

Washington, DC 20004-2505, is authorized to do business in Texas, and may be served with process by serving its registered agent for service of process, C.T. Corporation System at 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136.

6. Defendant Carlyle Global Infrastructure Opportunity Fund, LP, whose home office is located at 1001 Pennsylvania Avenue, NW, Washington, DC 20004-2505, is a foreign limited partnership that may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as its agent for service because Defendant has not designated or maintained a resident agent for service of process in Texas as required by statute. Additionally, Defendant Carlyle Global Infrastructure Opportunity Fund, LP engages in business in Texas, but has not designated or maintained a resident agent for service of process in Texas.

7. Defendant The Carlyle Group, LP, whose home office is located at 1001 Pennsylvania Avenue, NW, Washington, DC 20004-2505, is a Delaware limited partnership that may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as its agent for service because Defendant has not designated or maintained a resident agent for service of process in Texas as required by statute. Additionally, Defendant The Carlyle Group, LP engages in business in Texas but has not designated or maintained a resident agent for service of process in Texas.

II. JURISDICTION

8. This Court has jurisdiction over this matter, as the damages in controversy are within the jurisdictional limits of this Court.

9. This Court has personal jurisdiction over Carlyle Investment Management, L.L.C. because it is authorized to do business in Texas and does business in Texas. This

Court has personal jurisdiction over all Defendants because: Defendants do business in Texas; Defendants engaged in business in Texas by contracting with a Texas resident with respect to a transaction that was to be performed in whole or in part in Texas; and Defendants committed torts, which are the subject of this suit, in whole or in part in Texas.

10. Defendants purposefully availed themselves of the privileges and benefits of conducting business in Texas by contracting to form an entity to do business in Texas, contracting with Texas residents to do business in Texas, and doing business in Texas as described more thoroughly below. Defendants' agents and representatives traveled to Texas on numerous occasions.

11. Additionally, Defendants submitted to the jurisdiction of this Court in the Term Sheet among Plaintiffs Allen Lawrence Berry, Marvin Glenn Berry, and Dennis Wayne Berry and Defendants Carlyle Investment Management, L.L.C. and Carlyle Global Infrastructure Opportunity Fund, L.P., which was signed on February 7, 2019 and in which such Defendants agreed that any lawsuit relating to such Term Sheet would be filed in the state courts in Harris County, Texas and that any cause of action arising out the Term Sheet shall be deemed to have arisen from a transaction of business in the State of Texas.

12. Pursuant to Texas Rule of Civil Procedure 47(c)(3), Plaintiffs are seeking monetary relief in excess of \$1,000,000.

III. VENUE

13. Venue is proper and mandatory in Harris County because the Term Sheet agreement between the parties contains a forum selection clause in which the parties agreed that any lawsuit relating to such Term Sheet shall be brought in the state courts of Harris

County, Texas and that any cause of action arising out the Term Sheet shall be deemed to have arisen from a transaction of business in the State of Texas.

IV. DISCOVERY

14. In accordance with Texas Rules of Civil Procedure, discovery in this case is intended to be conducted under Level 3.

V. FACTS

15. On or about February 7, 2019, Plaintiffs Allen Lawrence Berry, Marvin Glenn Berry, and Dennis Wayne Berry (collectively, “Berry”) entered into a written agreement with Defendants Carlyle Investment Management, LLC and Carlyle Global Infrastructure Opportunity Fund, L.P. (collectively, “Defendants” or “Carlyle”) titled “Term Sheet.”

16. The Term Sheet describes the parties intent to have defendants invest in Plaintiffs’ project to (a) develop, construct, own and operate a hydrocarbon delivery system, which would allow hydrocarbon shippers maximum optionality to (i) deliver hydrocarbons to local refinery markets in the vicinity of Corpus Christi, Texas through tankage, shipping reception collection, consolidation, storage, transfer, staging, pumping, delivery and other facilities to be developed near Midway Junction, Texas (collectively, the “Midway Junction Facility”), and (ii) export hydrocarbons via the Midway Junction Facility through (A) related pipelines and other facilities to be developed around the Midway Junction Facility, (B) related tankage, pumping, transfer, storage, staging, delivery facilities, pipelines, and other facilities to be developed adjacent to and under Redfish Bay, Texas (collectively, the “Redfish Bay Facility”), and (C) a premier deep-water crude oil export terminal and related tankage, pipelines, shipping, pumping, transfer, exporting, and

other facilities to be developed on Harbor Island, Texas (collectively, the “Harbor Island Terminal”), and (b) facilitate the dredging of the Corpus Christi ship channel to a depth of 75 feet from the Gulf of Mexico to the site of the Harbor Island Terminal to permit the loading and unloading of fully-laden Very Large Crude Carriers (“VLCCs”) at the Harbor Island Terminal (collectively, the “Project”). The Project was intended to include pipeline, shipping, reception, collection, consolidation, storage, staging, transfer, delivery, exporting, and other facilities, including (I) the Midway Junction Facility, (II) the Redfish Bay Facility, (III) the Harbor Island Terminal (IV) other associated infrastructure, assets, facilities, and businesses, including without limitation, certain real property currently owned, leased, optioned, or otherwise controlled by Berry at Midway Junction, Redfish Bay, and Harbor Island, Texas (collectively, the “Contributed Land”), (V) to the extent applicable, additional properties and facilities to be acquired, leased, optioned, developed, or otherwise controlled by one or more Project Companies, one or more of the Plaintiffs, the Port of Corpus Christi Authority (“POCCA”), and/or third parties, and (VI) facilities for controlling and collecting tolls and/or other fees or charges from vessels that transit the portion of the Corpus Christi Ship channel to be dredged as part of the Project.

17. One entity to be used by the parties to the Term Sheet in connection with the Project is Lone Star Ports, LLC (“LSP”), which was formed, and which is a Plaintiff herein.

18. Both Carlyle and Berry have binding legal obligations under the Term Sheet. Berry has to date fully performed all of its obligations under the Term Sheet. Carlyle has repeatedly breached its obligations and continues to do so.

19. Among Carlyle's specific binding obligations under the Term Sheet are Carlyle's:

- a. Obligation to disclose to Berry all contracts and obligations of LSP;
- b. Obligation to negotiate in good faith to enter into Definitive Documents (as defined in the Term Sheet);
- c. Obligation to negotiate as promptly as practicable the execution of an operating agreement for LSP and the formalization of the transfer to Berry their ownership interests in LSP;
- d. Obligation, in the event that Closing (as defined in the Term Sheet) did not occur on or before the FID Date (as defined in the Term Sheet), to transfer to Berry Carlyle's entire interests or units, shares, or other equity interests, if any, in LSP and each Project Company (as defined in the Term Sheet) to Berry, to confirm and evidence that Berry owns 100% of all membership interests or units, shares, or other equity interests in LSP and each Project Company;
- e. Obligation, in the event that Closing did not occur on or before the FID Date, to cause Andrew Marino, Ferris Hussein, and each other officer, director, or employee of any Project Company who is or has been nominated or appointed by Carlyle to resign as members of the Board of LSP and from all other offices or positions in LSP and each Project Company;
- f. Obligation, in the event that Closing did not occur on or before the FID Date, to cease all ownership in, contractual relationship with, and continuing involvement in the Project or any Project Company;
- g. Obligation for all material decisions regarding LSP to be made by at least a majority of the members of LSP's Board;
- h. Obligation to provide to Berry full information and the rights and ability to participate in all significant LSP management, operational, and ownership entity matters, including without limitation incurrence of expenses, appointment and remuneration of senior management and consultants, appointment and continuation of legal counsel, approval of all related party and non-ordinary course

transactions, issuance of equity interests, and other ownership and ownership entity matters;

- i. Obligation of confidentiality;
- j. Obligation of cooperation with Berry to advance the Project;
- k. Obligation to cooperate in good faith to attempt to enter into (i) operating and investment transactions with a highly regarded, experienced, and qualified crude oil marine port operator that has the ability to improve Project economics (the “Operator”), and (ii) one or more equity investment transactions with crude oil producers, pipeline operators, aggregators, shippers, and/or other parties that have the ability to assist the Project to improve Project economics (each, an “Industry Investor”) and, in connection therewith to (A) agree with Berry on the identity of the Operator and each Industry Investor and the terms of any transactions or relationships with the Operator and each Industry Investor, (B) jointly negotiate with Berry in good faith regarding the terms of the transactions or relationships with the Operator and each Industry Investor, (C) jointly agree with Berry regarding the terms of any equity interest in the Project or any Project Company to be received by the Operator and each Industry Investor, (D) cooperate with Berry in exercising special caution to ensure that, if such Operator or Industry Investor operates, has any equity interest in, or otherwise has any other potentially competitive relationship with a port or refining facility within a radius of 750 miles of Harbor Island, Texas (the “Non-Compete Zone”), special contractual provisions would be instituted on terms to be agreed by Berry to ensure that such Operator or Industry Investor would not divert business opportunities from the Project or otherwise favor its other equity investments or competitive relationships, and (E) disclose any material direct or indirect equity relationships or contractual relationships Carlyle may have with any such potential Operator or Industry Investor;
- l. Obligation for none of Carlyle or any of its affiliated entities or individuals (each, a “Carlyle Affiliate”) to, directly or indirectly (A) solicit, provide information to, or otherwise pursue a Directly Competing Project (as defined in the Term Sheet), or (B) make, accept, or negotiate any offer with any operational, development, investment, financing, or other party other than Berry in respect of

any Directly Competing Project, without Berry's express written consent;

- m. Obligation for Carlyle and each Carlyle Affiliate to refrain from providing information to or assisting any Carlyle Affiliate to directly or indirectly finance or invest in a Directly Competing Project; and
- n. Obligation, in the event that Closing did not occur on or before the FID Date, for Carlyle and each Carlyle Affiliate to refrain from (i) directly or indirectly financing or investing in a Directly Competing Project, or (ii) providing information to or assisting any Carlyle Affiliate to directly or indirectly finance or invest in a Directly Competing Project until the earliest of (A) the substantial completion of the Project, (B) the abandonment or suspension of the Project by Berry, and (C) the date that is two years after the FID Date.

20. Defendants fraudulently induced Plaintiffs to enter into the Term Sheet agreement with no intention of honoring their obligations under the Term Sheet agreement

21. Defendants fraudulently induced Plaintiffs to enter into an exclusive relationship with Defendants relating to the Project with no intention of honoring their obligations under that relationship.

22. Defendants' true intention at the time they entered into the Term Sheet agreement with Plaintiffs was actually never to honor their obligations under the executed written Term Sheet agreement, but rather to delay the Project, reduce the Project's value, and "re-trade" the deal with Plaintiffs to enrich the Defendants and cause harm to the Plaintiffs.

23. Defendants fraudulently misrepresented to various third parties that Defendants wholly owned Plaintiff LSP and the Project. Defendants knew these representations were false. Defendants made the misrepresentations with the intent to interfere with Plaintiffs' contracts and prospective business relationships.

24. Defendants concealed from or failed to disclose to Plaintiffs various acts that Defendants caused to occur on behalf of LSP, including without limitation business transactions, negotiations with potential contract parties, and communications with and instructions to employees and contractors. Defendants had a fiduciary duty to disclose these acts to Plaintiffs. The acts were material. Defendants knew that Plaintiffs were ignorant of such acts, and Plaintiffs did not have an equal opportunity to discover the existence of such acts. Defendants were deliberately silent when they had a duty to speak. By failing to disclose the existence of the acts, Defendants intended to deceive Plaintiffs and prevent Plaintiffs from effectively exercising their rights and protecting their interests. Plaintiffs were injured as a result of acting or failing to act without the knowledge of the existence of such acts.

25. Defendants fraudulently caused and attempted to cause third parties to contract with Defendants or third parties instead of with Plaintiffs and their Affiliates. Defendants' tortious interference with Plaintiffs prospective and potential business relationships caused Plaintiffs' injuries.

26. Defendants made material misrepresentations to Plaintiffs regarding the Plaintiffs' representatives and their motives. Defendants knew the representations were false. Defendants made the misrepresentations with the intent of alienating Plaintiffs from their representatives, depriving Plaintiffs of their right to effective representation, and causing Plaintiffs to act on such misrepresentations.

27. Defendants provided journalists and other media sources with false and misleading information that falsely and unlawfully inflated the value of the Project and induced such journalists and media sources to publish false news stories, which resulted in

such journalists and media sources making material misrepresentations to third parties. The misrepresentations caused third parties who may have otherwise entered into contractual relationships with the Defendants to forego entering into negotiation or further negotiations with Defendants. Defendants knew and subsequently bragged that the representations were false. Defendants made the misrepresentations with the intent that third parties act on them. Plaintiffs were unaware of such misrepresentations and the creation of “fake news”

28. Defendants fraudulently included and attempted to include provisions in contracts between Plaintiffs and third parties that were for the benefit of Defendants and to the detriment of Plaintiffs.

29. Defendants fraudulently included and attempted to include provisions in contracts between Plaintiffs and third parties that required or would have required Defendants to be owners of LSP for such contracts to be valid or provide contractual benefits to Plaintiffs. Defendants knew these inclusions and attempts were fraudulent. Defendants made these inclusions and attempts with the intent that third parties act on them. Plaintiffs were unaware of such inclusions and attempts. The inclusions and attempts caused Plaintiffs’ injuries.

30. Defendants deliberately caused and attempted to prevent various transactions and potential transactions between Plaintiffs and third parties from being realized, to the detriment of Plaintiffs.

31. Defendants deliberately engaged in various fraudulent actions and attempts to cause the values of the Project, Plaintiffs’ contributions to the Project, the “Berry Pre-Money Equity Contribution”, the “Berry Equity Contribution”, and the “Berry Percentage”, (as defined in the Term Sheet), to be artificially and unlawfully depressed in

spite of the Defendants' earlier contractual agreement to such values in the Term Sheet. Defendants knew these acts and attempts were fraudulent. Defendants performed these acts and attempts to defraud the Plaintiffs and fraudulently enrich Defendants, and also with the intent that third parties act on them.

32. Defendants deliberately engaged in various fraudulent actions and attempts to cause the values of various assets to be contributed to the Project by Plaintiffs to be artificially depressed. Defendants knew these acts and attempts were fraudulent. Defendants performed these acts and attempts to defraud the Plaintiffs and fraudulently enrich Defendants.

33. Defendants made fraudulent misrepresentations to cause Plaintiffs to extend the period of effectiveness and exclusivity of the Term Sheet agreement. Defendants' fraudulent misrepresentations were successful and Plaintiffs extended the period of effectiveness and exclusivity of the Term Sheet agreement.

VI. CAUSES OF ACTION

A. BREACH OF CONTRACT

34. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

35. The failure of Defendants to perform their obligations under the Term Sheet constitutes a breach of contract with Plaintiffs. Plaintiffs have a valid and enforceable contract with Defendants. Plaintiffs are proper parties to sue for breach of contract.

Plaintiffs performed under the contract. Defendants have breached and continue to breach the contract with Plaintiffs. Plaintiffs have suffered and will continue to suffer damages.

36. Defendants' acts have been the producing and proximate causes of Plaintiff's damages in excess of the minimum jurisdictional limits of this court.

B. TORTIOUS INTERFERENCE WITH CONTRACT (THE CARLYLE GROUP, LP ONLY)

37. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

38. Defendant The Carlyle Group, LP willfully and intentionally interfered with the rights of the Plaintiffs under the Term Sheet. The interference proximately caused Plaintiffs' injuries, and Plaintiffs incurred actual damage or loss.

C. TORTIOUS INTERFERENCE WITH CONTRACTS (AGAINST ALL DEFENDANTS)

39. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

40. Plaintiff LSP has existing contracts with one or more third persons. Defendants willfully and intentionally interfered with those contracts. The interference proximately caused Lone Star Ports, LLC's injuries. LSP suffered actual damage or loss.

D. TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

41. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

42. There was a reasonable probability that Plaintiffs would have entered into additional business relationships with numerous other third persons. Each of the Defendants intentionally interfered with those prospective relationships. The conduct of each of the Defendants was independently tortious or unlawful. The interference proximately caused Plaintiffs' injuries. Plaintiffs suffered actual damage or loss.

E. FRAUD

43. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

44. Defendants made material misrepresentations to Plaintiffs. Defendants knew the representations were false or made them recklessly, as a positive assertion and without knowledge of their truth. Defendants made the misrepresentations with the intent that Plaintiffs act on them. Plaintiffs relied on the misrepresentations to their detriment. The misrepresentations caused Plaintiffs' injuries.

45. Defendants concealed from or failed to disclose certain facts to Plaintiffs. Defendants had a duty to disclose the facts to Plaintiffs. The facts were material. Defendants knew that Plaintiffs were ignorant of the facts, and Plaintiffs did not have an equal opportunity to discover the facts. Defendants were deliberately silent when they had a duty to speak. By failing to disclose the facts, Defendants intended to induce Plaintiffs to take some action or refrain from acting. Plaintiffs relied on Defendants' nondisclosures. Plaintiffs were injured as a result of acting without the knowledge of the undisclosed facts.

46. Defendants misrepresented facts to third parties. The facts were material. Defendants knew that the third parties were ignorant of the facts. Defendants had a duty to disclose to Plaintiffs that they were making material misrepresentations in the market. By making these misrepresentations, Defendants intended to reduce Plaintiffs value in the Project Plaintiffs were injured as a result of Defendants failure to disclose this information to Plaintiffs.

F. BREACH OF FIDUCIARY DUTY

47. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

48. Plaintiffs and Defendants had a fiduciary relationship. Defendants breached their fiduciary duties to the Plaintiffs, resulting in injury to Plaintiffs or benefits to Defendants.

49. Defendants concealed from or failed to disclose certain facts to Plaintiffs. Defendants had a fiduciary duty to disclose the facts to Plaintiffs. The facts were material. Defendants knew that Plaintiffs were unaware of the facts, and Plaintiffs did not have an equal opportunity to discover the facts.

50. Defendants were deliberately silent when they had a duty to speak. By failing to disclose the facts, Defendants intended to induce Plaintiffs to take some action or refrain from acting. Plaintiffs relied on Defendants' nondisclosures. Plaintiffs were injured as a result of acting without the knowledge of the undisclosed facts.

51. Defendants concealed from or failed to disclose to Plaintiffs various acts that Defendants caused to occur on behalf of Plaintiff LSP, including without limitation business transactions, negotiations with potential contract parties, and communications with and instructions to employees and contractors. Defendants had a fiduciary duty to disclose these acts to Plaintiffs. The acts were material. Defendants knew that Plaintiffs were ignorant of such acts, and Plaintiffs did not have an equal opportunity to discover the existence of such acts. Defendants were deliberately silent when they had a duty to speak. By failing to disclose the existence of the acts, Defendants intended to deceive Plaintiffs and prevent Plaintiffs from effectively exercising their rights and protecting their interests. Plaintiffs were injured as a result of acting or failing to act without the knowledge of the existence of such acts.

52. Defendants engaged in self-dealing to derive personal benefit at the expense of the Plaintiffs, to which Defendants owed fiduciary duties, resulting in injury to Plaintiffs or benefits to Defendants.

53. Defendants, by engaging in illegal market activity, breached their fiduciary duties to Plaintiffs.

VII. REQUEST FOR DECLARATORY RELIEF

54. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

55. Plaintiffs request a declaratory judgment that: (i) Plaintiffs own 100% of all membership and other equity interests in the Project, LSP, and each Project Company; and (ii) until the date that is two years after the date of such declaratory judgment neither Carlyle nor any Carlyle Affiliate shall consult for, be employed by, invest in, have any ownership interest in, provide debt, equity, or other financing to, provide information to, or assist in any way any property or project whose principal purpose is the development, acquisition, ownership, or operation of a hydrocarbons marine export terminal or related facilities to directly compete with the Project and is within seventy-five (75) miles of Harbor Island, Nueces County, Texas, including any offshore systems originating within or transversing such radius.

VIII. SPECIFIC PERFORMANCE

56. Plaintiffs request that each of the Defendants be ordered to fully perform each of its common law and statutory duties and each of its remaining contractual obligations under the Term Sheet, including without limitation the following:

(A) Taking any and all actions necessary to transfer to Berry the entire holdings of and by Carlyle and each Carlyle Affiliate of membership interests or units, shares, or other equity or other interests, if any, in LSP, Lone Star Ports, LLC, a Texas limited liability company (“LSPT”), all other Project

Companies, and the Project, including, without limitation (I) providing to the Plaintiffs a written transfer document memorializing such transfer, (II) changing the registered agent of LSP and each other Project Company to Harvard Business Services (<https://www.delawareinc.com/ourservices/change-agent/>), with the contact person being named as Tonja Fulghum at Plaintiff LSP, and (III) making any necessary filings with the appropriate government officials in the States of Delaware, Texas and any other relevant jurisdiction to effect such transfers;

(B) Confirming to Plaintiffs in writing that Berry currently owns 100% of all membership interests or units, shares, or other equity interests in the Project, LSP, and each other Project Company;

(C) Providing to Plaintiffs a list of contacts and contact details for all actual and potential investors, shippers, and operators relating to LSP or the Project;

(D) Providing the following written notice to Sean Strawbridge at Port of Corpus Christi Authority, Chris Robblee at Vopak, Susan Fong at Shell Midstream, Guy Freshwater at Glencore, Shannon Flowers at Salt Creek Midstream, Phil Mezey at Epic Midstream, Carlyle's contacts at SAF Group, Phillips 66, Harvest, Plains, and each other entity or individual with which Carlyle has had discussions or contact regarding LSP or the Project, including without limitation all actual and potential investors, shippers, and operators, with copies to LSPE:

"None of Carlyle Investment Management LLC, Carlyle Global Infrastructure Opportunity Fund L.P., or any other member of the Carlyle Group has any remaining involvement with LSP or any of its affiliates or the Harbor Island hydrocarbons export terminal or any of its related facilities (the "Project"). The Berry Group owns 100% of Lone Star Ports, the Project, the Harbor Island terminal, and all entities that are involved in developing and owning the Project. The Berry Group is continuing to develop the Project.";

(E) Confirming to Plaintiffs in writing that Carlyle has taken no action that will or may cause the Project, LSP, LSPT, LSPE, any other Project Company, or any of their respective affiliates to incur any expense, obligation, or liability of any nature, unless such expense, obligation, or liability has been fully disclosed in writing by Carlyle to Berry and accepted or assumed by Berry;

(F) Causing (I) Carlyle, (II) each Carlyle Affiliate, and (III) Andrew Marino, Ferris Hussein, and each officer, director, or employee of, or consultant to, the Project, LSP, LSPT, or any Project Company who has been nominated or appointed by Carlyle or any of its Affiliates, including without limitation

Jeremiah Ashcroft, Meredith Sadlowski, Anna-Louise Oliver, and Caleb Powers, to resign as members of the Board of LSP, as Managing Member or Manager of LSP, as Member of LSP, and from all other offices or positions in the Project, LSP, LSPT, and each Project Company, in each case with immediate effect;

(G) Confirming to Plaintiffs in writing that Carlyle will take any and all action to ensure that (I) none of Carlyle or any Carlyle Affiliate (a) has disclosed or made any use of, or (b) in the future will disclose or make any use of any documentation, information, and other matters (collectively, “Berry Information”) in connection with or in any way related to (a) Lawrence Berry, Marvin Berry, or Dennis Berry, (b) the Project, LSP, or any Project Company, (c) any predecessors, successors, parent entities, subsidiaries, owners, officers, directors, employees, former employees, representatives, agents, attorneys, and assigns of any such individuals or entities, (d) any entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with any of such individuals or entities, whether by ownership of voting interests, management policies, contract, or otherwise, (e) any officer, director, shareholder, owner, partner, member, trustee, manager, employee, representative, attorney, or agent of any such individual or entity, (f) any individual or entity who is related to any other such individual to any degree by blood, marriage, or adoption, or (g) any of their respective affiliates and/or businesses (collectively, the “Berry Group”), whether or not such information is strictly confidential or proprietary, for any purpose whatsoever, (II) Carlyle and each Carlyle Affiliate has and will continue to hold all of the Berry Information in the strictest confidence and have not and will not disclose or divulge any part of the Berry Information to any third person without the prior written consent of Berry, on such terms and conditions as Berry considers appropriate, unless such disclosure is absolutely required to be disclosed by a final decision of a relevant court, governmental authority, or stock exchange and Berry is provided with a reasonable opportunity to object to the disclosure of such Berry Information to such court, governmental authority, or stock exchange prior to its disclosure, (III) none of Carlyle or any Carlyle Affiliates will make or solicit any announcement or disclosure regarding any member of the Berry Group without the express prior written consent of Berry, and (IV) none of Carlyle or any Carlyle Affiliates will copy, reproduce, or part with possession of any of the Berry Information;

(H) Confirming to Plaintiffs in writing that none of Carlyle or any Carlyle Affiliate has in the past or will in the future (I) vilify, denigrate, or make any false, negative, critical, or disparaging remarks or statements, implied or expressed, concerning any member of the Berry Group at any time, (II) take

any action or do anything that would or could damage the business, reputation, business reputation, or good will of any member of the Berry Group at any time, (III) take any action or do anything that would or could slander or cloud Berry's ownership of or title to LSP, the Project, any Project Company, or any member of the Berry Group at any time, or (IV) do anything that would or could damage the business, reputation, or good will of any member of the Berry Group at any time;

(I) Confirming to Plaintiffs in writing that Carlyle, on behalf of itself and each Carlyle Affiliate, will (I) cooperate with regard to any matters related to Berry, LSP, the Project, and each of their respective Affiliates where its involvement is required after the date of such confirmation, and (II) cooperate fully with Berry, LSP, the Project, and their respective Affiliates and their counsel with respect to any matter (including litigation, investigations, or governmental proceedings) which relates to matters with which Carlyle was involved during its relationship with Berry, the Project, LSP, and their respective Affiliates, in a timely manner on reasonable notice from Berry or LSP;

(J) Confirming to Plaintiffs in writing that, until the date that is two years after the date of such confirmation, neither Carlyle nor any Carlyle Affiliate shall (I) consult for, be employed by, invest in, have any ownership interest in, provide debt, equity, or other financing to, provide information to, or assist in any way any property or project whose principal purpose is the development, acquisition, ownership, or operation of a hydrocarbons marine export terminal to directly compete with the Project and is within seventy-five (75) miles of Harbor Island, Nueces County, Texas, including any offshore systems originating within or transversing such radius, or (II) solicit or hire, on behalf of Carlyle or any Carlyle Affiliate, or any other person the services of any person who is, or within one year preceding or following the date of this letter was, an employee or consultant of any member of the Berry Group;

(K) Transferring to LSP's sole possession and control the Lone Star Ports website (including without limitation all domain, email, email archives, administrator user name and password, passwords, etc.), and the Project virtual data room (including without limitation all master administrator access, passwords, etc.) and directly instructing FTI Consulting, by both registered air mail and by email to Cody McGregor at FTI Consulting, to effect such transfer (1301 McKinney, Suite 3500, Houston, TX 77010 USA; www.fticonsulting.com; cody.mcgregor@fticonsulting.com) immediately, with copies to Plaintiffs;

(L) Transferring to Plaintiffs all legal documents, agreements, contracts, letters of intent, memoranda of understanding, term sheets, confidentiality or non-disclosure agreements, communications, etc., that have been completed to date or are pending and relate in any way to the Project, LSP, and each Project Company;

(M) Providing to Plaintiffs a list of professional consultants and contractors that have been appointed in connection with LSP or the Project and any contracts, engagement materials, and communications to, from, or relating to such individuals or entities;

(N) Transferring to Plaintiffs ownership of and control over all bank or other accounts relating to LSP or the Project and providing to Plaintiffs all records relating to such accounts;

(O) Providing to Plaintiffs a written status report regarding commercial activities, including committed and anticipated barrel throughput, for LSP and the Project;

(P) Providing to Plaintiffs a written status report regarding all permits for LSP and the Project;

(Q) Providing to Plaintiffs all outstanding invoices and accounts payable for LSP and the Project, it being understood that pursuant to the Term Sheet no member of the Berry Group has any obligation to reimburse or pay any costs or expenses that have been incurred by Carlyle or any Carlyle Affiliate, whether ostensibly on behalf of LSP or otherwise, unless Berry has specifically agreed to reimburse or pay such costs or expenses; and

(R) Providing to LSPE all documents, records, work product, and Information relating in any manner to the Project, LSP, and all Project Companies.

IX. DAMAGES

57. Plaintiffs are entitled to actual damages and special damages, including but not limited to lost profits and lost business and investment opportunities.

58. Plaintiffs are entitled to exemplary damages because Defendants' conduct constituted gross negligence, malice, or fraud.

X. ATTORNEYS' FEES

59. Plaintiffs are entitled to reasonable and necessary attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code Ch. 37.

XI. CONDITIONS PRECEDENT

60. All conditions precedent to bringing the above causes of action have been met or occurred.

XII. ALTERNATIVE PLEADING

61. The foregoing facts and theories are pled cumulatively and alternatively, with no election or waiver of rights or remedies.

XIII. REQUEST FOR DISCLOSURE

62. Under the Texas Rules of Civil Procedure 194, Plaintiffs hereby request that Defendants disclose, within 50 (fifty) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

XIV. JURY DEMAND

63. Plaintiffs requests trial by jury and submits appropriate jury fee.

XV. PRAYER

Plaintiffs prays that Defendants be cited to appear, for these reasons and that Plaintiffs have judgment against Defendants for all relief requested and for such other and further relief, general and special, at law or in equity, to which Plaintiffs are entitled.

Respectfully submitted,

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