Cubic Meters or greater	\$ 83,000

- (ii) If a Demurrage Event occurs, Customer shall invoice FLNG for such demurrage pursuant to Section 12.2.

- (d) Excess Boil-Off. If an LNG Vessel is delayed in berthing at the Freeport Facility and/or commencement of unloading due to an event occurring at the Freeport Facility and for a reason that would not result in an extension of Allotted Unloading Time under Section 9.7(a), and if, as a result thereof, the commencement of unloading is delayed beyond twenty-four (24) hours after the Notice of Readiness is effective, then, for each full hour by which commencement of unloading is delayed beyond such twenty-four (24) hour period, FLNG shall pay Customer as liquidated damages an amount, on account of excess boil-off, equal to the product of the Henry Hub Price multiplied by the quantity in MMBTUs equal to 0.125% of the Cargo per day. Customer shall invoice FLNG for such excess boil-off pursuant to Section 12.2.

#### 9.8 Unloading at the Freeport Facility

- (a) Efficiency. FLNG shall cooperate with Transporters (or their agents) and with the master of each LNG Vessel to facilitate the continuous and efficient delivery of LNG hereunder.
- (b) Vapor Return Line. During unloading of each Cargo of LNG, FLNG shall return to the LNG Vessel Gas in such quantities as are necessary for the safe unloading of the LNG at such rates, pressures and temperatures as may be required by the design of the LNG Vessel, and such returned Gas shall not be deemed to be volume unloaded for Customer's account.

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#### 9.9 LNG Vessel Not Ready for Unloading; Excess Berth Time

- (a) Vessel Not Ready for Unloading. If any LNG Vessel, previously believed to be ready for unloading, is determined to be not ready after being berthed, FLNG may direct the LNG Vessel's master to vacate

the berth and proceed to anchorage, whether or not other LNG vessels are awaiting the berth, unless it appears reasonably certain to FLNG that such LNG Vessel can be made ready without disrupting the overall unloading schedule of the Freeport Facility or operations of the Freeport Facility. When an unready LNG Vessel at anchorage becomes ready for unloading, its master shall notify FLNG. Upon the reberthing of any LNG Vessel vacated pursuant to this Section 9.9(a), Customer shall be responsible for any actual costs incurred by FLNG acting as a Reasonable and Prudent Operator as a result of such LNG Vessel not being ready for unloading.

(b) Berth Limitations.

(i) An LNG Vessel shall complete unloading and vacate the berth as soon as possible but not later than the following allowed berth time:

a. twenty-four (24) hours, in the case of an LNG Vessel with an LNG cargo containment capacity less than or equal to one hundred forty thousand (140,000) Cubic Meters; or

b. in accordance with the following formula, in the case of an LNG Vessel with an LNG cargo containment capacity greater than one hundred forty thousand (140,000) Cubic Meters:

$$24 + x = \text{allowed berth time (in hours)}$$

where:

y = the LNG cargo containment capacity of the LNG Vessel in excess of 140,000 Cubic Meters; and

x =  $y/10,000$  Cubic Meters.

Notwithstanding the foregoing, the aforementioned time restrictions shall be extended for: (a) reasons attributable to FLNG; (b) reasons attributable to a Pilot or to a Governmental Authority; (c) Adverse Weather Conditions; (d) Force Majeure; and (e) nighttime transit restrictions.

(ii) If an LNG Vessel fails to depart at the end of its allowed berth time, FLNG may direct the LNG Vessel to vacate the berth and proceed to sea at utmost dispatch.

(iii) If an LNG Vessel fails to vacate the berth after receipt of FLNG's notice to do so under this Section 9.9, Customer shall reimburse FLNG for any and all reasonable and actual damages its incurs as a result thereof, including amounts FLNG becomes contractually obligated to pay as

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demurrage to any of the Other Customers or to pay any Other Customer for excess boil-off.

(iv) In the event an LNG Vessel fails to vacate the berth and Customer is not taking actions to cause it to vacate the berth, FLNG may effect such removal at the expense of the Customer.

#### ARTICLE 10 RECEIPT OF LNG

##### 10.1 Title, Custody and Risk of Loss

(a) Title and Risk of Loss of Customer's Inventory. Subject to Section 3.3, title and risk of loss with respect to Customer's Inventory shall remain with Customer even during periods when it is in the possession and control of FLNG (including while held at a Gas Storage Facility and as provided in Section 10.5). For the avoidance of doubt, title and risk of loss with respect to Retainage shall pass to FLNG at the Receipt Point.

(b) Possession and Control. Possession and control of Customer's LNG shall pass from Customer to FLNG upon delivery of same at the Receipt Point. Possession and control of Customer's Inventory shall pass from FLNG to Customer upon delivery of same at the Delivery Point.

##### 10.2 No Encumbrance

(a) Customer's Covenants. Customer warrants to FLNG that (i) Customer has title to all of Customer's Inventory, other than to the Temporary Release Inventory; and (ii) the relevant Temporary Customer has title

to all of the Temporary Release Inventory. Customer covenants that Customer's Inventory shall remain free of all encumbrances and Liabilities therefor, and that no circumstances will exist which could give rise to any Liabilities or encumbrances relating thereto (collectively, "Claims") other than (i) those that may be caused by acts or omissions of FLNG or (ii) those arising out of or relating to an assignment for financing purposes or other security interest for financing purposes. Customer agrees to fully defend, indemnify and hold FLNG and its Affiliates harmless against all Claims regarding Customer's Inventory, including Claims brought by Other Customers, other than any Claims caused by FLNG's acts or omissions. For purposes of this Section 10.2(a), the term "encumbrance" shall include any mortgage, pledge, lien, charge, adverse claim, proprietary right, assignment by way of security, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement having the effect of security.

- (b) FLNG's Covenants. FLNG covenants that it has the right to deliver to Customer at the Delivery Point all Gas held for Customer's account free from all Claims relating thereto caused by FLNG's acts or omissions. FLNG agrees to

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fully defend, indemnify and hold Customer and its Affiliates harmless from and against all Claims regarding Customer's Inventory caused by the acts or omissions of FLNG and Other Customers.

### 10.3 Receipt of LNG

The receipt of LNG from an LNG Vessel at the Receipt Point shall be carried out by use of pumps and other equipment on the LNG Vessel under such reasonable and customary conditions as are specified in the Freeport Facility Marine Operations Manual.

### 10.4 Quality and Measurement of Customer's LNG

Customer's LNG shall be measured and tested in accordance with Annex I. Customer shall ensure that all LNG delivered at the Receipt Point for Customer's account shall conform to the following specifications:

- (a) Gross Heating Value.
- (i) LNG when delivered by Customer to FLNG shall have, in a gaseous state, a Gross Heating Value of not less than 950 BTU per Standard Cubic Foot and not more than 1150 BTU per Standard Cubic Foot.
- (ii) If the Gross Heating Value of LNG to be delivered hereunder is higher than the limits set forth in Section 10.4(a)(i) by reason of boil-off occurring during an unexcused delay caused by FLNG in unloading an LNG Vessel of more than thirty (30) hours after NOR becomes effective, such LNG shall be deemed to have met the quality specifications of this Agreement regarding Gross Heating Value.
- (b) Components.
- (i) The LNG when delivered by Customer to FLNG shall, in a gaseous state, contain not less than eighty-six (86) molecular percentage (86 MOL%) of methane (C//1//) and, for the components and substances listed below, such LNG shall not contain more than the following:
- a. Nitrogen (N//2//), 0.5 MOL%;
  - b. Ethane (C//2//), 11 MOL%;
  - c. Propane (C//3//), 3.5 MOL%;
  - d. Butanes (C//4//) and heavier, 2 MOL%;
  - e. Pentanes (C//5//) and heavier, .09 MOL%;
  - f. Hydrogen sulfide (H//2//S), .25 grains per 100 Standard Cubic Feet (.25 grains/100 SCF); and
  - g. Total sulfur content, 5 grains per 100 Standard Cubic Feet (5 grains/100 SCF).
- (ii) The LNG when delivered by Customer to FLNG shall contain no



water, mercury, active bacteria or bacterial agents (including sulfate reducing bacteria or acid producing bacteria) and other contaminants or extraneous material.

#### 10.5 Off-Specification LNG

- (a) Refusal of Off-Spec LNG. Without prejudice to any other rights and remedies of FLNG hereunder, FLNG may refuse to take delivery of all or part of any LNG not conforming to the quality specifications set forth in Section 10.4 ("Off-Spec LNG").
- (b) Notice. Customer shall provide notice to FLNG as soon as reasonably practicable of any existing or anticipated failure of the LNG available for delivery to FLNG hereunder to conform to the quality specifications set forth in Section 10.4, giving details of the nature and expected magnitude of the variance, the cause of the non-compliance and the probable duration thereof, including the Cargoes and Scheduled Unloading Windows to be affected thereby. If so notified, FLNG shall as soon as possible inform Customer whether it intends to reject any of such Off-Spec LNG. If FLNG is notified by Customer prior to the commencement of unloading of a Cargo at the Freeport Facility that the LNG is Off-Spec LNG and the quantity is delivered to the Freeport Facility, FLNG shall use reasonable endeavors to take delivery of any Cargoes which it would otherwise be entitled to reject; provided, however that FLNG shall be entitled to delay unloading of Off-Spec LNG for the period of time reasonably required for FLNG to determine whether it can take delivery of such Off-Spec LNG pursuant to this Section 10.5(b). Subject to FLNG first using its reasonable endeavors to take delivery of any Cargoes containing Off-Spec LNG, FLNG shall:
  - (i) notify Customer that FLNG will take delivery of some or all of the affected Cargoes, without prejudice to FLNG's rights and remedies with respect to such Off-Spec LNG other than FLNG's right to reject said Cargo; or
  - (ii) reject all or any of the affected Cargoes.

#### 10.6 Customer's Responsibility and Reimbursement

- (a) No Continuing Waiver. Acceptance of Off-Spec LNG shall not prevent FLNG from refusing future deliveries of Off-Spec LNG. No waiver by FLNG of any default by Customer of any of the specifications set forth in this Article 10

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shall ever operate as a continuing waiver of such specification or as a waiver of any subsequent default, whether of a like or different character.

- (b) Delivery of a Cargo of Off-Spec LNG. If FLNG accepts delivery of a Cargo of Off-Spec LNG which it would otherwise be entitled to reject, Customer shall:
  - (i) bear the financial responsibility for all reasonable and actual incremental costs (other than capital costs) and Liabilities incurred by FLNG or any of FLNG's Affiliates, in each case acting as a Reasonable and Prudent Operator, in connection with receiving and treating Off-Spec LNG by such means as are appropriate, including mixing such Off-Spec LNG with lower calorific value Gas or injecting nitrogen; and
  - (ii) indemnify and hold harmless FLNG, its Affiliates and their respective directors, officers and employees from any and all Liabilities, including any of same attributable to claims of any Person (including Temporary Customers) and any Other Customers, which arise out of, are incident to or result from the acceptance, handling, disposal or use of Off-Spec LNG.
- (c) Extended Delivery of Off-Spec LNG. If (i) Customer notifies FLNG pursuant to Section 10.5(b) of an anticipated delivery of two (2) or more Cargoes of Off-Spec LNG and (ii) the Parties agree for FLNG to incur incremental capital costs in order to accept delivery of such Cargoes, then Customer shall, in addition to its payment and indemnification obligations under Section 10.6(b), bear the financial responsibility for and directly fund, at FLNG's election, all such incremental capital costs.

#### 10.7 Subsequent Deliveries

Unless otherwise requested by Customer, any quantities of LNG which were, under the Customer LNG Receipt Schedule, scheduled to be unloaded during the Contract Year but were actually unloaded at the Freeport Facility

within the first \*\*\* days in the following Contract Year shall be, for the purposes of the Maximum LNG Reception Quantity, deemed to have been received by FLNG in the Contract Year in which such quantities were originally scheduled to be unloaded.

ARTICLE 11  
REDELIVERY OF GAS

11.1 General

- (a) Delivery Point. Subject to Section 3.3(a), the volume of Gas nominated by Customer for any day pursuant to Section 5.2 shall be delivered at the Delivery Point.

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- (b) Commingled Stream. Customer acknowledges and agrees that Customer's Inventory shall be delivered by FLNG in a commingled stream, including that combined with LNG received by FLNG from Temporary Customers and any Other Customers. Customer further acknowledges and agrees that Customer shall have no right to receive Gas of the same quality as Customer's LNG, provided that the specifications of the commingled Gas stream at the Delivery Point satisfy the requirements set forth in Section 11.3.
- (c) Odorization. FLNG will deliver Customer's Inventory at the Delivery Point in its natural state without the addition of any odorizing agent, and FLNG shall not be obligated to add odorizing agents to any Gas unless required to do so by a Governmental Authority. FLNG does not assume any responsibility for Liabilities by reason of the fact that it has not odorized Customer's Inventory prior to its delivery to Customer.

11.2 Customer's Responsibility

- (a) Downstream Arrangements. Customer shall arrange for the purchase and transportation of Gas by Downstream Pipelines in order to meet its obligations to take redelivery of Gas in accordance with the provisions of Section 3.4 at the rates nominated pursuant to Article 5. Customer shall be solely responsible for making all necessary arrangements with third parties at or downstream of the Delivery Point to enable FLNG to deliver Gas to Downstream Pipelines on a timely basis pursuant to the terms and conditions of this Agreement. Customer shall also be solely responsible for ensuring that all such arrangements are consistent with the terms and conditions of this Agreement and shall require all relevant third parties to confirm to FLNG all of Customer's nominations and scheduling of deliveries of Gas, such confirmation to be by telephone, electronic transmission, or other means acceptable to FLNG. Such third-party arrangements shall be timely communicated to, and coordinated with, FLNG, and FLNG shall have no liability whatsoever for any failure of any such third party to provide downstream arrangements. The rules, guidelines, and policies of a Downstream Pipeline transporting or purchasing any Gas for or from Customer at the Delivery Point (as may be changed from time to time by the Downstream Pipeline) shall set forth, among other things, the manner in which Customer's Inventory is transported from the Delivery Point. Customer and FLNG recognize that the receipt and delivery on the Downstream Pipeline's facilities of Gas shall be subject to the operational procedures of such Downstream Pipeline.
- (b) Imbalance Charges. In the event a Downstream Pipeline imposes scheduling fees, imbalance charges, cash out costs or similar costs, fees or damages for imbalances ("Imbalance Charges"), Customer shall be obligated to use its reasonable efforts to avoid imposition of such Imbalance Charges. Customer shall indemnify and hold harmless FLNG, its Affiliates and their respective directors, officers and employees from all Liabilities arising out of, incident to or resulting from any Imbalance Charge directly resulting from Customer's acts or omissions. FLNG shall indemnify and hold harmless Customer, its Affiliates and

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their respective directors, officers and employees from all Liabilities arising out of, incident to or resulting from any Imbalance Charge directly resulting from FLNG's acts or omissions.

- (c) Limitation. Customer shall ensure that its Gas transportation and sales arrangements are in compliance with all applicable laws and regulations. In this regard, Customer agrees that it shall transport, or cause to be transported, Customer's Inventory only into intra-state Gas pipelines or storage facilities unless otherwise approved by Governmental Authorities.

### 11.3 Specifications and Measurement of Gas at the Delivery Point

Gas delivered to Customer at the Delivery Point shall be measured and tested in accordance with Annex II. FLNG shall ensure that all Gas delivered at the Delivery Point for Customer's account shall conform to the following specifications:

- (a) Gross Heating Value. Gas when delivered by FLNG to Customer shall have a Gross Heating Value of not less than 950 BTU per Standard Cubic Foot and not more than 1150 BTU per Standard Cubic Foot.
- (b) Components.
  - (i) Gas when delivered by FLNG to Customer shall contain not less than eighty-six (86) molecular percentage (86 MOL%) of methane (C//1//) and, for the components and substances listed below, such Gas shall not contain more than the following:
    - a. Nitrogen (N//2//), three (3) MOL%;
    - b. Pentanes (C//5//) and heavier, 0.1 MOL%;
    - c. Hydrogen sulfide (H//2//S), .25 grains per 100 Standard Cubic Feet (.25 grains/100 SCF);
    - d. Total sulfur content, 5 grains per 100 Standard Cubic Feet (5 grains/100 SCF);
    - e. Oxygen (O//2//), ten (10) parts per million;
    - f. Carbon dioxide (CO//2//), two (2) MOL%; and
    - g. Water (H//2//O), seven (7) pounds per one million (1,000,000) cubic feet.
  - (ii) Gas when delivered by FLNG to Customer shall contain no mercury, active bacteria or bacterial agents (including sulfate reducing bacteria or acid producing bacteria) and other contaminants or extraneous material.

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- (c) Gas Delivery Pressure. Customer's Inventory shall be delivered at the Delivery Point at the appropriate pipeline pressure; provided, however, that such pressure shall be at least 1000 psig but shall not be required to exceed a maximum pressure of 1200 psig.

### 11.4 Nonconforming Gas

- (a) Right to Reject. Customer shall have the right to reject Gas that does not conform to the specifications set forth in Section 11.3 ("Nonconforming Gas") if the failure of such Nonconforming Gas to satisfy such specifications would (a) be grounds for an operator of a Downstream Pipeline or a Person under contract with Customer to purchase such Gas ("Downstream Purchaser") to reject such Nonconforming Gas or (b) otherwise materially and adversely affect Customer, in Customer's reasonable opinion.
- (b) FLNG Indemnity. If Customer accepts delivery of Non-Conforming Gas which it would otherwise be entitled to reject, FLNG shall indemnify and hold harmless Customer, its Affiliates and their respective directors, officers and employees from any and all Liabilities, including any of same attributable to claims of any Person (including Other Customers, a Downstream Pipeline, a Downstream Purchaser and Temporary Customers), which arise out of, are incident to or result from the acceptance, handling, disposal or use of Non-Conforming Gas. If Customer accepts delivery of Non-Conforming Gas which it would otherwise be entitled to reject, FLNG shall bear the financial responsibility for all reasonable and actual incremental costs (other than capital costs) and Liabilities incurred by Customer or any of Customer's Affiliates, in each case acting as a Reasonable and Prudent Operator, in connection with accepting delivery of Non-Conforming Gas.

## ARTICLE 12 PAYMENT

### 12.1 Monthly Statements

Between the first (1<sup>st</sup>/) day of each month and the tenth (10<sup>th</sup>) day of each month, commencing with the month prior to the Commercial Start Date, FLNG shall deliver to Customer a statement setting forth the following:

- (a) \*\*\*;

- (b) the FLNG Component for the following month;
- (c) the FOC Installment for the following month;
- (d) with respect to the March statement, a charge or credit, as applicable, for the FOC Reconciliation for the prior year;

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- (e) the Crest Installment for the following month;
- (f) the Awards Installment, if any, for the prior month;
- (g) with respect to the March statement, a charge or credit, as applicable, for the Crest Reconciliation for the prior year;
- (h) the Incremental Costs, if any, for the prior month; and
- (i) a charge or credit for any adjustment to the FLNG Component made under Section 4.6.

All statements delivered by FLNG to Customer shall as much as practicable account separately for the Fee related to each Temporary Release from all other amounts owed by Customer.

#### 12.2 Other Statements

If any other moneys are due from one Party to the other hereunder and if provision for the invoicing of that amount due is not made elsewhere in this Article 12, then the Party to whom such moneys are due shall furnish a statement therefor to the other Party, along with pertinent information showing the basis for the calculation thereof.

#### 12.3 Adjustments

If, within ninety (90) days of the issuance of a statement, either Party acquires information indicating the necessity of an adjustment to such statement rendered hereunder, then the Party acquiring the information shall promptly serve on the other Party a written notice setting forth that information. Unless otherwise provided herein, after obtaining that information, the Party that prepared the prior statement which by reason of that information must be adjusted, shall promptly prepare and serve on the other Party an adjusted statement, showing the necessary payment, the calculation of the payment amount, and the Party from whom the payment is owing.

#### 12.4 Payment Due Dates

- (a) Due Date for Monthly Statement. Each monthly statement submitted pursuant to Section 12.1 shall become due and payable on the later of (i) ten (10) days after delivery by FLNG of such monthly statement or (ii) the twenty-fifth (25/th/) day of the month in which such monthly statement was received; provided that if such day is not a Business Day, it shall become due and payable on the next Business Day.
- (b) Due Date for Other Statements. Each statement submitted pursuant to Section 12.2 shall become due and payable on the thirtieth (30/th/) day after the date on which it is received; provided that if such payment due date is not a Business Day, the due date for such payment shall be extended to the next Business Day. For purposes of this Section 12.4(b), a facsimile copy of an invoice shall be

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deemed received by a Party on the next Business Day following the day on which it was sent.

- (c) Interest. If the full amount of any statement is not paid when due, the unpaid amount thereof shall bear interest at the Base Rate, compounded annually, from and including the day following the due date up to and including the date when payment is made.

#### 12.5 Payment

Each Party shall pay, or cause to be paid, in United States dollars in immediately available funds, all amounts that become due and payable by such Party pursuant to any statement issued hereunder, to a bank account or accounts designated by and in accordance with instructions issued by the other Party. Each payment of any amount owing hereunder shall be in the full amount due without reduction or offset for any reason (except as expressly allowed under this Agreement), including Taxes, exchange charges, or bank transfer charges. Notwithstanding the preceding sentence,

the paying Party shall not be responsible for a designated bank's disbursement of amounts remitted to such bank, and a deposit in immediately available funds of the full amount of each statement with such bank shall constitute full discharge and satisfaction of the statement.

#### 12.6 Nonpayment

The term "Cumulative Delinquency Amount" shall mean, with respect to a Party, the cumulative amount, expressed in United States dollars, that is owed by that Party to the other Party under this Agreement and is past due. Without prejudice to a Party's right of offset, if a Party's failure to pay when due an amount owing hereunder causes its Cumulative Delinquency Amount to exceed \*\*\* times the sum of the \*\*\* and the FOC Installment, then the Party to which such amount is owed shall have the right, upon giving thirty (30) days written notice (such notice hereinafter referred to as the "Delinquency Notice") to the owing Party, to suspend performance of its obligations under this Agreement until such amount, with interest in accordance with Section 12.4(c), has been paid in full; provided, however, that (a) no such suspension of a Party's obligations under this Section 12.6 shall excuse the owing Party from the performance of its obligations hereunder, and (b) in the event that FLNG suspends performance under this Section 12.6, (i) Customer shall continue to be liable for the Fee pursuant to Article 4, and (ii) FLNG may offer Customer's unutilized Services Quantity to the Other Customers based on their proportionate contracted share of such services. If any such Cumulative Delinquency Amount has not been paid within sixty (60) days after the issuance of the Delinquency Notice, then the Party to whom such amount is owed shall have the right, upon not less than thirty (30) days notice to the other Party, to terminate this Agreement without the necessity of any further action, unless within that thirty (30) day period, the Party to which such amount is owed receives payments from or on behalf of the owing Party equal to the Cumulative Delinquency Amount. Any such termination shall be without prejudice to any other rights and remedies of the terminating Party arising hereunder or by law or otherwise, including the right of such Party to receive payment in respect of all obligations and claims that arose or accrued prior to such termination or by reason of such default by the owing Party.

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#### 12.7 Disputed Statements

In the event of disagreement concerning any statement, Customer or FLNG (as the case may be) shall make provisional payment of the total amount thereof and shall immediately notify the other Party of the reasons for such disagreement, except that in the case of an obvious error in computation, Customer or FLNG (as the case may be) shall pay the correct amount disregarding such error. Statements may be contested by Customer or FLNG (as the case may be) only if, within a period of ninety (90) days after a Party's receipt thereof, Customer or FLNG (as the case may be) serves on the other Party notice questioning their correctness. If no such notice is served, statements shall be deemed correct and accepted by both parties. Promptly after resolution of any Dispute as to a statement, the amount of any overpayment or underpayment (plus interest as provided in Section 12.4(c)) shall be paid by FLNG or Customer to the other, as the case may be.

#### 12.8 Final Settlement

Within sixty (60) days after expiration of the Term, FLNG and Customer shall determine the amount of any final reconciliation payment. After the amount of the final settlement has been determined, FLNG shall send a statement to Customer, or Customer shall send a statement to FLNG, as the case may be, in United States dollars for amounts due under this Section 12.8, and FLNG or Customer, as the case may be, shall pay such final statement no later than twenty (20) days after the date of receipt thereof.

### ARTICLE 13 CUSTOMER CREDIT

#### 13.1 Guarantee

As an essential inducement and consideration for entering into this Agreement, FLNG is relying on the legal, valid, binding and enforceable nature of the Guarantee given by Guarantor.

#### 13.2 Material Adverse Change

If at any time during the term of this Agreement, a Customer Material Adverse Change shall occur, FLNG may, in its Sole Opinion and without prejudice to any other rights or remedies it may have hereunder or in law or equity, require reasonable further assurances of Customer's creditworthiness, financial responsibility and ability to perform its

obligations hereunder as a condition of FLNG's further performance under this Agreement, and Customer shall comply with such further assurances. FLNG shall notify Customer requiring such assurances, including, in form and amount reasonably satisfactory to FLNG, any one or more of prepayments, a letter of credit and/or a bank guarantee. "Customer Material Adverse Change" for the purposes of this Section 13.2 means adverse changes, events or effects that have occurred or been threatened which could reasonably be likely to (a) materially adversely affect the business, operations, properties, condition (financial or otherwise), assets or liabilities of Customer and Guarantor taken as a whole; (b) prevent or materially delay the performance by Customer

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and Guarantor taken as a whole of their obligations under this Agreement and the Guarantee; or (c) create a reasonable basis for FLNG to have serious doubts about the creditworthiness, financial responsibility or ability to perform by Customer and Guarantor taken as a whole of their obligations under this Agreement and the Guarantee; provided, however, that Customer Material Adverse Change shall not include any adverse change, event or effect on the global energy industry as a whole, including those impacting energy prices or the value of oil and gas assets, the risks of which adverse changes are expressly recognized by FLNG as an assumed risk of entering into transactions of the nature contemplated by this Agreement. Upon Customer's failure to provide to FLNG, in form and amount satisfactory in FLNG's reasonable opinion, assurances of Customer's creditworthiness, financial responsibility and ability to perform its obligations hereunder within forty-five (45) days following FLNG's request for such assurance, FLNG may terminate this Agreement upon notice to Customer given no less than ten (10) days in advance of the effective date of such termination. [NOTE: THIS PROVISION TO BE ADJUSTED IF NO GUARANTEE IS ISSUED]

ARTICLE 14  
DUTIES, TAXES AND OTHER GOVERNMENTAL CHARGES

In addition to Customer's obligations under Section 4.4, Customer shall be responsible for and pay, or cause to be paid, all Taxes that may be imposed or levied on Customer's Inventory (including receipt or redelivery thereof) and the LNG Vessels. Customer shall reimburse and hold harmless FLNG for any such Taxes that may be required by law to be remitted by FLNG and shall pay such additional amount (including Taxes and corresponding interest at the Base Rate) as is necessary to ensure receipt by FLNG of the full amounts otherwise due to it under this Agreement. Notwithstanding the foregoing, neither Party shall be responsible for Taxes on the capital revenue or income derived by the other Party.

ARTICLE 15  
INSURANCE

15.1 FLNG's Insurance

FLNG shall be responsible for obtaining and maintaining (a) insurance for the Freeport Facility to the extent required by applicable law; and (b) additional insurance, as is reasonably necessary and available on reasonable commercial terms, against such other risks and at such levels as a Reasonable and Prudent Operator of a shared use LNG receiving and regasification terminal would obtain. FLNG shall obtain such insurance from a reputable insurer (or insurers) reasonably believed to have adequate financial reserves. Any insurance policy required pursuant to this Section 15.1 shall contain a standard waiver of subrogation endorsement and shall name any Major Customer as an additional insured. Upon request of Customer, FLNG shall provide to Customer satisfactory evidence that the insurance required pursuant to this Section 15.1 is in effect. In any event FLNG shall be required to obtain the following insurance coverages:

(a) Commercial General Liability Insurance;

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(b) Worker's Compensation;

(c) All-Risk Property Insurance;

(d) Wharf Owners Liability Insurance; and

(e) Pollution Insurance.

15.2 Customer's Insurance

(a) Loss of Product Insurance. Customer acknowledges that FLNG shall not at any time be responsible for securing and maintaining loss of

product insurance covering the risk of loss of Customer's Inventory and that Customer shall be responsible for insuring against such risk. If Customer elects to obtain loss of product insurance that insures the physical damage or loss of Customer's Inventory, FLNG shall, upon request of Customer, provide Customer all documents and information reasonably necessary to enable Customer to obtain such loss of product insurance.

- (b) LNG Vessel Insurance. Customer shall ensure that insurances are procured and maintained for each LNG Vessel in accordance with the following provisions. In all cases, such insurance shall establish insurance coverages consistent with insurances to the standards which a shipowner operating reputable LNG vessels, as a Reasonable and Prudent Operator, should observe in insuring LNG vessels of similar type, size, age and trade as such LNG Vessel. In this regard:
- (i) Hull and Machinery Insurance shall be placed and maintained with reputable marine underwriters; and
- (ii) Protection & Indemnity Insurance ("P&I Insurance") shall be placed and maintained as an unlimited entry, if such entry is available, with and subject to and on the basis of the rules of any of the reputable P&I insurance associations experienced in providing P&I Insurance for LNG vessels ("Approved Provider"). The terms of the P&I Insurance shall be those of the standard rules of the Approved Provider, provided that special provisions resulting from Transporter's acceptance of the Port Liability Agreement pursuant to Section 15.3 shall be incorporated into the terms of Transporter's P&I Insurance.
- (c) Evidence of Insurance. Prior to the commencement of deliveries to the Freeport Facility and thereafter at least once each Contract Year, Customer shall furnish the following evidence of insurance to FLNG in relation to each LNG Vessel: cover notes, certificates of entry, the latest rules of the particular Approved Provider, and detailed written information concerning all required insurance policies. The receipt of such information shall not impose any obligation on FLNG.

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### 15.3 Port Liability Agreement

- (a) Form. By no later than \*\*\*, the Parties shall agree on a form of "Port Liability Agreement" to be signed by each Transporter, such agreement to govern the Transporter's liability for damage to the Freeport Facility caused by the LNG Vessel. The Port Liability Agreement shall include:
- (i) \*\*\*; and
- (ii) Transporter's obligation to obtain the agreement of its Protection and Indemnity Association to cover the liabilities provided for in the Port Liability Agreement.

Upon the Parties agreeing upon the form of "Port Liability Agreement", this Agreement shall be amended to incorporate such form by reference.

- (b) Right to Reject. In the event a Transporter fails to execute a Port Liability Agreement, FLNG shall have the right under this Section 9.3(b) to reject Transporter's LNG Vessel until such time as the Port Liability Agreement is executed; provided, however, that FLNG shall not reject an LNG Vessel if Customer demonstrates that Transporter's failure to execute a Port Liability Agreement was due to Transporter's inability to obtain P&I Insurance on commercially reasonable terms for the liabilities provided for in the Port Liability Agreement.

## ARTICLE 16 LIABILITIES

### 16.1 Limitation of Liability of FLNG

In no case shall the Liabilities of FLNG arising out of, relating to, or connected with an Event under this Agreement exceed \*\*\* times the sum of the \*\*\* and the FOC Installment; provided, however, that the foregoing limitation shall not apply to Liabilities caused by the Gross Negligence/Willful Misconduct of FLNG. For purposes of this Section 16.1, an "Event" means any occurrence or series of occurrences having the same origin, and "Gross Negligence/Willful Misconduct" means any act or failure to act (whether sole, joint or concurrent) by FLNG which was intended to cause, or which was in reckless disregard of or wanton indifference to, harmful consequences FLNG knew, or should have known, such act or failure would have on the safety or property of another Person.

### 16.2 Consequential Loss or Damage

No Party shall be liable to the other Party for or in respect of:

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- (a) any consequential loss or damage, except to the extent provided in Sections 3.4, 6.2(b)(viii), 8.2(b)(ii), 9.9, 10.6, 11.2(b), 11.4 and 15.3 of this Agreement;
- (b) loss of profits or business interruption to the extent such amounts do not constitute consequential loss or damage; or
- (c) any special, incidental or punitive damages,

suffered or incurred by the other Party or any Person resulting from breach of or failure to perform this Agreement or the breach of any representation or warranty hereunder, whether express or implied, and whether such damages are claimed under breach of warranty, breach of contract, tort, or other theory or cause of action at law or in equity, except to the extent such damages have been awarded to a third party and are subject to allocation between or among the parties to the Dispute. For purposes of this Agreement, any amounts payable by Customer to its Gas purchasers or Gas suppliers for replacement Gas or other similar Liabilities shall be deemed to be a consequential loss or damage.

#### 16.3 Parties' Liability; Relationship of Shareholders

Customer's sole recourse and remedy under this Agreement for a breach hereof or a default hereunder shall be against FLNG and its assets. Except as otherwise provided herein, FLNG's sole recourse and remedy under this Agreement shall be against Customer and its assets for a breach hereof or a default hereunder.

#### 16.4 Liability for Personal Injury

Notwithstanding any other provisions of this Agreement, no indemnity set forth in Sections 3.4, 10.2, 10.6 and 11.4 of this Agreement shall apply to claims or damages for personal injury, illness or wrongful death.

### ARTICLE 17 FORCE MAJEURE

#### 17.1 Events of Force Majeure

Neither Party shall be liable to the other for any delay or failure in performance hereunder if and to the extent such delay or failure is a result of Force Majeure. Subject to the provision of this Article 17, the term "Force Majeure" shall mean any act, event, or circumstance that is not reasonably within the control of and that prevents or delays a performance by a Party. Nothing in this Article 17 shall be construed to require a Party to observe a higher standard of conduct than that required of a Reasonable and Prudent Operator as a condition to claiming the existence of Force Majeure.

#### 17.2 Limitation on Scope of Force Majeure Protection

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#### 17.3 Notice

A Force Majeure event shall take effect at the moment such an event or circumstance occurs. Upon the occurrence of a Force Majeure that prevents, interferes with or delays the performance by FLNG or Customer, in whole or in part, of any of its obligations hereunder, the party affected shall give notice thereof to the other party describing such event and stating the obligations the performance of which are affected (either in the original or in supplemental notices) and stating, as applicable:

- (a) the estimated period during which performance may be prevented, interfered with or delayed, including, to the extent known or ascertainable, the estimated extent of such reduction in performance;
- (b) the particulars of the program to be implemented to resume normal performance hereunder;
- (c) the anticipated portion of the Services Quantity for a Contract Year that will not be made available or received, as the case may be, by reason of Force Majeure; and
- (d) where Section 17.7 applies, the quantity of Services that FLNG reasonably expects to allocate to Customer.



Such notices shall thereafter be updated at least monthly during the period of such claimed Force Majeure specifying the actions being taken to remedy the circumstances causing such Force Majeure.

#### 17.4 Measures

In order to resume normal performance of this Agreement within the shortest time practicable, the party affected by the Force Majeure shall take all measures to this end which are reasonable under the circumstances, taking into account the consequences resulting from such event of Force Majeure. Prior to resumption of normal performance, the Parties shall continue to perform its obligations under this Agreement to the extent not excused by such event of Force Majeure.

#### 17.5 No Extension of Term

The Term shall not be extended as a result of or by the duration of an event of Force Majeure.

#### 17.6 Settlement of Industrial Disturbances

Settlement of strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of the party experiencing such situations, and nothing herein shall require such party to settle industrial disputes by yielding to demands made on it when it considers such action inadvisable.

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#### 17.7 Allocation of Services

If, as a result of an event of Force Majeure, FLNG is unable to meet its contractual obligations to Customer and any Other Customers under LNG terminal use agreements, FLNG shall allocate the available capability of the Freeport Facility to perform activities similar to the Services in the following order of priority (such allocation herein referred to as the "Major Customer Allocation Priority"):

- (a) first among Major Customers only, based on the ratio that the Maximum LNG Reception Quantity bears to the Aggregate Contracted Capacity for the remainder of such Contract Year (but including Major Customers only); and
- (b) then the remaining capability, if any, among Non-Major Customers based on the same ratio (but including Non-Major Customers only).

### ARTICLE 18 CURTAILMENT OF SERVICES OR TEMPORARY DISCONTINUATION OF SERVICES

#### 18.1 Scheduled Curtailment or Temporary Discontinuation of Services

To the extent that FLNG has notified Customer in connection with the preparation of the Customer LNG Receipt Schedule of maintenance to or modification of the Freeport Facility, FLNG shall, in addition to the rights set forth in Section 18.2, have the right to curtail or temporarily discontinue the Services, in whole or in part due to such maintenance or modification. During the period of such curtailment or temporary discontinuation of Services, FLNG shall, from time to time, use reasonable endeavors to update Customer on the expected progress towards completing the maintenance or modification, whichever applicable. For purposes of this Section 18.1, a curtailment of or temporary discontinuation of Services shall mean any curtailment or temporary discontinuation lasting no more than three (3) consecutive days. Notwithstanding the foregoing, FLNG agrees that, for purposes of this Section 18.1, neither a curtailment or temporary discontinuation of Services shall reduce FLNG's obligations to allow berthing, unloading and receipt of Customer's LNG in a quantity up to the Maximum LNG Reception Quantity.

#### 18.2 Unscheduled Curtailment or Temporary Discontinuation of Services

FLNG shall have the right to curtail or temporarily discontinue the Services, in whole or in part, at any time in order to (a) repair the Freeport Facility or (b) protect persons and property, including the Freeport Facility, from harm or damage due to operational or safety conditions. FLNG shall use reasonable endeavors to provide Customer a notice of curtailment or temporary discontinuation as is reasonable under the circumstances, and such notice may be issued for a specific period of time or until further notice is given. If, as a result of any unscheduled curtailment or temporary discontinuation of Services pursuant to this Section 18.2, FLNG is unable to meet its contractual obligations to Customer and any Other Customers under LNG terminal use agreements, FLNG shall

allocate the available capability of the Freeport Facility to perform activities similar to the Services in accordance with the Major Customer Allocation Priority. If a curtailment or temporary discontinuation of Services occurs under this Section 18.2, FLNG may direct Customer to adjust receipts of LNG and deliveries of Customer's Inventory, as the case may be, with preference given to Major Customers. Notwithstanding the foregoing, FLNG shall have no responsibility to inform Transporters, LNG Vessels, Downstream Pipelines, LNG Suppliers, or any other Persons involved in the transaction as to such curtailment or temporary discontinuation of Services.

ARTICLE 19  
ASSIGNMENT

19.1 Restrictions on Assignment

- (a) Consent of Other Party Required. Except as otherwise provided in this Article 19, neither this Agreement nor any rights or obligations hereunder may be assigned by any Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For greater certainty, a Temporary Release under Section 6.2 shall not be regarded as an assignment under this Article 19.
- (b) Obligation of Assignee. If consent is granted pursuant to Section 19.1(a) or in the case of an assignment permitted under Section 19.2 (other than Sections 19.2(c) and 19.2(d)), the assignee to such assignment must, as a condition to such assignment, deliver to the non-assigning Party its written undertaking to be bound by and perform all obligations of the assignor under this Agreement.

19.2 Permitted Assignments

- (a) Affiliates of FLNG. Notwithstanding the provisions of Section 19.1, FLNG may freely assign all of its rights under this Agreement to an Affiliate, upon notice to, but without requiring the consent of, Customer.
- (b) Affiliates of Customer. Notwithstanding the provisions of Section 19.1, Customer may freely assign all of its rights under this Agreement to (i) an Affiliate upon notice to, but without requiring the consent of, FLNG and (ii) an LNG Supply Project upon the written consent of FLNG, which consent shall not be unreasonably withheld.
- (c) Financing.
  - (i) Notwithstanding the provisions of Section 19.1, FLNG shall be entitled to assign, mortgage, or pledge all or any of its rights, interests, and benefits hereunder to secure payment of any indebtedness incurred or to be incurred in connection with the construction and term financing of the Freeport Facility, and Customer shall provide to the lenders to whom such indebtedness is owed a consent to assignment or similar document in form

and substance customary for similar financing transactions and agreed by such lenders and Customer.

- (ii) Notwithstanding the provisions of Section 19.1, Customer shall be entitled to assign, mortgage, or pledge all or any of its rights, interests, and benefits hereunder to secure payment of any indebtedness incurred or to be incurred, and FLNG shall provide to the lenders to whom such indebtedness is owed a consent to assignment or similar document in form and substance customary for similar financing transactions and agreed by such lenders and FLNG.
- (d) Partial Assignments for Periods of \*\*\* Years or More. Notwithstanding the provisions of Section 19.1 and subject to the provisions of this Section 19.2(d), Customer shall under this Section 19.2(d) be entitled to assign all or a part of its right to use the Services Quantity for a period that is no less than \*\*\* years (a "Partial Assignment") if such Partial Assignment is for a Maximum LNG Reception Quantity of no less than \*\*\* MMBTUs per Contract Year and is to:
  - (i) an Affiliate upon notice to, but without requiring the consent of, FLNG;
  - (ii) an LNG Supply Project upon the written consent of FLNG,

which consent shall not be unreasonably withheld; or

- (iii) any other Person upon the written consent of FLNG, which consent shall not be unreasonably withheld;

Any Partial Assignment is subject to (a) the assignee executing a terminal use agreement with FLNG (a "Parallel TUA"); and (b) Customer agreeing to appropriate modifications to the Gas redelivery provisions of this Agreement to ensure that FLNG is at all times capable of performing this Agreement and the Parallel TUA and appropriate modifications to the quantity provisions to reflect such assignment. The terms of the Parallel TUA shall be substantially the same as the terms of this Agreement except to the extent necessary to reflect the differences necessary to implement the Partial Assignment. For the avoidance of doubt, Customer shall have no obligation or liability under the Parallel TUA and the assignor shall be relieved of all rights and obligations hereunder to the extent of the assignment from and after the effective date of the assignment.

### 19.3 Assignment as Novation

An assignment under this Article 19 (except those permitted in Sections 19.2(c) and (d)) shall not serve as a novation of this Agreement unless and until, but shall serve as a novation if:

- (a) the assignee delivers to the non-assigning Party its written undertaking to be bound by and perform all obligations of the assignor under this Agreement, as if it were the assignor; and

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- (b) and, in the case of Customer, assignee having demonstrated to FLNG that its creditworthiness (including credit support from an irrevocable letter of credit, a parent guarantee or other security) at the time of the assignment is the same or better than the creditworthiness of Customer and Guarantor, taken as a whole, or is otherwise acceptable to FLNG.

In the event of a novation, the assignee shall be deemed to be a Party to this Agreement for all purposes with respect to rights and obligations pertaining to operations hereunder from and after the effective date of the assignment and the assignor shall be relieved of all rights and obligations hereunder from and after the effective date of the assignment. Notwithstanding Section 19.1(b), in the event of a novation, the Guarantee shall remain in effect only in relation to rights and obligations of Customer hereunder arising prior to the effective date of the novation.

## ARTICLE 20 TERMINATION

### 20.1 Early Termination Events

- (a) General. If during the period of construction of the Freeport Facility, Customer reasonably determines that Substantial Completion will not occur by \*\*\*, then Customer may terminate this Agreement (such termination referred to as an "Early Termination Event") pursuant to the other provisions of this Article 20.
- (b) Notice. Upon the occurrence of an Early Termination Event, Customer shall give notice thereof to FLNG.
- (c) Cure. At any time after the expiration of a period of thirty (30) days after Customer gives notice of an Early Termination Event pursuant to Section 20.1(b), Customer may terminate this Agreement with immediate effect by giving notice of such termination to FLNG; provided, however, that Customer may not terminate this Agreement if the circumstances constituting the Early Termination Event have been fully remedied or have ceased to apply.

### 20.2 Termination Relating to Guarantee

In addition to any other rights FLNG may have under this Agreement or otherwise, FLNG may, in its Sole Opinion, elect to terminate this Agreement by notice to Customer if the Guarantee ceases to be in full force and effect or the Guarantor:

- (a) suspends payment of its debts or is unable to pay its debts and such suspension;
- (b) passes a resolution, commences proceedings or has proceedings commenced against it (which are not stayed within sixty (60) days of service thereof on Guarantor) in the nature of bankruptcy or reorganization resulting from

insolvency or for its liquidation or for the appointment of a receiver, trustee in bankruptcy or liquidator of its undertaking or assets; or

- (c) enters into any composition or scheme or arrangement with its creditors;

provided that Customer has not provided credit support reasonably acceptable to FLNG within thirty (30) days following the delivery of FLNG's notice.

### 20.3 Other Termination Provisions

This Agreement is also subject to the termination provisions provided in Section 12.6 and Article 13.

### 20.4 Consequences of Termination

Termination of this Agreement under this Article 20 or any other provision of this Agreement shall be without prejudice to any other rights and remedies of either Party arising hereunder or by law or otherwise which arose or accrued prior to or as a result of such termination or by reason of default of either Party.

## ARTICLE 21 APPLICABLE LAW

The substantive laws of the State of New York, United States of America, exclusive of any conflicts of laws principles that could require the application of any other law, shall govern this Agreement for all purposes, including the resolution of all Disputes between or among the Parties.

## ARTICLE 22 DISPUTE RESOLUTION

### 22.1 Dispute Resolution

- (a) **Arbitration.** Any Dispute shall be exclusively and definitively resolved through final and binding arbitration, it being the intention of the Parties that this is a broad form arbitration agreement designed to encompass all possible Disputes.
- (b) **Rules.** The arbitration shall be conducted in accordance with the International Arbitration Rules (the "Rules") of the American Arbitration ("AAA") (as then in effect).
- (c) **Number of Arbitrators.** Three (3) arbitrators shall conduct the arbitration, unless the Parties to the Dispute agree to a sole arbitrator within thirty (30) days after the filing of the arbitration. For greater certainty, for purposes of this Section 22.1(c), the filing of the arbitration means the date on which the claimant's request for arbitration is received by the other Parties to the Dispute.

- (d) **Method of Appointment of the Arbitrators.**

If the arbitration is to be conducted by three (3) arbitrators and there are only two (2) Parties to the Dispute, then each Party to the Dispute shall appoint one (1) arbitrator within thirty (30) days of the filing of the arbitration, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators has been appointed by the Parties to the Dispute. If a Party to the Dispute fails to appoint its Party-appointed arbitrator or if the two Party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then the AAA shall serve as the appointing authority, and shall appoint the remainder of the three arbitrators not yet appointed. If the arbitration is to be conducted by three arbitrators and there are more than two parties to the Dispute, then within thirty (30) days of the filing of the arbitration, all claimants shall jointly appoint one arbitrator and all respondents shall jointly appoint one arbitrator, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators has been appointed by the parties to the Dispute. If either all claimants or all respondents fail to make a joint appointment of an arbitrator or if the party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then the AAA as the appointing authority shall appoint the remainder of the three

arbitrators not yet appointed.

- (e) Consolidation. If the Parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may be consolidated into a single arbitral proceeding.
- (f) Place of Arbitration. Unless otherwise agreed by all Parties to the Dispute, the place of arbitration shall be Houston, Texas.
- (g) Language. The arbitration proceedings shall be conducted in the English language, and the arbitrators shall be fluent in the English language.
- (h) Entry of Judgment. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.
- (i) Notice. All notices required for any arbitration proceeding shall be deemed properly given if sent in accordance with Article 25.
- (j) Qualifications and Conduct of the Arbitrators. All arbitrators shall be and remain at all times wholly impartial, and, once appointed, no arbitrator shall have any ex parte communications with any of the parties to the Dispute concerning the arbitration or the underlying Dispute other than communications directly concerning the selection of the presiding arbitrator, where applicable.

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- (k) Interim Measures. Any party to the Dispute may apply to a court for interim measures (i) prior to the constitution of the arbitral tribunal (and thereafter as necessary to enforce the arbitral tribunal's rulings); or (ii) in the absence of the jurisdiction of the arbitral tribunal to rule on interim measures in a given jurisdiction. The Parties agree that seeking and obtaining such interim measures shall not waive the right to arbitration. The arbitrators (or in an emergency the presiding arbitrator acting alone in the event one or more of the other arbitrators is unable to be involved in a timely fashion) may grant interim measures including injunctions, attachments and conservation orders in appropriate circumstances, which measures may be immediately enforced by court order. Hearings on requests for interim measures may be held in person, by telephone, by video conference or by other means that permit the parties to the Dispute to present evidence and arguments.
- (l) Costs and Attorneys' Fees. The arbitral tribunal is authorized to award costs and attorneys' fees and to allocate them between the parties to the Dispute. The costs of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal.
- (m) Interest. The award shall include interest, as determined by the arbitral award, from the date of any default or other breach of this Agreement until the arbitral award is paid in full. Interest shall accrue from day to day at the Base Rate.
- (n) Currency of Award. The arbitral award shall be made and payable in United States Dollars, free of any tax or other deduction.
- (o) Waiver of Challenge to Decision or Award. To the extent permitted by law, the Parties hereby waive any right to appeal from or challenge any arbitral decision or award, or to oppose enforcement of any such decision or award before a court or any governmental authority, except with respect to the limited grounds for modification or non-enforcement provided by any applicable arbitration statute or treaty.
- (p) Confidentiality. Any arbitration or expert determination relating to a Dispute (including a settlement resulting from an arbitral award, documents exchanged or produced during an arbitration proceeding, and memorials, briefs or other documents prepared for the arbitration) shall be confidential and may not be disclosed by the parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except (in accordance with Article 23) to the extent necessary to enforce this Section 22.1 or any arbitration award, to enforce other rights of a party to the Dispute, or as required by law; provided, however, that breach of this confidentiality provision shall not void any settlement, expert determination or award.

## 22.2 Expert Determination

For any decision referred to an expert under Annex I or Annex II, the

Parties hereby agree that such decision shall be conducted expeditiously by an expert selected

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unanimously by the Parties to the Dispute. The expert is not an arbitrator of the Dispute and shall not be deemed to be acting in an arbitral capacity. The Party desiring an expert determination shall give the other Party to the Dispute notice of the request for such determination. If the parties to the Dispute are unable to agree upon an expert within ten (10) days after receipt of the notice of request for an expert determination, then, upon the request of any of the parties to the Dispute, the International Centre for Expertise of the International Chamber of Commerce shall appoint such expert and shall administer such expert determination through the ICC's Rules for Expertise. The expert shall be and remain at all times wholly impartial, and, once appointed, the expert shall have no ex parte communications with any of the Parties to the Dispute concerning the expert determination or the underlying Dispute. Both Parties agree to cooperate fully in the expeditious conduct of such expert determination and to provide the expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner. Before issuing a final decision, the expert shall issue a draft report and allow the parties to the Dispute to comment on it. The expert shall endeavor to resolve the Dispute within thirty (30) days (but no later than sixty (60) days) after his appointment, taking into account the circumstances requiring an expeditious resolution of the matter in dispute. The expert's decision shall be final and binding on the Parties.

ARTICLE 23  
CONFIDENTIALITY

23.1 Confidentiality Obligation

Except as otherwise expressly provided in Section 4.5(a), neither this Agreement nor information or documents that come into the possession of a Party by means of the other Party in connection with the performance of this Agreement may be used or communicated to Persons (other than the Parties) without the mutual written agreement of the Parties, except that either Party shall have the right to disclose such information or documents without obtaining the other Party's prior consent in any of the situations described below:

- (a) accountants, other professional consultants or underwriters, provided such disclosure is solely to assist the purpose for which the aforesaid were so engaged and further provided that such Persons agree to hold such information or documents under terms of confidentiality equivalent to this Section 23.1, and for the benefit of the Parties;
- (b) bona fide prospective purchasers of all or a part of a Party's or its Affiliate's business, bona fide prospective assignees of all or part of a Party's interest in this Agreement, or providers of finance to either Party in relation to this Agreement or the Freeport Facility, provided that such Persons agree to hold such information or documents under terms of confidentiality equivalent to this Section 23.1, and for the benefit of the Parties;
- (c) to legal counsel, provided such disclosure is solely to assist the purpose for which the aforesaid were so engaged;
- (d) if required by any court of law or any law, rule, or regulation, or if requested by a Governmental Authority having or asserting jurisdiction over a Party and having or asserting authority to require such disclosure in accordance with that authority, or pursuant to the rules of any recognized stock exchange or agency established in connection therewith;
- (e) to the operator of a Gas Storage Facility, to Temporary Customers, to LNG Suppliers and to any of the purchasers under the Customer's Gas sales contracts from Customer's Inventory, in each case only to the extent required for the administration of such contracts, and provided that such Persons agree to hold such information or documents under terms of confidentiality equivalent to this Section 23.1, and for the benefit of the Parties;
- (f) to its Affiliates, its shareholders partners, or its shareholders' and partners' Affiliates, provided that such recipient entity has a bona fide business need for such information and agrees to hold such information or documents under terms of confidentiality equivalent to this Section 23.1;

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- (g) to any Government Authorities to the extent such disclosure assists FLNG and Customer in obtaining Approvals;
- (h) to an Expert in connection with the resolution of a Dispute pursuant to Section 22.2 or to an arbitration tribunal in connection with the resolution of a Dispute under Section 22.1;
- (i) to the extent any such information or document has entered the public domain other than through the fault or negligence of the Party making the disclosure; and
- (j) to Other Customers by FLNG only in order to allow FLNG to perform its obligations under Section 4.5(c) herein.

Notwithstanding the foregoing, Customer acknowledges and agrees that certain providers of finance to FLNG as well as FLNG's shareholders and partners may disclose this Agreement and information or documents disclosed pursuant to this Section 23.1 if required by any court of law or any law, rule, or regulation, or if requested by a Governmental Authority having or asserting jurisdiction over such Persons and having or asserting authority to require such disclosure in accordance with that authority, or pursuant to the rules of any recognized stock exchange or agency established in connection therewith. In addition, notwithstanding the foregoing, except as reasonably necessary to comply with applicable securities laws, the Parties (and each employee, representative, or other agent of the Parties) may (i) consult any tax advisor regarding the U.S. federal income tax treatment or tax structure of the transactions contemplated by this Agreement, and (ii) disclose to any and all Persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses)

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that are provided to the taxpayer relating to such tax treatment and tax structure; provided that clause (ii) shall not apply until the earliest of (x) the date of the public announcement of discussions relating to this Agreement, (y) the date of the public announcement of this Agreement or (z) the date of the execution of this Agreement, with or without conditions. For this purpose, "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Agreement and does not include information relating to the identity of the Parties.

## 23.2 Public Announcements

- (a) General. Neither Party may issue or make any public announcement, press release or statement regarding this Agreement unless, prior to the release of the public announcement, press release or statement, such Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains the approval of the other Party; provided that, notwithstanding any failure to obtain such approval, no Party shall be prohibited from issuing or making any such public announcement, press release or statement if it is necessary to do so in order to comply with the applicable laws, rules or regulations of any Governmental Authority, legal proceedings or stock exchange having jurisdiction over such Party.
- (b) FLNG Promotional Materials. Notwithstanding any provision in this Section 23.2(a) to the contrary, FLNG may, with the consent of Customer not to be unreasonably withheld, use the following in external announcements and publications: (i) information concerning the signing of this Agreement; (ii) the general nature of the Services; and (iii) the general nature of Customer's involvement in the Freeport Facility project.

## ARTICLE 24 REPRESENTATIONS AND WARRANTIES

### 24.1 Representations and Warranties of Customer

As of the date hereof and until the expiration of this Agreement, Customer represents, undertakes and warrants that:

- (a) Customer is and shall remain duly organized and in good standing under the laws of its country of incorporation, duly qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification and to perform its obligations under this Agreement;
- (b) Customer has taken all necessary action to authorize the execution, delivery and performance of its obligations hereunder;
- (c) Customer has not retained, employed or used any broker or

intermediary in connection with the negotiation of this Agreement and has no obligation to any

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third party by way of commissions, finder's fees or similar fees with respect to the execution of this Agreement; and

- (d) neither the execution, delivery nor performance of this Agreement, nor the consummation of any action contemplated herein, conflicts or will conflict with, results or will result in a breach of, or constitutes or will constitute a default under, any provision of Customer's constitutive instruments or any law, judgment, order, decree, rule or regulation of any court, administrative agency or other instrumentality of any Governmental Authority or of any other agreement or instrument to which Customer is a party.

#### 24.2 Representations and Warranties of FLNG

As of the date hereof and until the expiration of this Agreement, FLNG represents, undertakes and warrants that:

- (a) FLNG is and shall remain duly organized and in good standing under the laws of Delaware, duly qualified to do business in those jurisdictions where the nature of its activities or property requires such qualification and to perform its obligations under this Agreement;
- (b) FLNG has taken all necessary action to authorize the execution, delivery and performance of its obligations hereunder;
- (c) FLNG has not retained, employed or used any broker or intermediary in connection with the negotiation of this Agreement and has no obligation to any third party by way of commissions, finder's fees or similar fees with respect to the execution of this Agreement; and
- (d) neither the execution, delivery nor performance of this Agreement, nor the consummation of any action contemplated herein, conflicts or will conflict with, results or will result in a breach of, or constitutes or will constitute a default under, any provision of FLNG's constitutive instruments or any law, judgment, order, decree, rule or regulation of any court, administrative agency or other instrumentality of any Governmental Authority or of any other agreement or instrument to which FLNG is a party.

#### ARTICLE 25 NOTICES

Except as otherwise specifically provided, all notices authorized or required between the Parties by any of the provisions of this Agreement shall be in writing (in English) and delivered in person or by courier service or by any electronic means of transmitting written communications which provides written confirmation of complete transmission, and addressed to such Party. Oral communication does not constitute notice for purposes of this Agreement, and e-mail addresses and telephone numbers for the Parties are listed below as a matter of convenience only. The foregoing notwithstanding, notices given from LNG Vessels at sea may be given by radio, and notices required under Article 5 may be given by e-mail. A notice given under any provision

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of this Agreement shall be deemed delivered only when received by the Party to whom such notice is directed, and the time for such Party to deliver any notice in response to such originating notice shall run from the date the originating notice is received. "Received" for purposes of this Article 25 shall mean actual delivery of the notice to the address of the Party specified hereunder or, in the event notice was given by radio from an LNG Vessel at sea, actual receipt of the communication by radio, or to be thereafter notified in accordance with this Article 25. Each Party shall have the right to change its address at any time and/or designate that copies of all such notices be directed to another Person at another address, by giving written notice thereof to the other Party.

FREEMPORT LNG DEVELOPMENT L.P. [CONOCOPHILLIPS \_\_\_\_\_]

Attention: President Attention: General Manager, LNG

1200 Smith Street, Suite 600 600 North Dairy Ashford

Houston, Texas 77002-4310 Houston, Texas 77049

Fax: (713) 980-2903 Fax: (281) 293-4830



ARTICLE 26  
MISCELLANEOUS

26.1 Amendments

This Agreement may not be amended, modified, varied or supplemented except by an instrument in writing signed by FLNG and Customer.

26.2 Approvals

After satisfaction of the Conditions Precedent, each Party shall use reasonable endeavors to maintain in force all Approvals necessary for its performance under this Agreement. Customer and FLNG shall cooperate fully with each other wherever necessary for this purpose.

26.3 Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

26.4 Waiver

No failure to exercise or delay in exercising any right or remedy arising from this Agreement shall operate or be construed as a waiver of such right or remedy. Performance of any condition or obligation to be performed hereunder shall not be deemed to have been waived or postponed except by an instrument in writing signed by the Party who is claimed to have granted such waiver or postponement. No waiver by either Party shall operate or be construed as a waiver in respect of any failure or default

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not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver.

26.5 No Third Party Beneficiaries

The interpretation of this Agreement shall exclude any rights under legislative provisions conferring rights under a contract to Persons not a party to that contract. Nothing in this Agreement shall otherwise be construed to create any duty to, or standard of care with reference to, or any liability to, any Person other than a Party.

26.6 Rules of Construction

(a) Drafting. Each provision of this Agreement shall be construed as though all Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(b) Priority.

(i) In the event of a conflict between the terms of this Agreement excluding Annexes I and II and Exhibits A and B (the "Base Agreement") and the terms of Annexes I and II and Exhibits A and B, all terms of the Base Agreement shall take precedence over Annexes I and II and Exhibits A and B.

(ii) In the event that any conflict arises between this Agreement and the Freeport Facility Marine Operations Manual, this Agreement shall prevail. In the event that any conflict arises between this Agreement and the Freeport Services Manual, this Agreement shall prevail.

26.7 Survival of Rights

Any termination or expiration of this Agreement shall be without prejudice to any rights, remedies, obligations and liabilities which may have accrued to a Party pursuant to this Agreement or otherwise under applicable law. All rights or remedies which may have accrued to the benefit of either Party (and any of this Agreement's provisions necessary for the exercise of such accrued rights or remedies) prior to the termination or expiration of this Agreement shall survive such termination or expiration. Furthermore, the provisions of Article 12, Article 14, Article 16, Article 21, Article 22, Article 23, Article 25, and Article 26 shall survive the termination or expiration of this Agreement.

26.8 Rights and Remedies

Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

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#### 26.9 Interpretation

- (a) **Headings.** The topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular Article.
- (b) **Singular and Plural.** Reference to the singular includes a reference to the plural and vice versa.
- (c) **Gender.** Reference to any gender includes a reference to all other genders.
- (d) **Article.** Unless otherwise provided, reference to any Article, Section, Schedule, Annex or Exhibit means an Article, Section, Schedule, Annex or Exhibit of this Agreement.
- (e) **Include.** The words "include" and "including" shall mean include or including without limiting the generality of the description preceding such term and are used in an illustrative sense and not a limiting sense.
- (f) **Time Periods.** References to "day," "month," "quarter" and "year" shall, unless otherwise stated or defined, mean a day, month, quarter and year of the Gregorian calendar, respectively. For the avoidance of doubt, a "day" shall commence at 24:00 midnight.
- (g) **Statutory References.** Unless the context otherwise requires, any reference to a statutory provision is a reference to such provision as amended or re-enacted or as modified by other statutory provisions from time to time and includes subsequent legislation and regulations made under the relevant statute
- (h) **Currency.** References to United States dollars shall be a reference to the lawful currency from time to time of the United States of America.

#### 26.10 Disclaimer of Agency

The rights, duties, obligations and liabilities of the Parties under this Agreement shall be individual, not joint or collective. It is not the intention of the Parties to create, nor shall this Agreement be deemed or construed to create, a partnership, joint venture or other association or a trust. This Agreement shall not be deemed or construed to authorize any Party to act as an agent, servant or employee for the other Party for any purpose whatsoever except as explicitly set forth in this Agreement. In their relations with each other under this Agreement, the Parties shall not be considered fiduciaries.

#### 26.11 No Sovereign Immunity

Any Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by the laws of any applicable jurisdiction. This waiver includes immunity from (i) any expert

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determination or arbitration proceeding commenced pursuant to this Agreement; (ii) any judicial, administrative or other proceedings to aid the expert determination or arbitration commenced pursuant to this Agreement; and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from an expert determination, mediation, arbitration or any judicial or administrative proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations hereunder are of a commercial and not a governmental nature.

#### 26.12 Severance of Invalid Provisions

If and for so long as any provision of this Agreement shall be deemed to be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Agreement except only so far as shall be necessary to give effect to the construction of such invalidity, and any such invalid provision shall be

deemed severed from this Agreement without affecting the validity of the balance of this Agreement.

26.13 Compliance with Laws

In performance of their respective obligations under this Agreement, each Party agrees to comply with all applicable laws, statutes, rules, regulations, judgments, decrees, injunctions, writs and orders, and all interpretations thereof, of all Governmental Authorities having jurisdiction over such Party.

26.14 Conflicts of Interest

FLNG shall avoid any conflict between its own interests and the interests of Customer in relation to obtaining LNG terminalling services from the Freeport Facility. In this regard, FLNG shall not become one of the Other Customers during the Term hereof unless Customer has first consented in writing (such consent not to be unreasonably withheld or delayed) to such expanded business role by FLNG. For the avoidance of doubt, in no event shall (a) any of FLNG's joint venture partners or affiliated entities of any kind be restricted from becoming one of the Other Customers during the Term hereof; or (b) any partner, shareholder, member, or other equity owner of FLNG be restricted from becoming one of the Other Customers during the Term hereof. Except as provided above, the Parties and their Affiliates are free to engage or invest (directly or indirectly) in an unlimited number of activities or businesses, any one or more of which may be related to or in competition with the business activities contemplated under this Agreement, without having or incurring any obligation to offer any interest in such business activities to the other Party.

26.15 Expenses

Each Party shall be responsible for and bear all of its own costs and expenses incurred in connection with the preparation and negotiation of this Agreement.

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26.16 Scope

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces any provisions on the same subject contained in any other agreement between the Parties, whether written or oral, prior to the date of the original execution hereof.

26.17 Counterpart Execution

This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed an original Agreement for all purposes; provided that no Party shall be bound to this Agreement unless and until both Parties have executed a counterpart. For purposes of assembling all counterparts into one document, Customer is authorized to detach the signature page from one or more counterparts and, after signature thereof by the respective Party, attach each signed signature page to a counterpart.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and signed by its duly authorized officer as of the Effective Date.

FREEPORT LNG DEVELOPMENT, L.P.

By: Freeport LNG-GP, Inc., its General Partner

By: \_\_\_\_\_  
Michael S. Smith  
Chief Executive Officer

[CONOCOPHILLIPS \_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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ANNEX I

MEASUREMENTS AND TESTS FOR LNG AT RECEIPT POINT  
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Parties to Supply Devices  
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General. Unless otherwise agreed, Customer and FLNG shall supply equipment and conform to procedures that are in accordance with the latest appropriate International Organization for Standards ("ISO") documents.

Customer Devices. Customer or Customer's agent shall supply, operate and maintain, or cause to be supplied, operated and maintained, suitable gauging devices for the liquid level in LNG tanks of the LNG Vessels, pressure and temperature measuring devices, and any other measurement or testing devices which are incorporated in the structure of LNG vessels or customarily maintained on board ship.

FLNG Devices. FLNG shall supply, operate and maintain, or cause to be supplied, operated and maintained, devices required for collecting samples and for determining quality and composition of the LNG and any other measurement or testing devices which are necessary to perform the measurement and testing required hereunder at the Freeport Facility.

Dispute. Any Dispute arising under this Annex I shall be submitted to an Expert under Section 22.2.

Selection of Devices  
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All devices provided for in this Annex I shall be approved by FLNG, acting as a Reasonable and Prudent Operator. The required degree of accuracy (which shall in any case be within the permissible tolerances defined herein and in the applicable standards referenced herein) of such devices selected shall be mutually agreed upon by Customer and FLNG. In advance of the use of any device, the Party providing such device shall cause tests to be carried out to verify that such device has the required degree of accuracy.

Verification of Accuracy and Correction for Error  
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Accuracy. Accuracy of devices used shall be tested and verified at the request of either Party, including the request by a Party to verify accuracy of its own devices. Each Party shall have the right to inspect at any time the measurement devices installed by the other Party, provided that the other Party is notified in advance. Testing shall be performed only when both Parties are represented, or have received adequate advance notice thereof, using methods recommended by the manufacturer or any other method agreed to by FLNG and Customer. At the request of any Party hereto, any test shall be witnessed and verified by an independent surveyor mutually agreed upon by Customer and FLNG. Permissible

tolerances shall be as defined herein or as defined in the applicable standards referenced herein.

Inaccuracy. Inaccuracy of a device exceeding the permissible tolerances shall require correction of previous recordings, and computations made on the basis of those recordings, to zero error with respect to any period which is definitely known or agreed upon by the Parties as well as adjustment of the device. All invoices issued during such period shall be amended accordingly to reflect such correction, and an adjustment in payment shall be made between Customer and FLNG. If the period of error is neither known nor agreed upon, and there is no evidence as to the duration of such period of error, corrections shall be made and invoices amended for each receipt of LNG made during the last half of the period since the date of the most recent calibration of the inaccurate device. However, the provisions of this Paragraph 5 shall not be applied to require the modification of any invoice that has become final pursuant to Section 12.7.

Costs and Expenses of Test Verification. All costs and expenses for testing and verifying FLNG's measurement devices shall be borne by FLNG, and all costs and expenses for testing and verifying Customer's measurement devices shall be borne by Customer. The fees and charges of independent surveyors for measurements and calculations shall be borne directly by Customer.

Tank Gauge Tables of LNG Vessels

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Initial Calibration. Customer shall provide FLNG or its designee, or cause FLNG or its designee to be provided, with a certified copy of tank gauge tables for each tank of each LNG Vessel verified by a competent impartial authority or authorities mutually agreed upon by the Parties. Such tables shall include correction tables for list, trim, tank contraction and any other items requiring such tables for accuracy of gauging.

Presence of Representatives. FLNG and Customer shall each have the right to have representatives present at the time each LNG tank on each LNG Vessel is volumetrically calibrated.

Recalibration. If the LNG tanks of any LNG Vessel suffer distortion of such nature as to create a reasonable doubt regarding the validity of the tank gauge tables described herein (or any subsequent calibration provided for herein), Customer or Customer's agent shall recalibrate the damaged tanks, and the vessel shall not be employed as an LNG Vessel hereunder until appropriate corrections are made. If mutually agreed between Customer and FLNG representatives, recalibration of damaged tanks can be deferred until the next time when such damaged tanks are warmed for any reason, and any corrections to the prior tank gauge tables will be made from the time the distortion occurred. If the time of the distortion cannot be ascertained, the Parties shall mutually agree on the time period for retrospective adjustments.

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#### Accuracy of Measurement

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All measuring equipment must be maintained, calibrated and tested in accordance with the manufacturer's recommendations. In the absence of a manufacturer's recommendation, the minimum frequency of calibration shall be 180 days, unless otherwise mutually agreed between the Parties. Documentation of all tests and calibrations will be made available by the Party performing the same to the other Party. Acceptable accuracy and performance tolerances will be:

Temperature: +/- 0.2 degrees Celsius at - 160 degrees Celsius  
Pressure: +/- 2% of the calibrated span of the measuring device  
Level Gauge: +/- 5 millimeter  
Level Gauge  
Systems Comparison: +/- 5 millimeter

#### Gauging and Measuring LNG Volumes Delivered

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Gauge Tables. Upon FLNG's representative and the independent surveyor's, if present, arriving on board the LNG Vessel prior to the commencement of or during unloading, Customer or Customer's representative shall make available to them a certified copy of tank gauge tables for each tank of the LNG Vessel.

Gauges. Volumes of LNG delivered pursuant to this Agreement shall be determined by gauging the LNG in the tanks of the LNG Vessels before and after unloading. Each LNG Vessel's tank shall be equipped with two sets of level gauges, each set utilizing a different measurement principle. Comparison of the two systems, designated as Primary and Secondary Measurement Systems, shall be performed from time to time to ensure compliance with the acceptable performance tolerances stated herein.

Gauging Process. Gauging the liquid in the tanks of the LNG Vessels and measuring of liquid temperature, vapor temperature and vapor pressure in each LNG tank, trim and list of the LNG Vessels, and atmospheric pressure shall be performed, or caused to be performed, by Customer before and after unloading. FLNG's representative shall have the right to be present while all measurements are performed and shall verify the accuracy and acceptability of all such measurements. The first gauging and measurements shall be made immediately before the commencement of unloading. The second gauging and measurements shall take place immediately after the completion of unloading. The liquid level in the LNG Vessel before and after the unloading shall be determined by at least two separate tank gaugings to be conducted at least 15 minutes apart.

Records. Copies of gauging and measurement records shall be furnished to FLNG immediately upon completion of unloading.

Gauging Liquid Level of LNG. The level of the LNG in each LNG tank of the LNG Vessel shall be gauged by means of the primary gauging device installed in the LNG Vessel for that purpose. The level of the LNG in each tank shall be logged or printed.

Determination of Temperature. The temperature of the LNG and of the vapor space in each tank shall be measured by means of a sufficient number of properly located temperature measuring devices to permit the determination of average temperature. Temperatures shall be measured at the same time as the liquid level measurements and shall be logged or printed.

Determination of Pressure. The pressure of the vapor in each LNG tank shall be determined by means of pressure measuring devices installed in each LNG tank of the LNG Vessels. The atmospheric pressure shall be determined by readings from the standard barometer installed in the LNG Vessels. Pressures shall be measured at the same time as the liquid level measurements, and shall be logged or printed.

Determination of Density. The LNG density shall be calculated using the method described within ISO 6578-91, Refrigerated hydrocarbon liquids - Static measurement. This method shall be updated to conform to any official published revision of that document. Should any improved data, method of calculation or direct measurement device become available which is acceptable to both Buyer and Seller, such improved data, method or device shall then be used. If density is determined by measurements, the results shall be measured at the same time as the liquid level measurements and shall be logged or printed.

#### Samples for Quality Analysis

General. Flow proportional representative liquid samples shall be collected from an appropriate point located as close as practical to the unloading line starting two hours after the beginning of transfer and ending two hours before the end of transfer. Samples taken when biphasic or overheated LNG is suspected to be in the main transfer line will be disregarded. These incremental samples will be passed through a vaporizer, and samples of the vaporized liquid will be analyzed. The resulting analyses, which are proportional to time, will be mathematically flow rate weighted to yield an analysis that is representative of the unloaded Cargo. This flow rate weighted analysis shall be used for all appropriate calculations associated with the delivered Cargo. Should the automatic sampling system fail during the unloading, manual samples shall be collected and analyzed for accounting purposes.

Manual Samples. Prior to the end of the unloading cycle, two spot samples shall be collected from the vaporizer. Spot samples shall be collected in accordance with Gas Processors Association ("GPA") Standard 2166 - Methods for Obtaining Gas Samples for Analysis by Gas Chromatography - or by other mutually agreeable methods. The samples shall be properly labeled and then distributed to Customer

and FLNG. FLNG shall retain one sample for a period of 30 days, unless the analysis is in dispute. If the analysis is in dispute, the sample will be retained until the dispute is resolved.

Sampling and analysis methods and procedures that differ from the above may be employed with the mutual agreement of the Parties.

#### Quality Analysis

Certification and Deviation. Chromatograph calibration gasses shall be provided and their composition certified by an independent third party. From time to time, deviation checks shall be performed to verify the accuracy of the gas composition mole percentages and resulting calculated physical properties. Analyses of a sample of test gas of known composition resulting when procedures that are in accordance with the above mentioned standards have been applied will be considered as acceptable if the resulting calculated Gross Real Heating Value is within +/- 0.3% of the known Gross Real Heating Value of the test gas sample. If the deviation exceeds the tolerance stated, the Gross Real Heating Value, Relative Density and Compressibility previously calculated will be corrected immediately. Previous analyses will be corrected to the point where the error occurred, if this can be positively identified to the satisfaction of both Parties.

Otherwise it shall be assumed that the drift has been linear since the last recalibration and correction shall be based on this assumption.

GPA Standard 2261. All samples shall be analyzed by FLNG to determine the molar fraction of the hydrocarbon and other components in the sample by gas chromatography using a mutually agreed method in accordance with GPA Standard 2261 - Method of Analysis for Gas and Similar Gaseous Mixtures by Gas Chromatography, current as of January 1, 1990 and as periodically updated or as otherwise mutually agreed by the Parties. If better standards for analysis are subsequently adopted by GPA or other recognized competent impartial authority, upon mutual agreement of Customer and FLNG, they shall be substituted for the standard then in use, but such substitution shall not take place retroactively. A calibration of the chromatograph or other analytical instrument used shall be performed by FLNG immediately prior to the analysis of the sample of LNG delivered. FLNG shall give advance notice to Customer of the time FLNG intends to conduct a calibration thereof, and Customer shall have the right to have a representative present at each such calibration; provided, however, FLNG will not be obligated to defer or reschedule any calibration in order to permit the representative of Customer to be present.

GPA Standard 2377 and 2265. FLNG shall determine the presence of Hydrogen Sulfide (H<sub>2</sub>S) by use of GPA Standard 2377 - Test of Hydrogen Sulfide and Carbon Dioxide in Gas Using Length of Stain Tubes. If necessary, the concentration of H<sub>2</sub>S and total sulfur will be determined using one or more of the following methods as is appropriate: gas chromatography, Gas Processors Standard 2265 - Standard for Determination of Hydrogen Sulfide and Mercaptan Sulfur in Gas

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(Cadmium sulfate - Iodometric Titration Method) or any other method that is mutually acceptable.

#### Operating Procedures

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Notice. Prior to conducting operations for measurement, gauging, sampling and analysis provided in this Annex I, the Party responsible for such operations shall notify the appropriate representatives of the other Party, allowing such representatives reasonable opportunity to be present for all operations and computations; provided that the absence of the other Party's representative after notification and opportunity to attend shall not prevent any operations and computations from being performed.

Independent Surveyor. At the request of either Party any measurement, gauging, sampling and analysis shall be witnessed and verified by an independent surveyor mutually agreed upon by Customer and FLNG. The results of such surveyor's verifications shall be made available promptly to each Party.

Preservation of Records. All records of measurement and the computed results shall be preserved by the Party responsible for taking the same, or causing the same to be taken, and made available to the other Party for a period of not less than three (3) years after such measurement and computation.

#### Quantities Delivered

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Calculation of MMBTU Quantities. The quantity of MMBTUs delivered shall be calculated by FLNG and verified by Customer. Either Party may, at its own expense, require the measurements and calculations and/or their verification by an independent surveyor, mutually agreed upon by the Parties. Consent to an independent surveyor proposed by a Party shall not be unreasonably withheld by the other Party.

Determination of Gross Real Heating Value. All component values shall be in accordance with the latest revision of ISO 6578 and the latest revision of the reference standards therein.

Determination of Volume of LNG Unloaded.

(i) The LNG volume in the tanks of the LNG Vessel before and after unloading shall be determined by gauging on the basis of the tank gauge tables provided for in Paragraph 6. The volume of LNG remaining in the tanks after unloading of the LNG Vessel shall be subtracted from the volume before unloading and the resulting volume shall be taken as the volume of the LNG delivered from the LNG Vessel.

(ii) Gas returned to the LNG Vessel during unloading shall not be

deemed to be volume unloaded for Customer's account.

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- (iii) If failure of the primary gauging and measuring devices of an LNG Vessel should make it impossible to determine the LNG volume, the volume of LNG unloaded shall be determined by gauging the liquid level using the secondary gauging and measurement devices. If an LNG Vessel is not so equipped, the volume of LNG delivered shall be determined by gauging the liquid level in FLNG's onshore LNG storage tanks immediately before and after unloading the LNG Vessel, and such volume shall have added to it an estimated LNG volume, agreed upon by the Parties, for boil-off from such tanks during the unloading of such LNG Vessel and have added to it the volume of any LNG that has been pumped from the LNG Vessel's tanks during unloading. FLNG shall provide Customer, or cause Customer to be provided with, a certified copy of tank gauge tables for each onshore LNG tank which is to be used for this purpose, such tables to be verified by a competent impartial authority.

Determination of Quantities Unloaded. The quantities of MMBTUs sold and delivered shall be computed by FLNG by means of the following formula:

$$Q = [(V//L1// - V//L2//) - V//G//] * D//L2// * HV//L2//$$

Where:

- Q: represents the quantity of MMBTUs unloaded
- V//L1//: represents the volume of LNG in Cubic Meters on board the vessel prior to unloading.
- V//L2//: represents the volume of LNG in Cubic Meters on board the vessel after unloading.
- V//G//: represents the volume of Gas in Cubic Meters returned to the vessel during unloading.
- D//L2//: represents the density value of the unloaded LNG in kilograms per Cubic Meter.
- HV//L2//: represents the Gross Real Heating Value of the LNG unloaded from the vessel in BTUs per kilogram.

The units used and reported for Mass and Gross Real Heating Value will be kilograms and BTUs/kilogram respectively. The reference conditions for the determination of the BTUs received by FLNG are:

Temperature: 15.56DEG. Celsius

Atmospheric Pressure: 14.69 psia

The Parties consider that, at the time this Agreement is executed, the above formula represents the industry standard for determining the quantities of BTUs

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received by FLNG. If the industry standard changes during the term of this Agreement, the Parties will consult on changes needed to adjust the formula to the then-current industry standard. If the parties are unable to agree on such changes, either Party may refer the matter to an Expert for determination under Section 22.2.

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## ANNEX II

### MEASUREMENTS AND TESTS FOR GAS AT DELIVERY POINT

1. Applicability. The measurement procedures in this Annex II shall apply to the measurement of Gas delivered by FLNG for Customer's Account at the Delivery Point.
2. Unit of Measurement. All Gas delivered at the Delivery Point shall be measured in MMBTUs.
3. Metering.
  - (a) Metering Equipment. FLNG shall supply, operate and maintain (or cause



to be supplied, operated and maintained at or near the Delivery Point) the following:

- i) meters with redundancy and other equipment as is necessary to accurately measure the volume of Gas delivered at the Delivery Point hereunder;
- ii) devices for collecting samples and for determining the quality and composition of Gas delivered at the Delivery Point hereunder; and
- iii) and any other measurement or testing devices which are necessary to perform the measurement and testing required hereunder at the Delivery Point

(collectively, the "Downstream Metering Equipment"). The Downstream Metering Equipment shall be designed and installed in accordance with the current recommendations of the American Gas Association, Report No. 3.

- (b) Check Measurement Equipment and Access. Customer may, at Customer's expense, install and operate, at or near the Downstream Metering Equipment, check measuring equipment similar to the Downstream Metering Equipment to monitor the accuracy of the measurements made by the Downstream Metering Equipment. Such check metering equipment will be installed and operated by Customer so that it does not unreasonably interfere with the operation of the Downstream Metering Equipment or the Freeport Facility Pipeline.
- (c) General. A pressure transmitter shall be installed on each meter tube to measure the static pressure at the plane of the upstream differential pressure tapping. The temperature of the flowing Gas shall be measured on each meter tube by a platinum resistance thermometer installed in a thermowell so that the probe tip is in the center one-third of the pipe. Each meter run shall be provided with a dedicated microprocessor-based flow computer system powered by an appropriate back-up power supply.
- (d) Measuring and Density Standards. Gas shall be measured by orifice meters or other mutually agreeable measuring devices. Orifice meters shall be constructed

and operated, Gas shall be measured, and properties shall be determined in accordance with American Gas Association, Report No. 3 and any subsequent modification and amendment thereof. The compressibility and density shall be calculated in accordance with the latest revision of the American Gas Association, Report No. 3. Metering equipment shall include the use of flange connections and, where necessary, flow conditioners, straightening vanes, and pulsation dampening devices. Meter tubes shall be of a design incorporating suitable access for periodic internal inspection, including access for internal inspection of the upstream side of the flow conditioner. Electronic gas measurement with a continuous readout of pressure, temperature, and Gas flow rate shall be used. The differential low flow cut-off point shall be set at a value no greater than 0.1 percent of the calibrated range. Mechanical pressure, differential pressure, and temperature chart recorders shall be used as primary backup for the electronic gas measurement. All computations shall be made as prescribed in the above cited standard.

- (e) Ultrasonic Metering Standard. All ultrasonic metering shall comply with the American Gas Association, Report No. 9 and any subsequent modification and amendment thereof.

#### 4. Determination of Gross Heating Value.

- (a) GPA 2261 and 2145. The heating value of the Gas delivered by FLNG at the Delivery Point shall be determined by gas chromatograph. The composition of the Gas shall be continuously measured by on-line chromatographs. The Gross Heating Value of the Gas shall be calculated using results from the on-line chromatograph. The chromatographs will analyze all hydrocarbon components, up to and including at least the Nonanes+ group, and inerts having a concentration of greater than 0.002 mol percent. The determination of Gas composition shall be in accordance with the GPA Standard 2261 - Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography. All physical properties used in quality and quantity calculations shall be based on these compositional analyses and the component values published in GPA 2145, or the latest revision thereof. Water vapor content shall be included in the component analyses. The sample analysis cycle time shall be less than 6 minutes. The maximum response time from sample probe to analyzer shall be four minutes. In the event of failure of the on-line Gas chromatograph, chromatograph analysis of samples collected proportional to the flow through the meters shall be used.

Auto-calibration of the Gas chromatograph shall be conducted on a weekly basis or as otherwise mutually agreed by the Parties.

- (b) GPA 2145. Back-up composite samples of the flowing Gas shall be obtained weekly to be used for relative density (specific gravity), Gross Heating Value, and compressibility factors in case of electronic failure. Composite sampling of the flowing stream shall be by use of a mutually agreeable continuous sampler, designed and installed to sample proportionally to the flow rate. The end point of each composite sample chromatographic analysis shall be the Nonane+ fraction,

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and values for this fraction shall be based on the C9 value in the latest revision of GPA Standard 2145 - Table of Physical Constants of Paraffin Hydrocarbons and Other Components of Natural Gas. All component values shall be in accordance with such standard.

- (c) Quarterly Deviation Checks. Monthly gas chromatograph deviation checks shall be made on Gas composition mole percentages and resulting Gross Heating Value. Analyses of a sample of test Gas of known composition resulting when procedures that are in accordance with the above mentioned standards have been applied will be considered as acceptable if the resulting calculated Gross Heating Value is within plus or minus 5 BTU per Standard Cubic Foot of the known Gross Heating Value. If the deviation exceeds the tolerance stated, Gross Heating Value, relative density, and compressibility previously calculated will be corrected immediately. Previous analyses will be corrected to the point where the error occurred. If the point that the error occurred cannot be determined, previous analyses will be corrected for one-half the period since the last verification test, not to exceed a correction period of six months.
- (d) Corrections for Water Content. The heating value on a dry basis for Gas containing water shall be corrected in accordance with standards followed by the American Gas Association. Moisture content of flowing Gas shall be determined as often as found necessary in real practice by use of a mutually acceptable calculation or test instrument, which could include a Meco Moisture Analyzer.

## 5. Operating Procedures

- (a) Notice. Prior to conducting operations for measurement, calibration, sampling and analysis provided in Annex II, the Party responsible for such operations shall notify the appropriate representatives of the other Party, allowing such representatives reasonable opportunity to be present for all operations and computations; provided that the absence of the other Party's representative after notification and opportunity to attend shall not prevent any operations and computations from being performed.
- (b) Independent Surveyor. At the request of either Party any measurement, calibration, sampling and analysis shall be witnessed and verified by an independent surveyor mutually agreed upon by Customer and FLNG. The results of such surveyor's verifications shall be made available promptly to each Party.
- (c) Preservation of Records. All records of measurement and the computed results shall be preserved by the Party responsible for taking the same, or causing the same to be taken, and made available to the other Party for a period of not less than three (3) years after such measurement and computation.

- 6. Verification. At least once each month, and in addition, from time to time upon at least two weeks prior written notice by either Party to the other, FLNG shall verify or cause to be verified the accuracy of the Downstream Metering Equipment. When as a result of

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such test any of the Downstream Metering Equipment is found to be out of calibration by no more than 1% when compared to the manufacturer's specifications for such equipment, no adjustment shall be made to the Fee. If the testing of the Downstream Metering Equipment demonstrates that any meter is out of calibration by more than 1% when compared to the manufacturer's specifications for such equipment, the applicable Downstream Metering Equipment reading for the actual period during which out of calibration measurements were made shall be estimated as follows, in descending order of priority:

- (a) by using the registration of any check meter or meters if installed and accurately registering;

- (b) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or
- (c) by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.

If the actual period that such equipment has been out of calibration cannot be determined to the mutual satisfaction of FLNG and Customer, the adjustment shall be for a period equal to one-half of the time elapsed since the most recent test. The previous payments made by Customer to FLNG for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference (which may be a positive or negative amount) shall be added to the next monthly statement pursuant to Section 12.2.

- 7. Costs. The cost of the monthly testing and calibration of the Downstream Metering Equipment shall be borne by FLNG. The cost of any testing and calibration of the Downstream Metering Equipment beyond the monthly test permitted above shall also be paid by FLNG, unless the request to test any of the Downstream Metering Equipment is made by Customer and the results of such test requested by Customer demonstrate that the Downstream Metering Equipment is less than 1% out of calibration, in which case the cost of such testing and calibration shall be for Customer's account. Each Party shall comply with any reasonable request of the other Party concerning the sealing of the Downstream Metering Equipment, the presence of a representative of Customer when the seals are broken and tests are conducted, and other matters affecting the accuracy, testing and calibration of the Downstream Metering Equipment.
- 8. Disputes. Any Dispute arising under this Annex II shall be submitted to an Expert under Section 22.2.

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EXHIBIT A

GUARANTEE

This GUARANTEE (this "Guarantee"), dated as of [\_\_\_\_\_], 2004, is made by CONOCOPHILLIPS COMPANY, a Delaware corporation ("Guarantor"), in favor of FREEPORT LNG DEVELOPMENT, L.P., a Delaware limited partnership ("FLNG," and, together with Guarantor, each a "Party" and, collectively, the "Parties"). Capitalized terms used, but not otherwise defined, herein shall have the respective meanings ascribed to such terms in the Agreement (as defined below).

RECITALS

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WHEREAS, FLNG has agreed to enter into the LNG Terminal Use Agreement dated as of the date hereof, with [COP LNG] ("Subsidiary"), a subsidiary of Guarantor, (the "Agreement"), which is hereby incorporated by reference in this Guarantee and made a part hereof.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Guarantee.

(a) On the terms and subject to the conditions contained herein, Guarantor hereby absolutely, unconditionally and irrevocably guarantees, to and for the benefit of FLNG, the full and punctual performance and payment, as and when each such payment or performance becomes due (whether at the stated due date, by acceleration or otherwise), by or on behalf of Subsidiary of any and all obligations or amounts owed by Subsidiary to FLNG in connection with and to the extent provided for in the Agreement (the "Guaranteed Obligations"). The Guaranteed Obligations of Guarantor hereunder are direct and primary obligations.

(b) This Guarantee is an absolute, unconditional, present, and continuing guarantee of performance and payment, and not of collection, is in no way conditioned or contingent upon any attempt to collect from or enforce performance or payment by Subsidiary or upon any other event, contingency or circumstance whatsoever, and shall remain in full force and effect and be binding upon and against Guarantor and its successors and assigns (and shall inure to the benefit of FLNG and its successors, endorsees, transferees, and assigns) without regard to the validity or enforceability of the Agreement. If, for any reason, Subsidiary shall fail or be unable duly, punctually, and fully to perform or pay, as and when such performance or payment is due, any of the Guaranteed Obligations, Guarantor shall promptly perform or pay, or cause to be performed or paid, such Guaranteed Obligations.

(c) Guarantor agrees that any award or judgment resulting from any arbitration between Subsidiary and FLNG under the Agreement shall be conclusive and binding on Guarantor for purposes of determining Guarantor's obligations under this Guarantee.

(d) Guarantor further agrees to pay to FLNG any and all costs, expenses (including, without limitation, all reasonable fees and disbursements of counsel), and damages which may be paid or incurred by FLNG in enforcing any rights with respect to this Guarantee, including, without limitation, collecting against Guarantor under this Guarantee.

2. Obligations Absolute and Unconditional, Continuing; Etc. Guarantor agrees that the obligations of Guarantor set forth in this Guarantee shall be direct obligations of Guarantor, and such obligations shall be absolute, irrevocable and unconditional, shall not be subject to any counterclaim, set-off, deduction, diminution, abatement, recoupment, suspension, deferment, reduction or defense (other than full and strict compliance with its obligations hereunder) based upon any claim Guarantor or any other Person may have against FLNG or any other Person and shall remain in full force and effect without regard to and shall not be released, discharged or in any way affected or impaired by, any circumstance or condition whatsoever (other than full and strict compliance by Guarantor with its obligations hereunder) (whether or not Guarantor shall have any knowledge or notice thereof), including, without limitation: (i) any amendment or modification of or supplement to or other change in the Agreement or any other document, including, without limitation, any renewal, extension, acceleration or other changes to payment terms thereunder; (ii) any failure, omission or delay on the part of FLNG or any other Person to confirm or comply with any term of the Agreement or any other document, (iii) any waiver, consent, extension, indulgence, compromise, release or other action or inaction under or in respect of the Agreement or any other document or any obligation or liability of FLNG or any other Person, or any exercise or non-exercise of any right, remedy, power, or privilege under or in respect of any such instrument or agreement or any such obligation or liability; (iv) any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, or similar proceeding with respect to FLNG, Subsidiary or any other Person or any of their respective properties, or any action taken by any trustee or receiver or by any court in any such proceeding; (v) any discharge, termination, cancellation, frustration, irregularity, invalidity or unenforceability, in whole or in part, of the Agreement or any other document or any term or provision thereof; (vi) any merger or consolidation of Guarantor, Subsidiary, or any other Person into or with any other Person or any sale, lease, or transfer of all or any of the assets of Guarantor, Subsidiary, or any other Person; (vii) any change in the ownership of Guarantor, Subsidiary, or any other Person; (viii) any winding up or dissolution of Subsidiary; (ix) to the extent permitted under Applicable Law, any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing, which might otherwise constitute a legal or equitable defense or discharge of the liabilities of guarantor or surety or which might otherwise limit recourse against Guarantor. The Guaranteed Obligations constitute the full recourse obligations of Guarantor enforceable against it to the full extent of all its assets and properties. Without limiting the generality of the foregoing, Guarantor agrees that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, Subsidiary shall fail to perform obligations or pay amounts owed by it under the Agreement and that notwithstanding the recovery hereunder for or in respect of any given failure to so comply by Subsidiary under the Agreement, this Guarantee shall remain in full force and effect and shall apply to each and every subsequent such failure.

3. Reinstatement. Guarantor agrees that this Guarantee shall be automatically reinstated with respect to any payment made by or on behalf of Subsidiary pursuant to the Agreement if

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and to the extent that such payment is rescinded or must be otherwise restored, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

4. Waiver of Demands, Notices; Etc. Guarantor hereby unconditionally waives, to the extent permitted by Applicable Law: (i) notice of any of the matters referred to in Section 2 hereof; (ii) all notices which may be required by Applicable Law, or otherwise, now or hereafter in effect, to preserve any rights against Guarantor hereunder, including, without limitation, any demand, proof, or notice of non-payment or non-performance of any Guaranteed Obligation; (iii) any right to the enforcement, assertion, or exercise of any right, remedy, power, or privilege under or in respect of the Agreement; (iv) notice of acceptance of this Guarantee, demand, protest, presentment, notice of failure of performance or payment, and any requirement of diligence; (v) any requirement to exhaust any remedies or to mitigate any damages resulting from failure of performance or payment by Subsidiary under the Agreement or by any other Person under the terms of the Agreement; and (vi) any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge, release, or defense of a guarantor or surety, or which might otherwise limit recourse against Guarantor.

5. No Subrogation. Notwithstanding any performance, payment or payments made by Guarantor hereunder (or any set-off or application of funds of Guarantor by FLNG), Guarantor shall not be entitled to be subrogated to any of the rights of Subsidiary (or of any rights of FLNG hereunder), or any collateral, security, or guarantee or right of set-off held by FLNG, for the performance or payment of the obligations guaranteed hereunder, nor shall Guarantor seek or be entitled to assert or enforce any right of contribution, reimbursement, indemnity or any other right to payment from Subsidiary as a result of Guarantor's performance of its obligations pursuant to this Guarantee until all Guaranteed Obligations are performed or paid in full. If any amount shall be paid to Guarantor on account of such subrogation, contribution, reimbursement or indemnity rights at any time when all of the Guaranteed Obligations and all amounts owing hereunder shall not have been performed and paid in full, such amount shall be held by Guarantor in trust for FLNG, segregated from other funds of Guarantor, and shall, forthwith upon receipt by Guarantor, be turned over to FLNG in the exact form received by Guarantor (duly endorsed by Guarantor to FLNG, if required), to be applied against the Guaranteed Obligations, whether or not matured, in such order as FLNG may determine.

6. Representations and Warranties. Guarantor represents and warrants that:

(a) it is a [corporation] duly organized and validly existing under the laws of the [Delaware] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guarantee;

(b) the execution, delivery and performance of this Guarantee will not conflict with, violate or breach the terms of any agreement of Guarantor;

(c) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee; and

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(d) this Guarantee, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity as they apply to the Guarantor.

7. Miscellaneous.

(a) This Guarantee shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Guarantor may not assign or transfer this Guarantee or any rights or obligations hereunder without FLNG's prior written consent. FLNG may assign this Guarantee, in whole or part, to any of its Affiliates or co-venturers or to any Person jointly controlled by FLNG any co-venturers. Furthermore, FLNG may assign, pledge and/or grant a security interest in this Guarantee to any Lender without Guarantor's consent. Except as otherwise provided in this Section 7, nothing herein, express or implied, is intended or shall be construed to confer upon or to give to any Person other than the Parties hereto any rights, remedies, or other benefits.

(b) This Guarantee shall be governed by, and construed in accordance with, the laws of the state of Texas, without giving effect to the principles thereof relating to conflicts of law.

(c) Subject to Section 1(d), the Parties agree that any claim, dispute or controversy arising out of or relating to this Guarantee (including, without limitation, the breach, termination or invalidity thereof, and whether arising out of tort or contract) ("Dispute") shall be decided by litigation. Each Party hereby consents to personal jurisdiction in any legal action, suit, or proceeding brought in any court, federal or state, within Harris County, Texas, having subject matter jurisdiction and irrevocably waives, to the fullest extent permitted by Applicable Law and the laws of the State of Texas, any claim or any objection it may now or hereafter have, that venue or personal jurisdiction is not proper with respect to any such legal action, suit, or proceeding brought in such a court in Harris County, Texas, including any claim that such legal action, suit, or proceeding brought in such court has been brought in an inconvenient forum. Each Party further consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Party at its address specified herein for the giving of notices, or by such other notice given in accordance with the rules and procedures of such courts. This agreement to litigate is binding upon the Parties, Subsidiary, Subsidiary's surety (if any) and the successors and permitted assigns of any of them.

(d) No modification or amendment of this Guarantee shall be of any force or effect unless made in writing, signed by the Parties hereto, and specifying with particularity the nature and extent of such modification or amendment. This Guarantee constitutes the entire and only understanding and agreement among the Parties hereto with respect to the subject matter hereof and cancels and

supersedes any prior negotiations, proposals, representations, understandings, commitments, communications, or agreements, whether oral or written, with respect to the subject matter hereof.

(e) All notices, requests and communications to a Party hereunder shall be in writing (including telecopy and/or fax or similar writing) and shall be sent:

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If to FLNG:  
-----

FREEPOR T LNG DEVELOPMENT, L.P.  
1200 Smith Street, Suite 600  
Houston, Texas 77002-4310  
Attn: President  
Facsimile: (713) 980-2903  
Telephone No: (713) 980-2888

with a copy to:

[\_\_\_\_\_  
[Address]  
Attn: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_]

If to Guarantor:  
-----

CONOCOPHILLIPS COMPANY  
[Address]  
Attn: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_]

with a copy to:

[\_\_\_\_\_  
[Address]  
Attn: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_  
Telephone No.: [\_\_\_\_\_]

or to such other address or telecopy number and with such other copies, as such Party may hereafter reasonably specify by notice to the other Parties. Each such notice, request or communication shall be effective upon receipt, provided that if the day of receipt is not a Business Day then it shall be deemed to have been received on the next succeeding Business Day.

(f) The headings of the several provisions of this Guarantee are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Guarantee.

(g) No forbearance or delay by FLNG in asserting rights against Subsidiary shall affect or impair in any way Guarantor's obligations hereunder or the rights of FLNG hereunder.

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(h) This Guarantee may be executed in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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IN WITNESS WHEREOF, the undersigned have duly executed this Guarantee as of the date first above written.

CONOCOPHILLIPS COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FREEPOR T LNG DEVELOPMENT, L.P.

By: Freeport LNG-GP, Inc., its General  
Partner

By: -----  
Michael S. Smith  
Chief Executive Officer

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EXHIBIT B

FREEPORT SERVICES MANUAL

The Freeport Services Manual referred to in Section 3.5 shall be limited to the following matters and other matters of a similar nature:

1. Details associated with the implementation of Section 5.1 among FLNG, Customer and Other Customers
2. Details associated with the Gas delivery procedures in Section 5.2 among FLNG, Customer and Other Customers
3. Details associated with the content and format of the \*\*\*
4. Form of the Release Notice referred to in Section 6.2(b)(i)c
5. Details associated with the invoicing process under Article 12, including:
  - a. Format of invoices (electronic and original)
  - b. Numbering systems/codes for all invoice-related documents

EXHIBIT E  
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FORM OF SERVICES QUANTITY INCREASE AGREEMENT

See attached.

EXHIBIT F  
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FORM OF PARTNERSHIP AMENDMENT

EXHIBIT G  
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ENVIRONMENTAL INVESTIGATION

1. Review. During the period commencing on the Effective Date and ending ten (10) days prior to the Closing Date (the "Review Period"), and subject to the confidentiality provisions of this Agreement, Freeport LNG shall permit COP and its representatives to have reasonable access to: (i) the Facility Site; and (ii) the offices, personnel, books and records, and properties of Freeport LNG, and shall furnish or cause to be furnished to COP such financial and operating and other data, in each case relating to the Facility Site, as are available and as COP shall from time to time reasonably request, in order that COP may have a full opportunity to undertake an environmental assessment of the Facility Site (the "Review"); provided, that such Review shall be undertaken during normal business hours and upon at least 24 hours advance notice; and provided, further, that neither COP nor its representatives shall contact any of the employees, customers or suppliers of Freeport LNG in connection with the Facility, whether in person or by telephone mail or other means of communication, without the specific prior written approval of Freeport LNG.

2. Tests. COP may, as part of the Review, and at its sole cost, risk and expense, perform such tests as Freeport LNG and COP shall reasonably and mutually agree in order to determine the condition and integrity of the Facility Site; provided: (i) such tests shall be undertaken during normal business hours and upon at least 24 hours advance notice so that Freeport LNG may have the opportunity to be present and observe such tests; (ii) such tests shall be conducted in accordance with industry standards by adequately insured, licensed professionals or contractors selected by COP and approved by Freeport LNG (which approval shall not be unreasonably delayed, conditioned or withheld), and in a manner so as not to permanently or materially damage any of the Facility Site (iii) if any damage is caused, COP shall immediately repair and restore the damaged portions of the Facility Site to their former condition; (iv) notice of proposed sampling events shall also be given by COP to the State of Texas; and (v) soil, groundwater or debris from borehole drilling shall be promptly placed

in drums and removed from the Facility Site within 24 hours. COP SHALL BE RESPONSIBLE FOR AND SHALL RELEASE, SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS FREEPORT LNG, ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS AND CONTRACTORS AND THE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF EACH OF THEM, FROM AND AGAINST ANY AND ALL DAMAGES, COSTS AND EXPENSES ARISING FROM OR RELATING TO THE CONDUCT OF SUCH TESTS (OTHER THAN THE COSTS OF REMEDIATION OF ANY ADVERSE CONDITION DISCOVERED), INCLUDING, WITHOUT LIMITATION, ANY PERSONAL INJURIES OR PROPERTY DAMAGE, AND REGARDLESS WHETHER CAUSED BY THE JOINT OR CONTRIBUTORY NEGLIGENCE OF FREEPORT LNG OR ANY INDEMNIFIED PARTIES, UNLESS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF FREEPORT LNG. Freeport LNG shall have the right to obtain split samples from any testing performed, and COP shall inform Freeport LNG of its proposed method for analyzing samples in order that results may be duplicated. All sampling locations, methods and protocols must be submitted to Freeport LNG by COP at least two (2) days in advance of the proposed sampling. Freeport LNG may limit or prohibit sampling in certain areas or using certain techniques if the sampling method could result in adverse impact to the remedial activities at the Facility Site. If Freeport LNG exercises this right of limitation of sampling, it shall discuss with COP as soon as possible alternative methods for obtaining the required information, and shall make reasonable attempts to obtain such information and provide it to COP. COP shall be responsible for compliance with all Environmental Laws relating to the

gathering, handling, transport, testing and disposal of any samples obtained. COP shall furnish Freeport LNG with a copy of each report (and all supporting data) setting forth the results of any test performed by COP promptly after receipt but in any event not later than the last day of the Review Period and each such report (and all supporting data) shall be subject to the confidentiality and non-disclosure obligations of the Nondisclosure Agreement. COP shall not submit a copy of any report to any Governmental Authority unless specifically required by applicable Law; and, if so required, COP shall simultaneously provide to Freeport LNG a copy of any information submitted to such Governmental Authority.

3. Right to Terminate. If the Review reveals that the Facility Site is subject to any Material Adverse Environmental Condition or to any Material Defect (as such terms are defined below), COP shall have the right to terminate this Agreement prior to the Closing Date. In the event COP does not terminate this Agreement and the Closing of the Agreement occurs, Freeport LNG shall remediate such Material Adverse Environmental Condition and/or cure any Material Defect, and COP acknowledges that all costs, expenses and fees associated with such remediation shall be paid with the proceeds of the Loan. For purposes of this Section, the word "remediate," as applied to a Material Adverse Environmental Condition, shall mean only such remediation to the extent required by applicable Environmental Laws.

4. Terms. For the purposes of this Exhibit: (i) the term "Material Adverse Environmental Condition" shall mean (a) the existence of any of the following on or under the Facility Site at levels that exceed applicable recognized standards or are in violation of applicable Environmental Law: (1) contamination to municipal well or drinking water, (2) chlorinated solvents, (3) radioactivity or (4) MTBE, (b) evidence that the Facility Site has been used as a disposal site (other than for dredge materials) at levels in violation of applicable Environmental Law] or (c) any Hazardous Substance condition the estimated cost of which to remediate is greater than \*\*\* Dollars (U.S. \$\*\*\*) in the aggregate; and (ii) the term "Material Defect" shall mean a defect that has not been previously disclosed to COP and which would not have been evident during a walk-through inspection of the Facility Site, that would significantly impair the operating functions, safety, or use of the Facility and which would cost more than \*\*\* Dollars (U.S. \$\*\*\*) in the aggregate to cure.



**Exhibit 21**

Name of Subsidiary	Jurisdiction of Incorporation or Organization	Assumed Names under which Subsidiary Does Business
Cheniere Energy Operating Co., Inc.	Delaware	Not applicable
Cheniere—Gryphon Management, Inc.	Delaware	Not applicable
Cheniere LNG, Inc.	Delaware	Not applicable
Cheniere LNG Services, Inc.	Delaware	Not applicable
Cheniere Pipeline Company	Delaware	Not applicable
Cheniere Sabine Pass Pipeline Company	Delaware	Not applicable
Corpus Christi LNG-GP, Inc.	Delaware	Not applicable
Corpus Christi LNG, L.P.	Delaware	Not applicable
Corpus Christi Pipeline Company	Delaware	Not applicable
Sabine Pass LNG-GP, Inc.	Delaware	Not applicable
Sabine Pass LNG, L.P.	Delaware	Not applicable

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-57533, 333-49847, 333-70195, 333-83949, 333-94841, 333-61238, 333-71496, 333-105295 and 333-111454) and on Form S-8 (Nos. 333-52479, 333-35868, 333-112379, 333-35866, and 333-111457) of Cheniere Energy, Inc. of our report dated February 29, 2004 relating to the consolidated financial statements of Cheniere Energy, Inc., which appears in this Annual Report on Form 10-K on page 37.

/s/ MANN FRANKFORT STEIN & LIPP CPAs, L.L.P.

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MANN FRANKFORT STEIN & LIPP CPAs, L.L.P.

Houston, Texas  
March 25, 2004

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-57533, 333-49847, 333-70195, 333-83949, 333-94841, 333-61238, 333-71496, 333-105295 and 333-111454) and on Form S-8 (Nos. 333-52479, 333-35868, 333-112379, 333-35866, and 333-111457) of Cheniere Energy, Inc. of (i) our report dated March 29, 2002, except for Note 16 as to which the date is March 25, 2004, relating to the consolidated financial statements of Cheniere Energy, Inc., and (ii) our report dated March 29, 2002 relating to the financial statements of Gryphon Exploration Company, which appear in this Annual Report on Form 10-K on page 38 and 91, respectively.

/s/ PRICEWATERHOUSECOOPERS LLP

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PRICEWATERHOUSECOOPERS LLP

Houston, Texas  
March 25, 2004

**Independent Auditor's Consent**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-57533, 333-49847, 333-70195, 333-83949, 333-94841, 333-61238, 333-71496, 333-105295 and 333-111454) and on Form S-8 (Nos. 333-52479, 333-35868, 333-112379, 333-35866, and 333-111457) of Cheniere Energy, Inc. of our report dated March 14, 2003 (except as to Note 13, which is as February 27, 2004) relating to the financial statements of Gryphon Exploration Company, which appears on page 90 in Cheniere Energy, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2003.

/s/ KPMG LLP

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KPMG LLP

Houston, Texas  
March 25, 2004

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-57533, 333-49847, 333-70195, 333-83949, 333-94841, 333-61238, 333-71496, 333-105295 and 333-111454) and on Form S-8 (Nos. 333-52479, 333-35868, 333-112379, 333-35866, and 333-111457) of Cheniere Energy, Inc. of our report dated February 10, 2004 relating to the financial statements of Freeport LNG Development, L.P., which appears in this Annual Report on Form 10-K on page 81.

/s/ HEIN & ASSOCIATES LLP

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HEIN & ASSOCIATES LLP

Phoenix, Arizona  
March 25, 2004

**CONSENT OF INDEPENDENT PETROLEUM ENGINEERS**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-57533, 333-49847, 333-70195, 333-83949, 333-94841, 333-61238, 333-71496, 333-105295 and 333-111454) and on Form S-8 (Nos. 333-52479, 333-35868, 333-112379, 333-35866, and 333-111457) of Cheniere Energy, Inc. of our reserve reports, which appear in this Annual Report on Form 10-K.

/s/ SHARP PETROLEUM ENGINEERING, INC.

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SHARP PETROLEUM ENGINEERING, INC.

Houston, Texas  
March 25, 2004

**CONSENT OF INDEPENDENT PETROLEUM ENGINEERS**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-57533, 333-49847, 333-70195, 333-83949, 333-94841, 333-61238, 333-71496, 333-105295 and 333-111454) and on Form S-8 (Nos. 333-52479, 333-35868, 333-112379, 333-35866, and 333-111457) of Cheniere Energy, Inc. of our reserve reports, which appear in this Annual Report on Form 10-K.

/s/ RYDER SCOTT COMPANY

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RYDER SCOTT COMPANY

Houston, Texas

March 25, 2004

**CERTIFICATION BY CHIEF EXECUTIVE OFFICER PURSUANT TO  
RULE 13a-14(a) AND 15d-14(a) UNDER THE EXCHANGE ACT**

I, Charif Souki, certify that:

1. I have reviewed this annual report on Form 10-K of Cheniere Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies or material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 25, 2004

/s/ Charif Souki  
Charif Souki  
Chief Executive Officer



**CERTIFICATION BY CHIEF FINANCIAL OFFICER  
PURSUANT TO RULE 13a-14(a) AND 15d-14(a) UNDER THE EXCHANGE ACT**

I, Don A. Turkleson, certify that:

1. I have reviewed this annual report on Form 10-K of Cheniere Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies or material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 25, 2004

/s/ Don A. Turkleson  
Don A. Turkleson  
Chief Financial Officer

**CERTIFICATION BY CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Cheniere Energy, Inc. (the "Company") on Form 10-K for the period ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Charif Souki, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Charif Souki  
Charif Souki  
Chief Executive Officer

March 25, 2004

**CERTIFICATION BY CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Cheniere Energy, Inc. (the "Company") on Form 10-K for the period ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Don A. Turkleson, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Don A. Turkleson  
Don A. Turkleson  
Chief Financial Officer

March 25, 2004