

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): **April 27, 2017**

Arch Coal, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

1-13105
(Commission File Number)

43-0921172
(I.R.S. Employer Identification No.)

CityPlace One
One CityPlace Drive, Suite 300
St. Louis, Missouri 63141
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: **(314) 994-2700**

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

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

New Inventory Facility

On April 27, 2017 (the "Inventory Facility Closing Date"), Arch Coal, Inc. ("Arch Coal," the "Company" or "we") and certain subsidiaries of Arch Coal entered into a new senior secured inventory-based revolving credit facility in an aggregate principal amount of \$40 million (the "New Inventory Facility") with Regions Bank ("Regions") as administrative agent and collateral agent (in such capacities, the "Agent"), as lender and swingline lender (in such capacities, the "Lender") and as letter of credit issuer. Availability under the New Inventory Facility is subject to a borrowing base consisting of (i) 85% of the net orderly liquidation value of eligible coal inventory, (ii) the lesser of (x) 85% of the net orderly liquidation value of eligible parts and supplies inventory and (y) 35% of the amount determined pursuant to clause (i), and (iii) 100% of Arch Coal's Eligible Cash (defined in the New Inventory Facility), subject to reduction for reserves imposed by Regions.

The commitments under the New Inventory Facility will terminate on the date that is the earliest to occur of (i) the third anniversary of the Inventory Facility Closing Date, (ii) the date, if any, that is 364 days following the first day that Liquidity (defined in the New Inventory Facility and consistent with the definition in the Extended Securitization Facility (as defined below)) is less than \$250,000,000 for a period of 60 consecutive days and (iii) the date, if any, that is 60 days following the maturity, termination or repayment in full of the Extended Securitization Facility.

Revolving loan borrowings under the New Inventory Facility bear interest at a per annum rate equal to, at the option of Arch Coal, either at the base rate or the London interbank offered rate plus, in each case, a margin ranging from 2.25% to 2.50% (in the case of LIBOR loans) and 1.25% to 1.50% (in the

case of base rate loans) determined using a Liquidity-based grid. Letters of credit under the New Inventory Facility are subject to a fee in an amount equal to the applicable margin for LIBOR loans, plus customary fronting and issuance fees.

All existing and future direct and indirect domestic subsidiaries of Arch Coal, subject to customary exceptions, will either constitute co-borrowers under or guarantors of the New Inventory Facility (collectively with Arch Coal, the "Loan Parties"). The New Inventory Facility is secured by first priority security interests in the ABL Priority Collateral (defined in the New Inventory Facility) of the Loan Parties and second priority security interests in substantially all other assets of the Loan Parties, subject to customary exceptions (including an exception for the collateral that secures the Extended Securitization Facility).

Arch Coal has the right to prepay borrowings under the New Inventory Facility at any time and from time to time in whole or in part without premium or penalty, upon written notice, except that any prepayment of such borrowings that bear interest at the LIBOR rate other than at the end of the applicable interest periods therefor shall be made with reimbursement for any funding losses and redeployment costs of the Lender resulting therefrom.

The New Inventory Facility is subject to certain usual and customary mandatory prepayment events, including non-ordinary course asset sales or dispositions, subject to customary thresholds, exceptions (including exceptions for required prepayments under Arch Coal's term loan facility) and reinvestment rights.

The New Inventory Facility contains customary affirmative covenants and representations, including certain cash management and reporting requirements that are customary for asset-based credit facilities.

The New Inventory Facility also contains customary negative covenants, which, among other things, and subject to certain exceptions, include restrictions on (i) indebtedness, (ii) liens, (iii) liquidations, mergers, consolidations and acquisitions, (iv) disposition of assets or subsidiaries, (v) affiliate transactions, (vi) creation or ownership of certain subsidiaries, partnerships and joint ventures, (vii) continuation of or change in business, (viii) restricted payments, (ix) prepayment of subordinated and junior lien indebtedness, (x) restrictions in agreements on dividends, intercompany loans and granting liens on the collateral, (xi) loans and investments, (xii) sale and leaseback transactions, (xiii) changes in organizational documents and fiscal year and (xiv) transactions with respect to bonding subsidiaries. The New Inventory Facility also includes a requirement to maintain Liquidity equal to or exceeding \$175,000,000.

The New Inventory Facility permits the Extended Securitization Facility to remain in place.

The New Inventory Facility contains customary events of default, subject to customary thresholds and exceptions, including, among other things, (i) non-payment of principal and non-payment of interest and fees, (ii) a material inaccuracy

of a representation or warranty at the time made, (iii) a failure to comply with any covenant, subject to customary grace periods in the case of certain affirmative covenants, (iv) cross-events of default to indebtedness of at least \$50,000,000, (v) cross-events of default to surety, reclamation or similar bonds securing obligations with an aggregate face amount of at least \$50,000,000, (vi) uninsured judgments in excess of \$50,000,000, (vii) any loan document shall cease to be a legal, valid and binding agreement, (viii) uninsured losses or proceedings against assets with a value in excess of \$50,000,000 (or, in the case of ABL Priority Collateral, in excess of \$5,000,000), (ix) ERISA events, (x) a change of control or (xi) bankruptcy or insolvency proceedings relating to the Arch Coal or any material subsidiary of the Arch Coal.

The description of the New Inventory Facility is qualified in its entirety by reference to the full text of the New Term Inventory Facility, which is incorporated by reference herein. A copy of the New Inventory Facility is included herein as Exhibit 10.1.

Securitization Facility

On April 27, 2017 (the "Securitization Facility Closing Date"), Arch Coal extended and amended its existing trade accounts receivable securitization facility provided to Arch Receivable Company, LLC, a special-purpose entity that is a wholly owned subsidiary of Arch Coal ("Arch Receivable") (the "Extended Securitization Facility"), which supports the issuance of letters of credit and requests for cash advances. The amendment to the Extended Securitization Facility decreases the borrowing capacity from \$200 million to \$160 million and extends the maturity date to the date that is three years after the Securitization Facility Closing Date. Pursuant to the Extended Securitization Facility, Arch Receivable also agreed to a revised schedule of fees payable to the administrator and the providers of the Extended Securitization Facility.

The Extended Securitization Facility will terminate at the earliest of (i) three years from the Securitization Facility Closing Date, (ii) if the Liquidity (defined in the Extended Securitization Facility and consistent with the definition in the New Inventory Facility) is less than \$175,000,000 for a period of 60 consecutive days, the date that is the 364th day after the first day of such 60 consecutive day period and (iii) the occurrence of certain predefined events substantially consistent with the existing transaction documents. Under the Extended Securitization Facility, Arch Receivable, Arch Coal and certain of Arch Coal's subsidiaries party to the Extended Securitization Facility have granted to the administrator of the Extended Securitization Facility a first priority security interest in eligible trade accounts receivable generated by such parties from the sale of coal and all proceeds thereof.

The description of the Extended Securitization Facility is qualified in its entirety by reference to the full text of the Extended Securitization Facility, which is incorporated by reference herein. A copy of the Extended Securitization Facility is included herein as Exhibits 10.2 to 10.4.

Item 2.02 Results of Operations and Financial Condition

On May 2, 2017, the Company issued a press release containing its first quarter 2017 results and announcing a new share repurchase program and a quarterly dividend. A copy of the press release is attached hereto as Exhibit 99.1.

The information contained in this Item 2.02, including Exhibit 99.1, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section. The information in this Item 2.02, including Exhibit 99.1, shall not be incorporated by into any filing under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information regarding the New Inventory Facility and the Extended Securitization Facility set forth in Item 1.01 of this Report is incorporated by reference herein.

Item 8.01 Other Events

On April 27, 2017, the board of directors of Arch Coal authorized a new share repurchase program for up to \$300 million in shares of its common stock, with no time limit on the program. The timing of any purchases, and the ultimate number of shares to be purchased, will depend on market conditions. The Company had 25,021,079 common shares outstanding as of April 27, 2017.

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The purchases under the new share repurchase program may be made in the open market or through privately negotiated transactions from time to time in accordance with applicable laws, rules and regulations. Repurchases may also be made pursuant to a Rule 10b5-1 plan, which, if adopted by Company, would permit shares to be repurchased in accordance with pre-determined criteria when the Company might otherwise be prohibited from doing so under insider trading laws or because of self-imposed trading blackout periods. The share repurchase program may be amended, suspended or discontinued at any time and does not commit the Company to repurchase shares of its common stock. The actual number and value of the shares to be purchased will depend on the performance of the Company's stock price and other market conditions.

On April 27, 2017, the board of directors also authorized a new quarterly common stock cash dividend of \$0.35 per share. The dividend will be paid on June 15, 2017 to stockholders of record on May 31, 2017.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are attached hereto and filed herewith.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Credit Agreement, dated as of April 27, 2017, among Arch Coal, Inc. and certain of its subsidiaries, as borrowers, the lenders from time to time party thereto, and Regions Bank, in its capacities as administrative agent and as collateral agent
10.2	First Amendment to Third Amended and Restated Receivables Purchase Agreement, dated as of April 27, 2017, among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers.
10.3	Second Amendment to the Second Amended and Restated Purchase and Sale Agreement, dated as of April 27, 2017, among the Arch Coal, Inc. and certain subsidiaries of the Arch Coal, Inc., as originators.
10.4	First Amendment to the Second Amended and Restated Sale and Contribution Agreement, dated as of April 27, 2017, between Arch Coal, Inc., as the transferor, and Arch Receivable Company, LLC.
99.1	Press Release containing Arch Coal's first quarter 2017 results dated May 2, 2017.

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Signatures

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

Dated: May 2, 2017

Arch Coal, Inc.

By: /s/ Robert G. Jones
Robert G. Jones

Senior Vice President — Law, General Counsel and Secretary

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- 10.3 Second Amendment to the Second Amended and Restated Purchase and Sale Agreement, dated as of April 27, 2017, among the Arch Coal, Inc. and certain subsidiaries of the Arch Coal, Inc., as originators.
- 10.4 First Amendment to the Second Amended and Restated Sale and Contribution Agreement, dated as of April 27, 2017, between Arch Coal, Inc., as the transferor, and Arch Receivable Company, LLC.
- 99.1 Press Release containing Arch Coal's first quarter 2017 results dated May 2, 2017.

CREDIT AGREEMENT

by and among

ARCH COAL, INC.

AND CERTAIN OF ITS SUBSIDIARIES,

JOINTLY AND SEVERALLY, as the “Borrowers”

THE FINANCIAL INSTITUTIONS PARTY HERETO FROM TIME TO TIME, as the “Lenders”

REGIONS BANK, as the “Administrative Agent”

and

**REGIONS CAPITAL MARKETS, a division of Regions Bank
as Sole Book Runner and Sole Lead Arranger**

April 27, 2017

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EXHIBITS

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "Agreement") is dated as of April 27, 2017, by and among (A) **ARCH COAL, INC.**, a Delaware corporation ("Parent"); (B) the Subsidiaries of Parent identified on the signature pages hereto and any other Subsidiaries of Parent that may become Borrowers hereunder pursuant to Section 9.12 (each of such Subsidiaries, together with Parent, jointly and severally, the "Borrowers" and, each, a "Borrower"); (C) the financial institutions from time to time party hereto (each, a "Lender" and, collectively, the "Lenders"); (D) **REGIONS BANK**, an Alabama bank (as further defined below, "Regions Bank"), in its capacities as the Swingline Lender (as defined below) and LC Issuer (as defined below); and (E) Regions Bank, in its capacities as administrative agent and collateral agent for the Lenders, LC Issuer and other Secured Parties (defined below) (Regions Bank, acting in such capacities, and as further defined below, "Administrative Agent" or "Agent").

WITNESSETH:

WHEREAS, Loan Parties have requested that Administrative Agent and the Lenders establish a revolving credit facility in favor of Borrowers and that LC Issuer establish a letter of credit sub-facility for the account of Borrowers, all for the purposes set forth herein; and

WHEREAS, Administrative Agent, the Lenders, and LC Issuer are willing to provide such credit facility and letter of credit sub-facility to Borrowers subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, each Borrower, Administrative Agent, each Lender, and LC Issuer, each intending to be legally bound, hereby covenant and agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. **Definitions.** Capitalized terms that are not otherwise defined herein shall have the meanings set forth in this Section 1.1. As used in this Agreement and, as applicable, any other Loan Documents, the following terms shall have the following meanings:

"ABL Priority Collateral" shall have the meaning specified in the Intercreditor Agreement.

"Account Control Period" means (a) any period during which an Event of Default exists; and (b) each other period that commences on the first day on which Administrative Agent receives any Borrowing Base Certificate indicating that Liquidity has fallen below \$275,000,000 at any time, and ends on (and includes) the first day thereafter on which Administrative Agent receives a Borrowing Base Certificate indicating that Liquidity has exceeded \$275,000,000.

"Active Operating Properties" means all property which is the subject of outstanding Environmental Health and Safety Permits issued to any Loan Party or any Subsidiary of any Loan Party.

“Adjusted LIBOR Rate” means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBOR Loan, the rate per annum obtained by dividing (a) (i) the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the LIBOR or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Reuters screen page (or such other commercially available source providing

such quotations as may be designated by the Administrative Agent from time to time) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service which displays an average settlement rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (iii) in the event the rates referenced in the preceding clauses (i) and (ii) are not available, the rate per annum (rounded upward to the next whole multiple of one sixteenth of one percent (1/16 of 1%)) equal to the quotation rate (or the arithmetic mean of rates) offered to first class banks in the London interbank market for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Regions Bank or any other Lender selected by the Administrative Agent, for which the Adjusted LIBOR Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (b) an amount equal to the number one minus the Applicable Reserve Requirement. Notwithstanding anything contained herein to the contrary, if the Adjusted LIBOR Rate, as so determined, is ever less than zero (0), then, the Adjusted LIBOR Rate shall be deemed to be zero (0).

“Administrative Agent” or “Agent” means Regions Bank, in its capacity as administrative agent and collateral agent for each Secured Party, together with its successors and assigns.

“Administrative Agent Indemnitees” means Administrative Agent and its officers, directors, employees, managers, Affiliates, agents, trustees, and representatives, including Administrative Agent Professionals.

“Administrative Agent Professionals” means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Administrative Agent.

“Administrative Questionnaire” means an administrative questionnaire provided by the Lenders in a form supplied by the Administrative Agent.

“Affected Lender” has the meaning set forth in Section 15.1(b).

“Affected Loan” has the meaning set forth in Section 15.1(b).

“Affiliate” as to any Person means any other Person (i) which directly or indirectly controls, is controlled by, or is under common control with such Person, (ii) which beneficially owns or holds 10% or more of any class of the voting or other equity interests of such Person, or (iii) 10% or more of any class of voting interests or other equity interests of which is beneficially owned or held, directly or indirectly by such Person. Control, as used in this definition, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors or trustees of a corporation or trust, as the case may be.

“Agent Parties” has the meaning set forth in Section 16.1(d).

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

“Agreement Currency” has the meaning set forth in Section 16.22.

“Aggregate Revolving Obligations” means, at any time of determination, the sum (without duplication) of (a) the outstanding principal amount of all Loans and (b) the outstanding amount of all LC Obligations.

“Allocable Amount” has the meaning given such term in Section 5.7(c)(ii).

“Anti-Corruption Laws” means the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq, the UK Bribery Act of 2010 and all other laws, rules, and regulations of any jurisdiction applicable to any Loan Party or any of its Affiliates from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means any laws relating to the prevention of terrorism or money laundering, including the PATRIOT Act and all OFAC rules and regulations, including Executive Order 13224.

“Applicable Margin” means, subject to the terms of this definition, with respect to any Type of Loan and at any time of determination, the percentage rate per annum set forth in the following table, as determined by reference to Liquidity as of the last date of the calendar month preceding each Determination Date (as defined below), as further described below:

Level	Liquidity	Loans		
		Base Rate	LIR	LIBOR
I	Less than or equal to \$275,000,000	1.50%	2.50%	2.50%
II	Greater than \$275,000,000	1.25%	2.25%	2.25%

The Applicable Margin shall be subject to reduction or increase, as applicable and as set forth in the table above, on a monthly basis on each Determination Date, and any such reduction or increase shall be automatic and without notice to any Person. Without limiting Administrative Agent's or Required Lenders' rights to invoke the Default Rate, if (a) the Borrowing Base Certificate (together with the related calculations setting forth Liquidity) are not received by Administrative Agent on or before the applicable dates required pursuant to Section 9.16(a), as applicable, or (b) an Event of Default occurs and, in either case, Administrative Agent or Required Lenders so elect, then, in each case, from the date such Borrowing Base Certificate was required to be delivered or the date such Event of Default occurred, as applicable, the Applicable Margin shall, at the option of Administrative Agent or the Required Lenders, be at the Level with the highest rates of interest until such time as such Borrowing Base Certificate and related reports are received by Administrative Agent and any Event of Default (whether resulting from a failure to timely deliver such Borrowing Base Certificate or otherwise) is waived in accordance with the terms of this Agreement.

Any of the foregoing to the contrary notwithstanding, on and after the Closing Date to, but not including, the first Determination Date, the Applicable Margin shall be equal to the rates set forth in Level II. As used herein, "Determination Date" means the first day of the first calendar month after the date on which Borrower Agent provides the Borrowing Base Certificate under Section 9.16(a) for each of its Fiscal Months.

If any Borrowing Base Certificate is shown to be inaccurate (regardless of whether this Agreement or any Commitments are or remain in effect when such inaccuracy is discovered), and such inaccuracy, if

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corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin actually applied for such Applicable Period, then (A) Borrowers shall immediately deliver to Administrative Agent a correct Borrowing Base Certificate for the Applicable Period; (B) the Applicable Margin for such Applicable Period shall be determined by reference to such Borrowing Base Certificate; and (C) Borrowers shall promptly pay Administrative Agent, **ON DEMAND**, the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period and any other additional fee or charge which was based, in whole or in part, on the Applicable Margin, which payment shall be promptly applied by Administrative Agent for its own account and the account of Lenders and LC Issuer, as applicable, in accordance with the terms hereof. If any inaccurate Borrowing Base Certificate or other report on which Liquidity is determined would, if corrected, have led to the application of a lower Applicable Margin for any period for which interest has already been paid, none of the Secured Parties shall be required to refund or return any portion of such interest.

"Applicable Reserve Requirement" means, at any time, for any LIBOR Loan or LIR Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D of the Board of Governors, as in effect from time to time) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the Adjusted LIBOR Rate or the LIBOR Index Rate is to be determined, or (b) any category of extensions of credit or other assets which include LIBOR Loans or LIR Loans. LIBOR Loans and LIR Loans shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefit of credit for pro ration, exception or offsets that may be available from time to time to the applicable Lender. The rate of interest on LIBOR Loans and LIR Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"Approved Fund" means any fund that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Article 9 Control" means, with respect to any asset, right, or property with respect to which a security interest therein is perfected by a secured party's having "control" thereof (whether pursuant to the terms of an agreement or through the existence of certain facts and circumstances), that the Administrative Agent or a Lender, as applicable, has "control" of such asset, right, or property in accordance with the terms of Article 9 of the UCC. Without limitation of the foregoing, so long as Regions Bank is the Administrative Agent, Administrative Agent shall be deemed to have "control" of any Securities Account or Deposit Account maintained with Regions Bank or any Affiliate of Regions Bank, including any maintained by or through Regions Bank or any agents or correspondents acting on behalf of Regions Bank.

"Asset Sale" has the meaning set forth in Section 9.16(f).

"Assignment Agreement" means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 14.1(b)) and accepted by the Administrative Agent, in substantially the form of **Exhibit B** or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent from time to time.

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"Auto Borrow Agreement" has the meaning specified in Section 4.1(b)(iii).

"Availability" means, at any time of determination, the amount, if any, by which (a) the lesser of (i) the Borrowing Base and (ii) the Commitments exceeds (b) the Aggregate Revolving Obligations.

"Average Cost" means the average cost method of accounting under GAAP as calculated by Borrowers in the ordinary course of business, or such other average cost method of accounting as may be expressly approved by Administrative Agent.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU

“Bank Product Agreement” means any agreement between one or more Loan Parties and a Bank Product Provider evidencing the making available of any Bank Product by such Bank Product Provider to such Loan Party.

“Bank Product Obligations” means indebtedness, liabilities and other obligations of any Loan Party to any Bank Product Provider arising under, pursuant to or in connection with Bank Products.

“Bank Product Provider” means any Lender or Affiliate of a Lender that provides a Bank Product. For purposes hereof, the term “Lender” shall be deemed to include the Administrative Agent.

“Bank Product Reserve” means an amount determined from time to time by Administrative Agent in its Permitted Discretion as a reserve for Bank Product Obligations.

“Bank Products” means all bank, banking, financial, and other similar or related products, services, and facilities offered or provided by any Bank Product Provider to any Loan Party, including (a) merchant card services, credit or stored value cards and corporate purchasing cards; (b) cash management, treasury, and related products and services, including depository and checking services, Deposit Accounts (whether operating, money market, investment, collections, payroll, trust, disbursement, or other Deposit Accounts), automated clearinghouse (“ACH”) transfers of funds and any other ACH services, remote deposit capture, lockboxes, account reconciliation and information reporting, controlled disbursements, wire and other electronic funds transfers, e-payable, overdraft protection, stop payment services and fraud protection services (all of the products and services described in this clause (b), collectively, “Treasury Services”); and (c) bankers’ acceptances, drafts, documentary services, foreign currency exchange services; (d) Swap Agreements; (e) supply chain finance arrangements; and (f) leases and other banking products or services, other than Letters of Credit.

“Bankruptcy Code” means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 *et seq.*

“Base Rate” means, for any day, the rate per annum equal to the greatest of (a) the Federal Funds Rate in effect on such day plus ½ of 1%; (b) the Prime Rate in effect on such day; and (c) the Adjusted LIBOR Rate for an Interest Period of one-month, as determined on the Interest Rate Determination Date corresponding thereto plus 1%. If for any reason Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable, after due inquiry, to ascertain

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either the Adjusted LIBOR Rate or the Federal Funds Rate, or both such rates, for any reason, including the inability or failure of Administrative Agent to obtain sufficient quotations in regard to such rate(s) in accordance with the terms hereof, the Base Rate shall be determined without regard to clause (a) and/or clause (c) of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate, or the Adjusted LIBOR Rate shall be effective on the effective date of such change in the Prime Rate, Federal Funds Rate or the Adjusted LIBOR Rate, respectively, automatically and without notice to any Person. Notwithstanding anything contained herein to the contrary, if the Base Rate, as so determined, is ever less than zero (0), then, the Base Rate shall be deemed to be zero (0).

“Base Rate Loan” means any Loan which bears interest at a rate based on the Base Rate.

“Benefit Arrangement” means an “employee benefit plan,” within the meaning of Section 3(3) of ERISA, which is neither a Plan nor a Multiemployer Plan and which is maintained, sponsored or contributed to by any of the Loan Parties.

“Black Lung Act” means, collectively, the Black Lung Benefits Revenue Act of 1977, as amended and the Black Lung Benefits Reform Act of 1977, as amended.

“Board of Governors” means the Board of Governors of the Federal Reserve System.

“Bonding Subsidiary” means a Subsidiary of a Borrower the sole purpose of which is to own a leasehold interest in a coal lease where the lessor thereof is a Person who is not an Affiliate of a Borrower (but not to operate any Mining Operations thereon) and to enter into surety or similar arrangements to provide payment assurances to the lessor thereof related to the cost of acquiring such leasehold interest and any bonus bid and royalty payments thereunder, and Bonding Subsidiaries shall mean, collectively, each and every Bonding Subsidiary.

“Borrower” and “Borrowers” have the meanings set forth in the preamble hereto, provided that no Foreign Subsidiary shall be a Borrower.

“Borrower Agent” has the meaning given such term in Section 4.3.

“Borrower Shares” has the meaning set forth in Section 8.2.

“Borrowing” means a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

“Borrowing Base” means, on any date of determination, an amount, calculated in Dollars, equal to:

- (a) 85% of the NOLV Percentage of Eligible Coal Inventory; plus
- (b) the lesser of (i) 85% of the NOLV Percentage of Eligible Parts and Supplies Inventory; and (ii) 35% of the amount determined pursuant to clause (a) of this definition; provided that during any Borrowing Base Adjustment Period, the amount of this clause (b) shall be deemed to equal \$0; plus
- (c) 100% of Eligible Cash; minus
- (d) Reserves.

“Borrowing Base Adjustment Period” means the first day on which Administrative Agent receives any Borrowing Base Certificate indicating that Liquidity has fallen below \$225,000,000 at any time (an “Initial Adjustment Event”), and all subsequent days until and including the first day thereafter on which Administrative Agent receives a Borrowing Base Certificate indicating that Liquidity has exceeded \$225,000,000 for a thirty (30) consecutive day period after such Initial Adjustment Event.

“Borrowing Base Certificate” means a borrowing base certificate substantially in the form of Exhibit E or such other form as may be acceptable to Administrative Agent from time to time in its discretion.

“Business Day” means (a) any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of, or are in fact closed in, the States of Alabama, Georgia, or New York, and (b) if such day relates to any notice, determination, funding or payment in respect of a LIBOR Loan or an LIR Loan, any such day which is a Business Day as prescribed in clause (a) above and is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

“Case” or “Cases” means Parent and its subsidiaries’ voluntary petitions with the United States Bankruptcy Court for the Eastern District of Missouri for relief under Chapter 11 of the Bankruptcy Code on January 11, 2016.

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, LC Issuer or Swingline Lender, as applicable, as collateral for the LC Obligations or Swingline Loans, as applicable, or obligations of Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent, LC Issuer or Swingline Lender, as applicable, may agree, each in its sole discretion, other credit support, in each case pursuant to documentation in form and substance, and in an amount (but not less than 105% of the obligated amount), in each case, reasonably satisfactory to the Administrative Agent, such LC Issuer and/or Swingline Lender, as applicable, in its or their sole discretion. “Cash Collateral”, “Cash Collateralization” and “Cash Collateralizing” shall have meanings correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support including any cash and any interest or other income earned thereon

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any Law, (ii) any change in any Law or in the administration, interpretation, implementation or application thereof by any Official Body or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Official Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of Law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

“Change of Control” has the meaning given such term in Section 12.1(j).

“CIP Regulations” has the meaning set forth in Section 13.15(b).

“Claims” means all liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs, disbursements, and expenses of any kind (including fees, costs, and expenses of attorneys

and paralegals, experts, agents, consultants, and advisors, and Extraordinary Expenses (in the case of legal fees, limited to the reasonable and documented fees of a single primary legal counsel to Administrative Agent, plus one local counsel in any relevant jurisdiction, plus any special counsel, plus, in the case of an actual or perceived conflict of interest, where such Indemnitees endeavor to provide the Parent prior notice of such conflict of interest, a single firm of counsel for all similarly affected Indemnitees) at any time (including before or after the Closing Date, after Payment in Full of the Obligations, or resignation or replacement of Administrative Agent) incurred by or asserted against or imposed on any Indemnitee as a result of, or arising from or in connection with, (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions relating thereto; (b) any action taken or omitted to be taken by any Indemnitee in connection with any Loan Documents; (c) the existence or perfection of any Liens, or realization upon any Collateral; (d) exercise of any rights or remedies under any Loan Documents or Law; or (e) failure by any Loan Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration, or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

“Closing Date” has the meaning given such term in Section 7.1.

“Coal Act” means the Coal Industry Retiree Health Benefits Act of 1992, as amended.

“Coal Supply Agreement” means with respect to any Borrower or any of their Subsidiaries an agreement or contract in effect on the Closing Date or thereafter entered into for the sale, purchase, exchange, processing or handling of coal with an initial term of more than one year.

“Code” means the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time.

“Collateral” means all of the “Collateral” and “Pledged Collateral” as defined in any Security Document and all other assets that become subject to (or purported to be subject to) the Liens created by the Security Documents from time to time.

“Commitment” means, at any time of determination and with respect to each Lender, such Lender’s obligation to make Loans, participate in Swingline Loans and participate in LC Obligations, “Commitments” means, at any time of determination, the aggregate amount of such Commitments of all Lenders. The amount of each Lender’s Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is FORTY MILLION DOLLARS (\$40,000,000).

“Commitment Increase” has the meaning given such term in Section 2.1(f).

“Commitment Termination Date” means the earliest to occur of the following: (a) the Stated Commitment Termination Date; (b) the date on which Borrowers terminate the Commitments pursuant to Section 2.1(c); (c) the date on which the Commitments are terminated pursuant to Section 12.2; and (d) the sixtieth (60th) day following maturity, termination or repayment in full of any Permitted Receivables Financing; provided that Administrative Agent may in its discretion require Borrowers to cash collateralize the Obligations in such amounts as Administrative Agent may determine in its discretion on and after the thirtieth (30th) day following such maturity, termination or repayment in full described in this clause (d).

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“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Communications” has the meaning set forth in Section 16.1(d).

“Compliance Certificate” a certificate of Borrower Agent signed by a Senior Officer, substantially in the form of Exhibit F: (i) stating that no Default or Event of Default then exists or, if a Default or Event of Default exists, the nature and duration thereof and Loan Parties’ intention with respect thereto, (ii) containing a list of each Significant Subsidiary and each Non-Loan Party Subsidiary (and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary), other than those set forth on Schedule 8.2 and (iii) confirming that each Significant Subsidiary has joined the Loan Documents in accordance with the requirements of Section 9.12.

“Concentration Account” means a Deposit Account established or maintained by a Loan Party at Regions Bank, which Deposit Account shall be utilized solely for purposes of receiving payments made by a Securitization Subsidiary in respect of a sale of Receivables Assets to such Securitization Subsidiary pursuant to a Permitted Receivables Financing (including each payment made pursuant to the Receivables Purchase Documents), and over which Administrative Agent shall have Article 9 Control and, at any time during the continuance of an Account Control Period, exclusive control to withdraw or otherwise direct the disposition of funds on deposit therein..

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Net Income” means consolidated net income (or loss) of the Parent and its Subsidiaries, excluding (without duplication): (a) the effect of non-cash compensation expenses related to common stock and other equity securities issued to employees, (b) extraordinary or non-recurring gains and losses, (c) gains or losses on discontinued operations or disposal of discontinued operations or costs and expenses associated with the closure of any mines (including any reclamation or disposal obligations) and (d) equity earnings or losses of Affiliates (other than earnings or losses of the Parent or any Subsidiary of the Parent).

“Consolidated Net Tangible Assets” means, as of any particular time, the total of all the assets appearing on the most recent consolidated balance sheet prepared in accordance with GAAP of the Parent and its Subsidiaries as of the end of the last Fiscal Quarter for which financial information is available (less applicable reserves and other properly deductible items) after deducting from such amount (a) all current liabilities, including current maturities of long-term debt and current maturities of obligations under capital leases (other than any portion thereof maturing after, or renewable or extendable at the option of the relevant Borrower or the relevant Subsidiary beyond, twelve months from the date of determination) and (b) the total of the net book values of all assets of the Parent and its Subsidiaries properly classified as intangible assets under GAAP (including goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangible assets).

“Contamination” means the presence or Release or threat of Release of Regulated Substances in, on, under or emanating to or from the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, which pursuant to Environmental Health and Safety Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Health and Safety Laws requires performance of a Remedial Action or which otherwise constitutes a violation of Environmental Health and Safety Laws.

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“Contractual Obligation” means as to any Person, any provisions of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control Agreement” shall mean, with respect to any Deposit Account, Securities Account, Commodity Account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to Administrative Agent, among Administrative Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant Article 9 Control over such account (and all assets on deposit therein or credited thereto) to Administrative Agent, for the benefit of the Secured Parties.

“Debt” means for any Person as of any date of determination the sum, without duplication, of any and all indebtedness, obligations or liabilities of such Person for or in respect of: (i) all indebtedness for borrowed money (including, without limitation, all subordinated indebtedness), (ii) all amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) all indebtedness in respect of any other transaction (including production payments (excluding royalties), installment purchase agreements, forward sale or purchase agreements, capitalized leases, conditional sales agreements, deferred purchase price of property or services and indebtedness secured by a Lien on property owned or being purchased by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements, (iv) reimbursement obligations (contingent or otherwise) under any letter of credit, (v) all indebtedness and other obligations of each Securitization Subsidiary in respect of any Permitted Receivables Financing, (vi) all payments such Person would have to make in the event of an early termination, on the date such Debt is being terminated, in respect of outstanding Swap Agreements, (vii) all obligations of such Person in respect of Disqualified Equity Interests or (viii) the amount of all indebtedness (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) in respect of all Guaranties by such Person (the “Guarantying Person”) of Debt described in clauses (i) through (vii) above of other Persons (each such other Person being a “Primary Loan Party” and the obligations of a Primary Loan Party which are subject to a Guaranty by a Guarantying Person being “Primary Obligations”) (it being understood that if the Primary Obligations of the Primary Loan Party

do not constitute Debt, then the Guaranty by the Guarantying Person of the Primary Obligations of the Primary Loan Party shall not constitute Debt). It is expressly agreed that obligations in respect of any current trade liabilities (which are incurred in the ordinary course of business and which are not represented by a promissory note or other evidence of indebtedness) and current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business shall not be deemed "Debt" for purposes hereof. For purposes of determining the Debt outstanding at any time under any Permitted Receivables Financing, the amount of such outstanding Debt shall equal the sum of (i) either (x) the drawn amount of commitments that has been invested in receivables under the Existing Receivables Financing (or any similarly structured Permitted Receivables Financing) at such time or (y) the principal amount of loans under an alternatively structured Permitted Receivables Financing at such time, plus (ii) the sum of the undrawn amounts of letters of credit issued thereunder at such time

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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"Default" means any event or condition which with notice or passage of time, or both, would constitute an Event of Default.

"Default Rate" means for any Obligation (including, to the extent permitted by Law, interest not paid when due), 2.0% per annum plus the interest rate otherwise applicable thereto or, to the extent that there is no applicable rate thereto, the Base Rate plus the highest Applicable Margin for Base Rate Loans plus 2.0% per annum.

"Defaulting Lender" means, subject to Section 4.2(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days after the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower Agent in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, LC Issuer, Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days after the date when due, (b) has notified Borrower Agent, Administrative Agent, LC Issuer or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied, (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower Agent, to confirm in writing to Administrative Agent and Borrower Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) has become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by an Official Body so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Official Body) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 4.2(b)) upon delivery of written notice of such determination to Borrower Agent, each LC Issuer, each Swingline Lender and each Lender.

"Designated Non-Cash Consideration" means the fair market value (as reasonably determined by Borrowers in good faith) of non-cash consideration received by any Borrower or any of their Subsidiaries in connection with a Disposition that is so designated as "Designated Non-Cash Consideration."

"Designated Parts and Supplies" shall have the meaning specified in the definition of "Inventory".

"Dispose" or "Disposition" shall have the meaning specified in Section 10.4.

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"Disqualified Equity Interests" means any equity interests which, by their terms (or by the terms of any security into which they are convertible or for which they are exchangeable), or upon the happening of any event, (a) mature (excluding any maturity as the result of an optional redemption by the issuer thereof) or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are redeemable at the option of the holder thereof, in whole or in part, or require the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the date that is ninety-one (91) days after the Stated Commitment Termination Date (determined as of the date of issuance thereof), or (b) are convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) cash, (ii) debt securities or (iii) any equity interests referred to in (a) above, in each case at any time prior to the date that is ninety-one (91) days after the Stated Commitment Termination Date (determined as of the date of issuance thereof). Notwithstanding the foregoing, any equity interests that would constitute Disqualified Equity Interests solely because holders of the equity interests have the right to require the issuer of such equity interests to repurchase such equity interests upon the occurrence of a change of control or an asset sale will not constitute Disqualified Equity Interests if the terms of such equity interests provide that the issuer may not repurchase or redeem any such equity interests pursuant to such provisions unless such repurchase or redemption is permitted under the terms of this Agreement.

"Dollars" and the symbol "\$" shall mean lawful money of the United States of America.

"EBITDA" for any period of determination means with respect to the Parent and its consolidated Subsidiaries for such period of determination; (a) Consolidated Net Income, plus (b) the sum of the following, without duplication and to the extent deducted in determining Consolidated Net Income: (i) interest expense (net of interest income), (ii) income tax expense, (iii) depreciation, depletion, amortization (including, without limitation, amortization of intangibles, deferred financing fees, and any amortization included in pension or other employee benefit expenses) and all other non-cash items reducing Consolidated Net Income (including, without limitation, write-downs and impairment of property, plant, equipment and intangibles, other long-lived assets,

the impact of purchase accounting and asset retirement obligations accretion expenses, but excluding any such non-cash charge that represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), (iv) non-cash debt extinguishment costs, (v) non-cash impairment charges or asset write-offs and non-cash charges, including non-cash charges due to cumulative effects of changes in accounting principles (but excluding any such non-cash charge that represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), (vi) any costs and expenses incurred in connection with the Cases and the consummation of the Plan of Reorganization and the consummation of the transactions contemplated thereby for such period, (vii) any charges arising from Fresh Start Reporting adjustments that do not impact the cash flows of the Borrowers and their Subsidiaries and (viii) costs and expenses, including fees, incurred directly in connection with the consummation of the transactions contemplated under the Loan Documents, plus (c) cash dividends or distributions received from Affiliates (other than received from any Borrower or any Subsidiary of a Borrower) to the extent not included in determining Consolidated Net Income, minus (d) the sum of the following, without duplication and to the extent included in determining Consolidated Net Income, (i) non-cash debt extinguishment gains, (ii) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in a prior period under this Agreement), including non-cash gains due to cumulative effects of changes in accounting principles and income tax benefits and (iii) any gains arising from Fresh Start Reporting adjustments that do not impact the cash flows of the Borrowers and their Subsidiaries. All items included in the definition of EBITDA shall be determined in each case for the applicable Person for the period of determination on a consolidated basis in accordance with GAAP.

EBITDA for the Borrowers and their Subsidiaries shall be deemed to be (i) \$(6,170,000) for the Fiscal Quarter ended March 31, 2016, (ii) \$(7,752,000) for the Fiscal Quarter ended June 30, 2016, (iii) \$90,039,000 for the Fiscal Quarter ended September 30, 2016 and (iv) \$95,559,000 for the Fiscal Quarter ended December 31, 2016, as each such amount may be adjusted on a pro forma basis.

For purposes of determining the Total Net Leverage Ratio under this Agreement, in the event that any Borrower or any Subsidiary of any Borrower:

A. acquires in a Permitted Acquisition or any other acquisition or Investment permitted hereunder with an aggregate fair market value (as reasonably determined by such Borrower in good faith) in excess of \$3,000,000 (the “Acquired Person”) during any period of determination, then EBITDA of the Borrowers and their Subsidiaries shall be increased for such period of determination by the EBITDA of the Acquired Person, subject to the following:

(1) the EBITDA of the Acquired Person shall be based upon financial statements reasonably acceptable to the Administrative Agent (the “Acquired Person’s EBITDA”); and

(2) the Permitted Acquisition of the Acquired Person shall be deemed to have occurred on the first day of the period of determination with the Acquired Person’s EBITDA for periods prior to the actual date of the consummation of such acquisition based upon the Acquired Person financial statements and in an amount and calculated in a manner reasonably acceptable to the Administrative Agent and with Acquired Person’s EBITDA for periods on or after the date of consummation of such Permitted Acquisition based upon the actual operating results of the Acquired Person after giving effect to such Permitted Acquisition; or

B. Disposes of any assets with an aggregate fair market value (as reasonably determined by the Borrowers in good faith) in excess of \$3,000,000 pursuant to Section 10.4 of this Agreement, then EBITDA of the Borrowers and their Subsidiaries shall, with respect to such dispossessed assets, shall be increased or decreased, as applicable, for such period of determination by the EBITDA attributable to such dispossessed assets, subject to the following:

(1) the EBITDA attributable to such assets shall be based upon financial statements reasonably acceptable to the Administrative Agent (the “Dispossessed Business EBITDA”); and

(2) the Disposition of such assets shall be deemed to have occurred on the first day of the period in which such Disposition occurred and calculated in a manner reasonably acceptable to the Administrative Agent and with the applicable Dispossessed Business EBITDA based upon the actual operating results of such dispossessed business.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee of a Lender under Section 14.1, subject to any consents and representations, if any, as may be required therein.

“Eligible Cash” means cash of Borrowers on deposit in a Deposit Account maintained at Regions Bank over which Administrative Agent shall have (a) first priority Article 9 Control, and (b) exclusive control to withdraw or otherwise direct the disposition of funds on deposit therein.

“Eligible Coal Inventory” means Inventory of the Borrowers consisting of above-ground mined coal, but excluding therefrom, without duplication, any Inventory:

(a) which constitutes work-in-process;

(b) which is not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent other than Liens arising by operation of law (including Permitted Liens described in clause (c) of the definition of “Permitted Liens” that arise by operation of law), in each case as long as Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(c) as to which any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Inventory shall be untrue, misleading, or in default; provided, however, that this clause (c) shall not (i) be deemed a waiver by the Required Lenders of any Default or Event of Default which occurs under this Agreement or any other Loan Document as a result of any such representation, warranty, or covenant being untrue or misleading, or in default or (ii) limit the ability of Administrative Agent to institute Reserves in connection therewith to the extent provided in this Agreement;

(d) which is on Consignment (i.e., where such Borrower is the consignee) from any seller, vendor, or supplier or subject to any agreement whereby the seller, vendor, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;

(e) which is on Consignment (i.e., where such Borrower is the consignor) to any other Person;

(f) which (in each case, as determined by Administrative Agent) (i) is not new; (ii) is not in good and saleable condition; (iii) is damaged, defective, unserviceable, or otherwise unmerchantable; (iv) constitutes returned or repossessed Goods; (v) constitutes obsolete or slow-moving Goods; (vi) as applicable, fails to meet standards of any Official Body or Law regarding the storage, use, or sale of such Inventory, or (vii) has been acquired from a Sanctioned Person or Sanctioned Country;

(g) which is subject to any negotiable Document;

(h) which is subject to any License with any Third Party which limits or restricts or is reasonably likely to limit or restrict any Borrower or Administrative Agent’s right to sell or otherwise dispose of such Inventory (unless such Third Party has entered into a Third Party Agreement) or which constitute or are alleged to constitute infringing Goods or which have or are alleged to have been manufactured or sold in a manner which violates the Intellectual Property rights of any Person;

(i) which is not located in the continental United States at an Active Operating Property or other Permitted Location, unless it is in-transit Inventory that constitutes Eligible Coal Inventory in accordance with clause (k) below;

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(j) which is located at a Permitted Location not owned and controlled by such Borrower or another Loan Party, unless (i) Administrative Agent has received from the Person owning or in control of such Permitted Location a Third Party Agreement or (ii) Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(k) which constitutes in-transit Inventory, unless (i) it is in-transit Inventory that is in transit in the continental United States with a railway that has provided a Third Party Agreement to Administrative Agent and such railway has provided the railcars used to transport such in-transit Inventory or (ii) Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(l) with respect to which Administrative Agent has not received all documentation required pursuant to Section 9.20 relating to such Inventory; or

(m) which Administrative Agent, in its Permitted Discretion, deems not to be Eligible Coal Inventory.

For purposes of calculating the Borrowing Base, the value of Eligible Coal Inventory shall be determined on the basis of the lower of Average Cost and market value.

“Eligible Inventory” mean Eligible Coal Inventory and Eligible Parts and Supplies Inventory.

“Eligible Parts and Supplies Inventory” means Inventory of the Borrowers consisting of parts and supplies used in the mining of coal or in other related mining activities, but excluding therefrom, without duplication, any Inventory:

(a) which constitutes work-in-process or which does not constitute finished goods;

(b) which is not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent other than Liens arising by operation of law (including Permitted Liens described in clause (c) of the definition of “Permitted Liens” that arise by operation of law), in each case as long as Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(c) as to which any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Inventory shall be untrue, misleading, or in default; provided, however, that this clause (c) shall not (i) be deemed a waiver by the Required Lenders of any Default or Event of Default which occurs under this Agreement or any other Loan Document as a result of any such representation, warranty, or covenant being untrue or misleading, or in default or (ii) limit the ability of Administrative Agent to institute Reserves in connection therewith to the extent provided in this Agreement;

(d) which is on Consignment (i.e., where such Borrower is the consignee) from any seller, vendor, or supplier or subject to any agreement whereby the seller, vendor, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;

(e) which is on Consignment (i.e., where such Borrower is the consignor) to any other Person;

(f) which (in each case, as determined by Administrative Agent) (i) is damaged, defective, unserviceable, or otherwise unmerchantable; (ii) constitutes returned or repossessed Goods; (iii)

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constitutes obsolete Goods; (iv) as applicable, fails to meet standards of any Official Body or Law regarding the storage, use, or sale of such Inventory, or (v) has been acquired from a Sanctioned Person or Sanctioned Country;

(g) which is subject to any negotiable Document;

(h) which is subject to any License with any Third Party which limits or restricts or is reasonably likely to limit or restrict any Borrower or Administrative Agent's right to sell or otherwise dispose of such Inventory (unless such Third Party has entered into a Third Party Agreement) or which constitute or are alleged to constitute infringing Goods or which have or are alleged to have been manufactured or sold in a manner which violates the Intellectual Property rights of any Person;

(i) which is not located in the continental United States at an Active Operating Property or other Permitted Location, unless it is in-transit Inventory that constitutes Eligible Parts and Supplies Inventory in accordance with clause (k) below;

(j) which is located at a Permitted Location not owned and controlled by such Borrower or another Loan Party, unless (i) Administrative Agent has received from the Person owning or in control of such Permitted Location a Third Party Agreement or (ii) Administrative Agent has instituted a Reserve with respect thereto in an amount determined by Administrative Agent in its Permitted Discretion;

(k) which constitutes in-transit Inventory, unless it is in transit in the continental United States between locations owned or leased by one or more Loan Parties;

(l) which constitutes fuel; or

(m) which Administrative Agent, in its Permitted Discretion, deems not to be Eligible Parts and Supplies Inventory.

For purposes of calculating the Borrowing Base, the value of Eligible Parts and Supplies Inventory shall be determined on the basis of Average Cost.

"Enforcement Action" means any action to collect any Obligations or enforce any Loan Document or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

"Environmental Health and Safety Claim" means any administrative, regulatory or judicial action, suit, claim, written notice of non-compliance or violation, written notice of investigation, written notice of liability or potential liability, or proceeding relating in any way to any Environmental Health and Safety Laws, any Environmental Health and Safety Permit, any Regulated Substances, any Contamination, or the performance of any Remedial Action.

"Environmental Health and Safety Laws" means, collectively, any federal, state, local or foreign statute, Law (including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f300j, the Federal Air Pollution Control Act, 42 U.S.C. § 7401 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y, the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. the Mine Safety and Health Act, 30 U.S.C. §§ 801 et seq., the

Surface Mining Control and Reclamation Act 30 U.S.C. §§ 1201 et seq., the Atomic Energy Act, 42 U.S.C. § 2011 et seq., the National Historic Preservation Act, 16 U.S.C. § 470 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Wild and Scenic Rivers Act, 16 U.S.C. §§ 12711278, each as amended, or any equivalent state or local statute, and any amendments thereto), code, consent decree, settlement agreement, directive or any binding judicial or agency interpretation, policy or guidance, in each case regulating: (a) pollution or pollution control; (b) Contamination or Remedial Actions; (c) protection of human health from exposure to Regulated Substances; (d) protection of natural resources or the environment, including endangered or threatened species or Environmentally Sensitive Areas; (e) employee health safety in the workplace and the protection of employees from exposure to Regulated Substances in the workplace (but excluding workers compensation and wage and hour laws); and (f) the presence, use, management, generation, manufacture, processing, extraction, mining, treatment, recycling, refining, reclamation, labeling, transport, storage, collection, distribution, disposal or Release or threat of Release of Regulated Substances.

"Environmental Health and Safety Orders" means all decrees, orders, directives, judgments, opinions, rulings writs, injunctions, settlement agreements or consent orders issued by or entered into with an Official Body relating or pertaining to Contamination, Environmental Health and Safety Laws, Environmental Health and Safety Permits, Regulated Substances or Remedial Actions.

"Environmental Health and Safety Permit" means any applicable Permit required under any of the Environmental Health and Safety Laws.

"Environmentally Sensitive Area" means (a) any wetland as defined by applicable Environmental Health and Safety Laws; (b) any area designated as a coastal zone pursuant to applicable Environmental Health and Safety Laws; (c) any area of historic or archeological significance or scenic area as defined or designated by applicable Environmental Health and Safety Laws; (d) habitats of endangered species or threatened species as designated by applicable Environmental Health and Safety Laws; (e) a floodplain or other flood hazard area as defined pursuant to any applicable Environmental Health and Safety Laws; (f) streams, rivers or other water bodies or springs classified, or designated or as otherwise protected by applicable Environmental Health and Safety Laws as a fishery, as having exceptional or high quality or value or as having recreational use; (g) any area classified, designated or protected by applicable Environmental Health and Safety Laws as unsuitable for mining; and (h) any man-made or naturally occurring surface feature classified, designated or protected by applicable Environmental Health and Safety Laws from disturbance, the effects of blasting, subsidence and mining operations.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

“ERISA Group” means, at any time, the Loan Parties and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control or treated as a single employer under Section 414(b), (c), (m) or (o) of the Code with any of the Loan Parties.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” has the meaning given such term in Section 12.1.

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

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“Excluded Accounts” means (a) any Deposit Account that is used solely for payment of payroll, bonuses, other compensation and related expenses, in each case, for employees or former employees, (b) escrow accounts to the extent the use of such escrowed funds is permitted under this Agreement and the amount on deposit therein in connection with any letter of intent is in respect of a purchase that would reasonably be expected to result in a Permitted Acquisition or other permitted Investment, (c) fiduciary or trust accounts, (d) zero-balance accounts, so long as the balance in such account is zero at the end of each Business Day, (e) any other Deposit Accounts with an aggregate daily balance as at the end of each Business Day of less than \$3,000,000 in the aggregate for all such Deposit Accounts and (f) assets subject to Liens permitted under clause (l) of the definition of “Permitted Liens”.

“Excluded Property” means (a) those assets, including, without limitation any undeveloped land, which (i) are existing on the Closing Date and listed on Schedule 1.1(A) or (ii) in the reasonable discretion of Administrative Agent, the taking of Liens thereupon is impractical, prohibited by Law or commercially unreasonable, (b) assets subject to certificates of title, (c) the assets of any Non-Loan Party Subsidiary, (d) voting equity interests in any Foreign Subsidiary in excess of 65% of all outstanding voting equity interests in such Foreign Subsidiary, (e) the assets with respect to which any pledge or security interests thereof would be (i) prohibited by Law or (ii) in the case of equity interests of non-wholly owned Subsidiaries or Permitted Joint Ventures, prohibited by the Organizational Documents of such non-wholly owned Subsidiaries or Permitted Joint Ventures, except to the extent such prohibition is ineffective or rendered unenforceable under applicable Law (including the UCC) (provided that, for the avoidance of doubt, the equity interests in Knight Hawk Holdings, LLC shall constitute Excluded Property so long as (1) it is not a wholly-owned Subsidiary of Parent, (2) the prohibition on pledge of such interests remains in effect pursuant to the operating agreements with respect thereto, (3) its equity owner is a JV Holding Company and (4) such JV Holding Company is a Guarantor and the equity interests in such JV Holding Company constitute Collateral), (f) assets subject to Liens permitted under clause (i) (A) of the definition of “Permitted Liens”, but only to the extent described as an exclusion to collateral in the UCC financing statement filed by, or on behalf of, Administrative Agent, as secured party, against the applicable Loan Party, (g) Excluded Accounts, provided that, for the avoidance of doubt, any Proceeds of Collateral held from time to time in any such Excluded Account shall not cease to be Collateral solely because such Proceeds are held in an Excluded Account, (h) any owned Real Estate acquired after the Closing Date with a fair market value not exceeding \$3,000,000, (i) any Real Estate lease entered into after the Closing Date with a Loan Party as lessee, and with the lessor being a Person that is not a Loan Party or Affiliate thereof, with annual minimum royalties, rents or any similar payment obligations, not exceeding \$3,000,000, (j) any contract or lease agreement (including, for the avoidance of doubt, any lease agreement evidencing any leasehold interest referred to in the proviso to Section 9.9, to the extent the applicable Loan Party could not obtain the required third party consent after using commercially reasonable efforts to obtain the same) if the grant of a security interest in such contract or lease agreement is prohibited by the terms of such contract or lease agreement or would require the consent of another party thereto or would give another party thereto any rights of termination or acceleration, except to the extent that (x) the term in such contract or lease providing for such prohibition or right of termination or acceleration is ineffective or rendered unenforceable under applicable Law (including Sections 9-406 through 9-409 of the UCC) or principles of equity or (y) any consent or waiver has been obtained that would permit Administrative Agent’s security interest or Lien to attach notwithstanding the prohibition or restriction on the pledge of or security interest in such contract or lease agreement, (k) any property which is subject to a Lien permitted under clause (g) or (j) of the definition of Permitted Liens (in the case of clause (g), excluding any Inventory), in each case where the governing documents prohibit the applicable Loan Party from granting any other Liens in such property or to the extent the grant of a security interest therein would violate or invalidate such documents or would create a termination right in favor of any other party thereto (other than to the extent that any such prohibition would be rendered ineffective pursuant to Sections 9-406 through 9-409 of the UCC or any other applicable Law or principles of equity and other than to the extent all necessary consents to the creation,

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attachment and perfection of Administrative Agent’s Liens thereon have been obtained), and, in any event, immediately upon the ineffectiveness, lapse or termination of such terms that prohibit such Loan Party from granting any other Liens in such property or the obtaining of such consents to the creation, attachment and perfection of Administrative Agent’s Liens thereon, such property shall cease to constitute Excluded Property, (l) any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law and (m) (A) any account, instrument, chattel paper, or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person or Sanctioned Country or (B) any lease under which the lessee is a Sanctioned Person or Sanctioned Country; provided that “Excluded Property” (1) shall not include any and all Proceeds, products, substitutions and replacements of Excluded Property specified in clauses (a) through (l) of this definition to the extent such Proceeds, products, substitutions and replacements do not themselves constitute Excluded Property under clauses (a) through (l) of this definition and (2) shall not include any Proceeds of Excluded Property specified in clause (m).

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of any guaranty of such Loan Party of, or the grant under a Loan Document by such Loan Party of a Lien to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 5.7 hereof and any and all guaranties of such Loan Party’s Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such guaranty or Lien becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrowers under Section 15.4) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 15.3, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 15.3(g) and (d) any Taxes imposed under FATCA.

“Existing Receivables Financing” means the receivables financing pursuant to the following agreements, each dated as of October 5, 2016, as amended on the Closing Date and in each case as the same may be further amended, restated, supplemented or otherwise modified from time to time: (a) the Second Amended and Restated Purchase and Sale Agreement by and among Arch Coal Sales Company, Inc., certain of the Parent’s Subsidiaries as the Originators (as defined therein) thereunder and the Parent, (b) the Second Amended and Restated Sale and Contribution Agreement by and among Parent and Arch Receivable Company, LLC, (c) the Third Amended and Restated Receivables Purchase Agreement by

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and among Arch Receivable Company, LLC, Arch Coal Sales Company, Inc., certain financial institutions from time to time parties thereto, as LC Participants (as defined therein), certain financial institutions from time to time parties thereto, as conduit purchasers, related committed purchasers, and purchaser agents and PNC Bank, National Association, as Administrator (as defined therein) on behalf of the Purchasers (as defined therein) and as LC Bank (as defined therein), (d) the Third Amended and Restated Performance Guaranty, dated as of October 5, 2016, between Parent and PNC Bank, National Association, as Administrator (as defined therein), (e) the Amended and Restated Originator Performance Guaranty, dated as of October 5, 2016, among certain of the Parent’s Subsidiaries as the Originators (as defined therein) and PNC Bank, National Association, as Administrator (as defined therein) and (f) other related agreements and documents.

“Extraordinary Expenses” means all out-of-pocket costs, expenses, or advances (or, in the case of field examinations, the standard charges of the Administrative Agent’s internal field examination group) that Administrative Agent may incur during an Event of Default or during the pendency of an Insolvency Proceeding of a Loan Party (including such costs, expenses or advances that are directly invoiced to the Borrowers in lieu of payment by the Administrative Agent), including those relating to (a) any audit, inspection, field examination, repossession, storage, repair, appraisal, insurance, manufacture, preparation, or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Loan Party, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority, or avoidability of Administrative Agent’s Liens with respect to any Collateral), Loan Documents, Letters of Credit, or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges, or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any amendment, restatement, supplement, modification, waiver, workout, restructuring, or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses, and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees (excluding all costs of internal counsel), appraisal fees, brokers’ fees and commissions, auctioneers’ fees and commissions, accountants’ fees, turnaround and financial consultants and experts’ fees, environmental study fees and remedial response costs, wages and salaries paid to employees of any Loan Party or independent contractors in liquidating any Collateral, and travel expenses.

“FATCA” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any amended or successor version of such section that is described above), any intergovernmental agreement entered into in connection with any of the foregoing and any law, rule, regulation, or other official written practice implementing such intergovernmental agreement.

“Federal Funds Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Regions Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the

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Administrative Agent. Notwithstanding anything contained herein to the contrary, if the Federal Funds Rate, as so determined, is ever less than zero (0), then, the Federal Funds Rate shall be deemed to be zero (0).

“Fee Letter” means the fee letter agreement between Administrative Agent and Borrowers.

“Financial Covenant” means the financial covenant set forth in Section 11.

“Fiscal Year,” “Fiscal Quarter,” and “Fiscal Month” mean the Parent’s fiscal years, fiscal quarters, and fiscal months, as applicable.

“Flood Laws” shall mean all applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Laws related thereto.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the laws of the United States or any state or district thereof.

“Foreign Subsidiaries” means, for any Person, each Subsidiary of such Person that is (a) a “controlled foreign corporation” (a “CFC”) within the meaning of Section 957 of the Code, (b) a Subsidiary of a CFC or (c) a Subsidiary substantially all of the assets of which constitute equity interests (or equity interests and indebtedness) of CFCs or of Subsidiaries described in this clause (c).

“Fresh Start Reporting” means the preparation of consolidated financial statements of Parent in accordance with American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Plan of Reorganization.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to LC Issuer, such Defaulting Lender’s Pro Rata Share of outstanding LC Obligations with respect to Letters of Credit issued by LC Issuer other than LC Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to Swingline Lender, such Defaulting Lender’s Pro Rata Share of outstanding Swingline Loans made by Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“GAAP” means generally accepted accounting principles as are in effect from time to time, subject to the provisions of Section 1.2, and applied on a consistent basis both as to classification of items and amounts.

“Guarantor Payment” has the meaning given such term in Section 5.7(c)(ii).

“Guarantors” means each of the Significant Subsidiaries of the Borrowers that are party to a Guaranty on the Closing Date or, after the Closing Date, delivers a Joinder Agreement and a Guaranty in accordance with Section 9.12, provided that no Foreign Subsidiary shall guarantee payment or performance of any Obligations.

“Guaranty” means each guaranty agreement executed by a Guarantor in favor of Administrative Agent.

“Historical Statements” has the meaning given such term in Section 8.7(a).

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“Immaterial Subsidiaries” means, as of any date, any Subsidiary that is not a Loan Party (a) whose assets, as of the last day of the Fiscal Quarter of the Parent then most recently ended for which financial statements have been provided to the Administrative Agent under Section 9.16(b) or 9.16(c), had an aggregate book value of less than \$3,000,000, and (b) whose assets, when taken together with the assets of all other Immaterial Subsidiaries, had an aggregate book value of less than \$3,000,000 as of the last day of the Fiscal Quarter of the Parent then most recently ended for which financial statements have been provided to the Administrative Agent under Section 9.16(b) or 9.16(c).

“Incremental Term Notes” has the meaning given such term in Section 10.1(c).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” means Administrative Agent Indemnitees, Lender Indemnitees, LC Issuer Indemnitees, and Regions Bank Indemnitees.

“Information” means all information received from the Loan Parties or any of their Subsidiaries relating to the Loan Parties or any of such Subsidiaries or any of their respective businesses, other than any such information that is available to Administrative Agent or any Secured Party on a non-confidential basis prior to disclosure by the Loan Parties or any of their Subsidiaries.

“Insolvency Proceeding” means, with respect to any Person, (a) a case, action or proceeding with respect to such Person (i) before any court or any other Official Body under any bankruptcy, insolvency, reorganization or other similar Law now or hereafter in effect, or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Loan Party or otherwise relating to the liquidation, dissolution, winding-up or relief of such Person, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of such Person’s creditors generally or any substantial portion of its creditors, undertaken under any Law.

“Intellectual Property” means all intellectual and similar property of a Person including (a) inventions, designs, patents, patent applications, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software, and databases; (b) all embodiments or fixations thereof and all related documentation, applications, registrations, and franchises; (c) all licenses or other rights to use any of the foregoing; and (d) all books and records relating to the foregoing.

“Interest Period” has the meaning given such term in Section 3.1(f).

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

“Intercreditor Agreement” means that certain Intercreditor Agreement, dated as of April 27, 2017, among Regions Bank, as Initial ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Initial Term Loan Agent (as defined therein), and following the execution of an Additional Joinder Agreement (as defined therein), each Additional Pari Passu Debt Agent (as defined therein), and acknowledged by the Loan Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

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“Inventory” means all “inventory” (as defined in the UCC), all As-Extracted Collateral, and all coal, coal products and other minerals that have been extracted from real property, whether or not constituting “inventory” or “as-extracted collateral” under the UCC and, in any event, includes all parts and supplies that either (a) have a per unit cost of less than \$10,000 or (b) are of a type that would be put into use or consumed during a period of eighteen (18)

months of the normal operations of the Borrowers' business (clauses (a) and (b), "Designated Parts and Supplies"); provided that "Inventory" shall not include (x) software related to machinery or other equipment (other than Designated Parts and Supplies) or (y) parts or supplies that at any time of determination are incorporated or installed in, or attached or affixed to, or made part of, any machinery or other equipment (other than Designated Parts and Supplies), including, without limitation, all tangible embodiments of Intellectual Property and software that is embedded in and is part of such machinery or other equipment (other than Designated Parts and Supplies).

"Inventory Reserve" means an amount determined from time to time by Administrative Agent in its Permitted Discretion as a reserve for changes in the merchantability of any Eligible Inventory in the ordinary course of business or such other factors that may negatively impact the value of Eligible Inventory, including changes in salability, obsolescence, seasonality, theft, shrinkage, imbalance, changes in composition or mix, markdowns, vendor chargebacks, damage, or, if such Inventory consists of Goods, the price of which is ascertainable from, published by, or quoted by one or more recognized exchanges, any decrease in any such exchange's price therefor.

"Investment" means collectively all of the following with respect to any Person: (a) investments or contributions by any of the Loan Parties or their Subsidiaries in or to the capital of such Person, (b) loans by any of the Loan Parties or their Subsidiaries to such Person, (c) any Guaranty by any Loan Party or any Subsidiary of any Loan Party directly or indirectly of the Debt or of the other obligations of such Person, (d) other payments by any of the Loan Parties or their Subsidiaries to such Person (except in connection with transactions for the sale of goods or services for fair value), or (e) credit enhancements of any Loan Party to or for the benefit of such Person. If the nature of an Investment is tangible property, then the amount of such Investment shall be determined by valuing such property at fair value in accordance with the past practice of the Loan Parties, and such fair values shall be reasonably satisfactory to the Administrative Agent. For the purposes of calculating the outstanding aggregate amount of such Investments, the aggregate amount shall be reduced by the aggregate amount of any quantifiable rebate, dividend, return, or other financial benefit received by such Loan Party with respect to such Investments for the period from the Closing Date through and including the date of determination.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

"Joinder Agreement" means a joinder agreement in the form of Exhibit G or such other form as may be acceptable to Administrative Agent from time to time pursuant to Section 9.12, delivered by a Significant Subsidiary that is becoming a Borrower or Guarantor.

"Judgment Currency" has the meaning set forth in Section 16.22.

"JV Holding Company" means any Guarantor, (a) the sole asset of which is the equity interests of a single non-wholly owned Subsidiary or Permitted Joint Venture owned directly or indirectly by a Borrower and (b) who does not have any material indebtedness, liabilities or obligations, other than tax liabilities and the Obligations.

"Labor Contracts" means all collective bargaining or other collective labor agreements among any Loan Party or Subsidiary of any Loan Party and any union or other representative of its employees.

"Law" means any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval of or any settlement arrangement, by agreement, consent or otherwise, with any Official Body, foreign or domestic.

"LC Application" means an application by Borrower Agent to LC Issuer for issuance of a Letter of Credit, in form and substance satisfactory to LC Issuer and Administrative Agent.

"LC Conditions" means each of the following conditions precedent with respect to the issuance of a Letter of Credit: (a) each of the conditions precedent to the issuance of such Letter of Credit set forth in Section 7.2 (and, solely in the case of Letters of Credit issued on the Closing Date, Section 7.1) shall have been satisfied; (b) LC Issuer shall have received an LC Request, an LC Application, and such other instruments, documents, or agreements as LC Issuer customarily requires for the issuance of letters of credit of similar purpose and amount, in each case, at least two (2) Business Days before the requested date of issuance of such Letter of Credit (or such shorter period as LC Issuer may permit in writing in its discretion); (c) after giving effect to the issuance of such Letter of Credit, the LC Obligations shall not exceed the LC Sublimit and no Overadvance shall exist; (d) the expiration date of such Letter of Credit shall be (i) in the case of a standby Letter of Credit, no more than three hundred sixty-five (365) days from issuance; (ii) in the case of a documentary Letter of Credit, no more than one hundred twenty (120) days from issuance; and (iii) at least twenty (20) days before the Stated Commitment Termination Date; (e) the date on which such Letter of Credit is to be issued shall be at least thirty (30) days before the Stated Commitment Termination Date; (f) such Letter of Credit and payments thereunder shall be denominated in Dollars; (g) the form of such Letter of Credit shall be acceptable to each of Administrative Agent and LC Issuer in their respective discretion and the purpose of such Letter of Credit shall be permitted by Section 2.4(a)(iii); and (h) in the event that any Lender is at such time a Defaulting Lender, LC Issuer has entered into arrangements reasonably satisfactory to LC Issuer (in its discretion) with Borrowers or such Defaulting Lender to eliminate LC Issuer's Fronting Exposure with respect to such Lender (after giving effect to Section 4.2(a) (iv) and any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of LC Obligations in a manner reasonably satisfactory to Administrative Agent in its discretion.

"LC Documents" means all documents, instruments, certificates and agreements (including LC Requests and LC Applications) delivered by any Borrower, Borrower Agent or any other Person to LC Issuer or Administrative Agent in connection with the issuance, amendment, extension or renewal of, or payment under, any Letter of Credit.

"LC Issuer" means any of Regions Bank or an Affiliate of Regions Bank, together with its successors and permitted assigns acting in such capacity.

"LC Issuer Indemnitees" means LC Issuer and its officers, directors, employees, managers, Affiliates, agents, trustees, consultants, attorneys and other representatives.

"LC Obligations" means, at any time, the sum of (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all drawings under Letters of Credit that have not been

reimbursed by the Borrowers in accordance herewith and with the LC Documents. For all purposes of this Agreement, (i) amounts available to be drawn under Letters of Credit will be calculated as provided in [Section 2.4\(a\)\(v\)](#), and (ii) if a Letter of Credit has expired by its terms but any amount may

still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“[LC Request](#)” means each request for issuance of a Letter of Credit provided by Borrower Agent to Administrative Agent and LC Issuer, in form and substance satisfactory to Administrative Agent and LC Issuer.

“[LC Sublimit](#)” means \$40,000,000.

“[LCA Election](#)” has the meaning set forth in [Section 1.5\(a\)](#).

“[LCA Test Date](#)” has the meaning set forth in [Section 1.5\(a\)](#).

“[Lender Indemnitees](#)” means the Lenders and their officers, directors, employees, managers, Affiliates, agents, trustees, consultants, attorneys and other representatives.

“[Lenders](#)” has the meaning given such term in the preamble to this Agreement and, in any event, includes Swingline Lender in its capacity as a provider of Swingline Loans and any other Person who hereafter becomes a “Lender” pursuant to an Assignment Agreement. The initial Lenders are identified on the signature pages hereto and are set forth on [Appendix A](#).

“[Lending Office](#)” means, with respect to any Lender, the office designated by such Lender as its “Lending Office” on [Appendix B](#) hereto at the time it becomes party to this Agreement or thereafter by notice to Administrative Agent and Borrower Agent.

“[Letter of Credit](#)” means any standby or documentary letter of credit issued by LC Issuer for the account of a Borrower.

“[LIBOR](#)” means the London Interbank Offered Rate.

“[LIBOR Index Rate](#)” means, for any LIR Loan, a per annum rate equal to the Adjusted LIBOR Rate determined with respect to an Interest Period of one month, determined daily on each Business Day and shall be increased or decreased, as applicable, automatically and without notice to any Person on the date of each such determination. Upon Borrower Agent’s request from time to time, Administrative Agent will quote the current LIBOR Index Rate to Borrower Agent.

“[LIBOR Loan](#)” means each set of Loans (other than LIR Loans) bearing interest at a rate based on the Adjusted LIBOR Rate that has a common length and commencement of Interest Period.

“[License](#)” means any license or agreement under which a Loan Party is authorized to use Intellectual Property in connection with (a) any manufacture, marketing, distribution, or disposition of Collateral, (b) the provision of any service or (c) any other use of property or conduct of its business.

“[Lien](#)” means any mortgage, deed of trust, pledge, lien, security interest, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing), but, for the avoidance of doubt, shall not include any operating lease.

“[Limited Condition Acquisition](#)” means any Permitted Acquisition or other Investment permitted hereunder which a Borrower or one or more Subsidiaries has contractually committed to consummate, the terms of which do not condition such Borrower’s or such Subsidiary’s, as applicable, obligation to close such Permitted Acquisition or other Investment on the availability of third-party financing.

“[Liquidity](#)” means, as of any date of determination, the sum of, without duplication, (a) unrestricted cash or Permitted Investments as of such date of the Parent and its Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) that are not Foreign Subsidiaries, (b) withdrawable funds from brokerage accounts of Borrowers as of such date, (c) Availability as of such date, and (d) any unused commitments that are available to be drawn as of such date by the Parent pursuant to the terms of any Permitted Receivables Financing.

“[LIR Loan](#)” means any Loan which bears interest at a rate based on the LIBOR Index Rate.

“[LLC Interests](#)” has the meaning set forth in [Section 8.2](#).

“[Loan](#)” means a loan made pursuant to [Section 2.1](#), and any Swingline Loan, Overadvance Loan or Protective Advance.

“[Loan Documents](#)” means this Agreement, the Fee Letter, each Note, the Security Agreement, each other Security Document, LC Document, Third Party Agreement, Perfection Certificate, any Auto Borrow Agreement, any subordination agreement in respect of any subordinated Debt, the Intercreditor Agreement, any other intercreditor agreement, any Borrowing Base Certificate, Compliance Certificate, and other documents, instruments, agreements, certificates, and schedules executed or delivered pursuant to or in connection herewith or any other Loan Document, or the transactions contemplated herein, whether now existing or hereafter arising (but, in any case, specifically excluding any Bank Product Agreement unless, by its express terms, they are deemed to be “Loan Documents” hereunder), together with all exhibits, schedules, annexes, addenda, and other attachments thereto, in each case therewith as the same may be supplemented, amended, restated, replaced or otherwise modified from time to time in accordance herewith or therewith, and “Loan Document” shall mean any of the Loan Documents.

“Loan Parties” means the Borrowers and the Guarantors.

“Loss” means, with respect to any property, (a) the loss, theft, damage, or destruction thereof or other casualty with respect thereto or (b) the condemnation or taking by eminent domain thereof by any Official Body.

“Material Adverse Change” means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any other material Loan Document, (b) is or could reasonably be expected to be materially adverse to the business, properties, assets, financial condition, or results of operations of Borrowers and their Subsidiaries taken as a whole, (c) impairs materially or would reasonably be expected to impair materially the ability of the Loan Parties taken as a whole to pay the Obligations when due under the Loan Documents, (d) impairs materially or would reasonably be expected to impair materially the ability of Agent or any Lender, to the extent permitted, to enforce their legal remedies pursuant to this Agreement or any other Loan Document, or (e) impairs materially or would reasonably be expected to impair materially the value of any material portion of the ABL Priority Collateral, the validity or priority of Administrative Agent’s Liens on any material portion of the ABL Priority Collateral, or the ability of Administrative Agent or any Lender to realize upon any material portion of the ABL Priority Collateral.

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“Material Contract” means, collectively, all contracts, agreements or other instruments described in Regulation S-K, Item 601(b)(10) promulgated pursuant to the Exchange Act, which the Parent is required to file as an exhibit to any annual, quarterly or other report required to be filed by the Parent under the Exchange Act.

“Material Subsidiary” means any Subsidiary of Parent which at any time (a) has gross revenues equal to or in excess of five percent (5%) of the gross revenues of Parent and its Subsidiaries on a consolidated basis, or (b) has total assets equal to or in excess of five percent (5%) of the total assets of Parent and its Subsidiaries, in either case, as determined and consolidated in accordance with GAAP.

“Mining Laws” means any and all applicable federal, state, local and foreign statutes, laws, regulations, guidance, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or common law causes of action relating to mining operations and activities, or oil, natural gas, minerals, and other hydrocarbons and their constituents production operations and activities. Mining Laws shall include but not be limited to, the Mineral Lands Leasing Act of 1920, the Federal Coal Leasing Amendments Act, the Surface Mining Control and Reclamation Act, all other land reclamation and use statutes and regulations relating to coal mining, the Federal Coal Mine Health and Safety Act, the Black Lung Act and the Coal Act, the Mine Safety and Health Act and the Occupational Safety and Health Act, each as amended, and their state and local counterparts or equivalents.

“Mining Operations” means (a) the removal of coal and other minerals from the natural deposits or from waste or stock piles by any surface or underground mining methods; (b) operations or activities conducted underground or on the surface associated with or incident to the preparation, development, operation, maintenance, opening and reopening of an underground or surface mine storage or stockpiling of mined materials, backfilling, sealing and other closure procedures related to a mine or the movement, assembly, disassembly or staging of any mining equipment; (c) milling; (d) coal preparation, coal processing or testing; (e) coal refuse disposal, coal fines disposal or the operation and maintenance of impoundments; (f) the operation of any mine drainage system; (vii) reclamation activities and operations; or (g) the operation of coal terminals, river or rail load-outs or any other transportation facilities.

“Mining Title” means fee simple title to surface and/or coal or an undivided interest in fee simple title thereto or a leasehold interest in all or an undivided interest in surface and/or coal together with no less than those real property, easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, process and transport coal in the manner presently operated.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage” means each mortgage, deed of trust, or deed to secure debt pursuant to which a Loan Party grants to Administrative Agent Liens upon the Real Estate owned by such Loan Party as security for the Obligations.

“Multiemployer Plan” means any employee benefit plan which is a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA and to which any Borrower or any member of the ERISA Group is then making or accruing an obligation to make contributions or, within the preceding five Plan years, has made or had an obligation to make such contributions and to which it continues to have unsatisfied liability.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Parent or any member of the ERISA Group) at least two of whom are not under common control, as such a Plan is described in Sections 4063 and 4064 of ERISA.

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“Net Cash Proceeds” means proceeds received by any Borrower or any Subsidiary (other than a Bonding Subsidiary or Securitization Subsidiary) after the Closing Date in cash from (a) any sale of property, net of (i) the direct out-of-pocket cash costs, fees and expenses paid or required to be paid in connection therewith (including all reasonable fees, legal fees, brokerage fees, commissions, costs and other expenses in connection therewith), (ii) taxes paid or reasonably estimated to be payable as a result thereof and (iii) any amount required to be paid or prepaid on Debt (other than the Obligations and Debt owing to any Loan Party) secured by the property subject thereto (A) pursuant to a Permitted Lien with priority over Administrative Agent’s Lien in such property, or (B) to the extent that such property constitutes Equipment (that, for the avoidance of doubt, does not constitute Inventory) or does not constitute Collateral, pursuant to any Permitted Lien; and (b) any sale or issuance of equity interests or incurrence of Debt, in each case net of brokers’, advisors’ and investment banking fees and other customary outofpocket underwriting discounts, commissions and other customary out-of-pocket cash costs, fees and expenses, in each case incurred in connection with such transaction; provided that amounts provided as a reserve, in accordance with GAAP, against any liability under any indemnification obligations or purchase price adjustment associated with any of the foregoing shall not constitute Net Cash Proceeds except to the extent and at the time any such amounts are released from such reserve.

“Net Insurance/Condemnation Proceeds” means an amount equal to: (a) any cash payments or proceeds received by any Borrower or any Subsidiary (other than a Bonding Subsidiary or Securitization Subsidiary) (i) under any casualty insurance policy in respect of a covered loss thereunder or (ii) as a result of the taking of any assets of any Borrower or any such Subsidiary by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (b) (i) any actual and reasonable costs incurred by any Borrower or any such Subsidiary in connection with the adjustment or settlement of any claims of any Borrower or such Subsidiary in respect thereof, and (ii) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (a)(ii) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

“NOLV” means, as to any Eligible Inventory, the expected dollar amount to be realized at an orderly sale of such Eligible Inventory, net of all operating expenses, commissions and other liquidation expenses, as set forth in the most recent Qualified Appraisal of such Eligible Inventory accepted by the Administrative Agent.

“NOLV Percentage” means (a) with respect to Eligible Coal Inventory, the NOLV thereof (expressed as a percentage of the lesser of the Average Cost and the market value of such Eligible Coal Inventory) and (b) with respect to Eligible Parts and Supplies Inventory, the NOLV thereof (expressed as a percentage of the Average Cost of such Eligible Parts and Supplies Inventory), in each case, as set forth in the most recent Qualified Appraisal of such Eligible Inventory accepted by the Administrative Agent.

“Non-Consenting Lender” means, with respect to any consent, amendment, or waiver under Section 16.2(a) (including any forbearance of Administrative Agent’s or any Lender’s rights and remedies), any Lender whose consent to such consent, waiver, or amendment (or forbearance) was required but which, for any reason, failed to provide such consent.

“Non-Loan Party Subsidiary” means any Subsidiary of a Borrower that is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

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“Notes” means each Revolving Note, the Swingline Note and any other promissory note executed by Borrowers, or any of them, to evidence any Obligations, as amended, restated, supplemented, or otherwise modified from time to time.

“Notice of Borrowing” means a Notice of Borrowing in the form of Exhibit C or such other form acceptable to Administrative Agent from time to time.

“Notice of Conversion/Continuation” means a notice substantially in the form of Exhibit D or in such other form acceptable to Administrative Agent from time to time.

“Obligations” means all obligations, indebtedness and other liabilities of every nature of each Loan Party from time to time owed to the Administrative Agent (including any former Administrative Agent), any LC Issuer, any Lender (including former Lenders in their capacity as such), and any Bank Product Provider under any Loan Document or Bank Product Agreement (including Swap Obligations, subject to the proviso set forth below), together with all renewals, extensions, modifications or refinancings of any of the foregoing, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification, or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, joint or several, and specifically including, but without limitation, all (a) principal of and premium, if any, on the Loans; (b) LC Obligations and other obligations of the Loan Parties with respect to Letters of Credit; (c) interest, expenses, fees, and other sums payable by the Loan Parties under this Agreement or the other Loan Documents (including any interest on pre-petition Obligations accruing after the commencement of any Insolvency Proceeding by or against any Loan Party, whether or not allowable in such Insolvency Proceeding); and (d) obligations of the Loan Parties under any indemnity for Claims in accordance with the Loan Documents; provided, however, that the term “Obligations” shall exclude (i) any Excluded Swap Obligations, and (ii) any Swap Obligations owing to the Term Agent or any Term Lender.

“OFAC” means The Office of Foreign Assets Control of the United States Department of the Treasury or any successor thereto.

“Official Body” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Organizational Documents” means, with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery,

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performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 15.4).

“Overadvance” means, at any time of determination, the amount, if any, by which the Aggregate Revolving Obligations at such time exceed the Borrowing Base at such time.

“Overadvance Loan” means a Base Rate Loan or, to the extent provided in Section 3.1(h), an LIR Loan made when an Overadvance exists or is caused by the funding thereof.

“Parent” has the meaning set forth in the preamble hereto.

“Participant” has the meaning given such term in Section 14.1(d).

“Participant Register” has the meaning given such term in Section 14.1(d).

“Partnership Interests” has the meaning set forth in Section 8.2.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Payment Item” means each check, draft, or other item of payment payable to a Loan Party, including those constituting Proceeds of any Collateral.

“Payment in Full” means, with respect to any Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees, and other charges and charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding), other than Obligations in respect of any Bank Product Agreements and other contingent obligations as to which no claim has been asserted; (b) if such Obligations are LC Obligations, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Administrative Agent in its discretion, in the amount of required Cash Collateral); and (c) termination of the Commitments.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Perfection Certificate” shall mean the Perfection Certificate delivered by Parent to Administrative Agent on the Closing Date and each other Perfection Certificate substantially in the form thereof delivered to Administrative Agent as provided herein; provided that only locations in which any Loan Party maintains tangible personal property with an aggregate book value in excess of \$2,500,000 shall be required to be scheduled in Section 3(a) of any such other Perfection Certificate delivered after the Closing Date.

“Permit” means any and all permits, approvals, licenses, registrations, consents, notifications, identification numbers, bonds, waivers or exemptions and any other regulatory authorization, in each case, from an Official Body having jurisdiction over the applicable activity.

“Permitted Acquisition” shall have the meaning assigned to such term in Section 10.3(b).

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable business judgment (from the perspective of a secured, asset-based lender extending credit of similar amounts and types to similar businesses).

“Permitted Investments” means:

- (a) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed or insured by the United States government or any agency thereof;
- (b) certificates of deposit and time deposits with maturities of 18 months or less from the date of acquisition and overnight bank deposits of any Lender or of any commercial bank having capital and surplus in excess of \$500,000,000;
- (c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition with respect to securities issued or fully guaranteed or insured by the United States government;
- (d) commercial paper of a domestic issuer rated at least A2 by Standard & Poor’s or P2 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency if both of Standard & Poor’s and Moody’s cease publishing ratings of investments;
- (e) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor’s or A by Moody’s;
- (f) securities with maturities of 18 months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition;
- (g) corporate obligations such as notes, bonds, loan participation certificates, master notes, and variable rate demand notes rated at least A by Standard & Poor’s or A2 by Moody’s;
- (h) asset backed and mortgage backed securities and collateralized mortgage obligations rated AAA by Standard & Poor’s or Aaa by Moody’s;
- (i) money market auction rate preferred securities and auction rate notes with auctions scheduled no less frequently than every 49 days;
- (j) shares of money market mutual or similar funds which invest principally in assets satisfying the requirements of clauses (a) through (i) of this definition; and

(k) in the case of a Person that is a Foreign Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such Person conducts business.

“Permitted Joint Venture” means any Person (a) with respect to which the ownership of equity interests thereof by any Borrower or any Subsidiary of a Borrower is accounted for in accordance with the “equity method” in accordance with GAAP; (b) engaged in a line of business permitted by Section 10.7; and (c) with respect to which the equity interests thereof were acquired by a Borrower or a Subsidiary of a Borrower in an arm’s-length transaction.

“Permitted Liens” means:

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(a) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable or that are being contested in good faith by appropriate proceedings and as to which appropriate reserves have been established in accordance with GAAP;

(b) pledges or deposits made in the ordinary course of business to secure payment of reclamation liabilities, worker’s compensation, or to participate in any fund in connection with worker’s compensation, unemployment insurance, oldage pensions or other social security programs (including pledges or deposits to secure letters of credit issued to assure payment of such obligations, provided that such letters of credit are not prohibited by Section 10.1);

(c) Liens of mechanics, materialmen, warehousemen, carriers, or other like Liens, securing obligations incurred in the ordinary course of business that are not yet due and payable and Liens of landlords incurred in the ordinary course of business securing obligations to pay lease or royalty payments that are not yet due and payable or in default beyond all applicable notice and cure periods;

(d) good-faith pledges or deposits made in the ordinary course of business to secure performance of bids (including bonus bids), tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder or other amounts as may be customary, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business (including pledges or deposits to secure letters of credit issued to assure payment of such obligations, provided that such letters of credit are not prohibited by Section 10.1);

(e) encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property, none of which materially impairs the use of such property or the value thereof, and none of which is violated in any material respect by existing or proposed structures or land use;

(f) Liens created on the Collateral under the Loan Documents in favor of Administrative Agent;

(g) Liens on property leased by any Loan Party or Subsidiary of a Loan Party under capital leases (as the nature of such lease is determined in accordance with GAAP) securing obligations of such Loan Party or Subsidiary to the lessor under such leases and Purchase Money Security Interests on assets (other than Inventory) purchased by any Loan Party or Subsidiary of a Loan Party, provided that such Liens shall not extend to any assets that are not the subject of such leases or Purchase Money Security Interests; provided, further, that the aggregate amount for Borrowers and their Subsidiaries of all loans, capital lease obligations and deferred payments secured as permitted by this clause (g) shall not at any time outstanding exceed the greater of \$150,000,000 and 8.25% of Consolidated Net Tangible Assets;

(h) the following, (A) if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings diligently conducted so long as levy and execution thereon have been stayed and continue to be stayed or (B) if a final judgment is entered and such judgment is discharged within thirty (30) days of entry, and in either case they do not affect the Collateral or, in the aggregate, materially impair the ability of any Loan Party to perform its Obligations hereunder or under the other Loan Documents:

(i) claims or Liens for taxes, assessments or charges due and payable and subject to interest or penalty, provided that the applicable Loan Party maintains such reserves or other appropriate provisions as shall be required by GAAP and pays all such taxes, assessments or charges forthwith upon the commencement of proceedings to foreclose any such Lien;

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(ii) claims, Liens or encumbrances upon, and defects of title to, real or personal property other than the Collateral, including any attachment of personal property or Real Estate or other legal process prior to adjudication of a dispute on the merits;

(iii) claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens;

(i) (A) Liens securing obligations in respect of a Permitted Receivables Financing, so long as the Liens created pursuant to such Permitted Receivables Financing are limited to Receivables Assets and the assets of the applicable Securitization Subsidiary (and as further provided in clause (l) of “Permitted Liens” below with respect to letters of credit issued pursuant to a Permitted Receivables Financing), or (B) Liens securing the Term Loan Obligations (provided that, to the extent the Term Loan Obligations constitute Debt, the Liens securing such Debt shall only be permitted under this clause (i) to the extent such Debt is permitted to be incurred under Section 10.1(l)) so long as the Liens securing such Term Loan Obligations are limited to assets constituting Collateral, owned Real Estate, Real Estate leases and other assets of Borrowers and their Subsidiaries that Borrowers elect to include in the Collateral securing the Obligations, notwithstanding the definition of Excluded Property set forth herein), to the extent such Liens granted pursuant to or in respect of such Term Loan Obligations are subject to the Intercreditor Agreement;

(j) Liens assumed in connection with (but not incurred in contemplation of) a Permitted Acquisition or any other permitted Investment, provided that (i) such Liens existed at the time such property or assets were acquired or such entity became a Subsidiary and were not created in anticipation thereof, (ii) such Liens do not extend to any other property or assets of such Person (other than the proceeds of the property or assets initially subject to such Lien) or of any Borrower or any Subsidiary and (iii) the amount of Debt secured thereby is not increased and is not prohibited by Section 10.1;

(k) Liens relating to the pledge of the equity interests of a Bonding Subsidiary in favor of the provider of the surety bonds which provide payment assurances to the lessor of the leasehold interest leased by such Bonding Subsidiary related to the cost of such Bonding Subsidiary of acquiring such leasehold interest and any bonus bid and royalty payments to the lessor thereunder;

(l) the pledge of cash and Permitted Investments, and Deposit Accounts and Securities Accounts containing solely such cash and Permitted Investments, securing a Permitted Secured Letter of Credit Facility or letters of credit issued pursuant to a Permitted Receivables Financing, to the extent the amount of such cash or value of Permitted Investments does not exceed 115% of the undrawn face amount of all letters of credit issued under such Permitted Secured Letter of Credit Facility or Permitted Receivables Financing;

(m) Liens securing Incremental Term Notes, Refinancing Term Notes or any Permitted Refinancing of the foregoing; provided that (i) such Liens rank junior or pari passu with the Liens securing the Term Loan Obligations, (ii) the rights of the holders of the Incremental Term Notes, Refinancing Term Notes or such Permitted Refinancing are subject to the terms of the Intercreditor Agreement or another intercreditor agreement, as applicable, in a form reasonably acceptable to the Administrative Agent and (iii) such Liens are limited to assets constituting Collateral, owned Real Estate, Real Estate leases and other assets of the Borrowers and their Subsidiaries that the Borrowers elect to include in the Collateral securing the Obligations, notwithstanding the definition of Excluded Property set forth herein;

(n) Liens securing Debt (including any Permitted Refinancing thereof) or other obligations up to \$25,000,000 in the aggregate at any time outstanding; provided that any Lien described in this

clause (n) that encumbers ABL Priority Collateral shall be subject to an intercreditor agreement reasonably acceptable to Administrative Agent;

(o) statutory and common law banker's Liens and rights of setoff on bank deposits;

(p) any Lien existing on the Closing Date and described on **Schedule 1.1(B)**;

(q) any Lien arising out of the Permitted Refinancing of any Debt secured by any Lien that is permitted by Section 10.1(f);

(r) Liens arising out of final judgments, awards, or orders not otherwise constituting an Event of Default;

(s) option agreements and rights of first refusal granted with respect to assets that are permitted to be disposed of pursuant to the terms of Section 10.3 or Section 10.4 of this Agreement;

(t) Liens securing Debt of Non-Loan Party Subsidiaries permitted pursuant to Section 10.1(r), in an aggregate amount not to exceed \$10,000,000 at any time;

(u) precautionary filings under the Uniform Commercial Code by a lessor with respect to personal property leased to such Person under an operating lease;

(v) any leases of assets permitted by Section 10.4;

(w) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto; and

(x) Liens resulting from the deposit of funds or evidences of Debt in trust for the purpose of decreasing or legally defeasing Debt of the Loan Parties permitted hereby so long as such decrease or defeasance is not prohibited hereunder.

"Permitted Location" means (a) any location described in Section 3 of the most recent Perfection Certificate delivered to Administrative Agent, and (b) any other location of which Borrower Agent has provided at least 30 days' written notice to Administrative Agent, and Administrative Agent shall have consented in writing before such location's being a "Permitted Location".

"Permitted Receivables Financing" means a transaction or series of transactions pursuant to which a Securitization Subsidiary purchases Receivables Assets or interests therein from Parent or any Subsidiary of Parent and finances such Receivables Assets or interests therein through the issuance of Debt or equity interests or through the sale of such Receivables Assets or interests therein; provided that (a) the board of directors of Parent shall have approved such transaction, (b) no portion of the Debt of a Securitization Subsidiary is guaranteed by or is recourse to any Borrower or any of their other Subsidiaries (other than recourse for customary representations, warranties, covenants, indemnities and other customary matters none of which shall relate to the collectability of such Receivables Assets), and (c) neither any Borrower nor any of their other Subsidiaries has any obligation to maintain or preserve such Securitization Subsidiary's financial condition. The Existing Receivables Financing, as in effect on the Closing Date, is a Permitted Receivables Financing.

"Permitted Refinancing" means, with respect to any Debt, commitments to make loans or advances, existing letters of credit, commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit, any refinancing, refunding, renewal, replacement or extension thereof,

provided, that (i) such refinancing, refunding, renewal, replacement or extension permitted under the foregoing shall (A) not have any obligors and/or guarantors other than the obligors and/or guarantors on such Debt being extended, renewed, replaced, refunded or refinanced, (B) not be secured by any assets other than the assets (if any) securing the Debt being extended, renewed, replaced, refunded or refinanced, (C) be at least as subordinate to the Obligations as the Debt being extended, renewed, replaced, refunded or refinanced (and unsecured if the Debt being extended, renewed, replaced, refunded or refinanced is unsecured), (D) not exceed in a principal amount the Debt being renewed, extended, replaced, refunded or refinanced plus any Permitted Refinancing Increase in respect of such modification, refinancing, refunding, renewal, replacement or extension, and (E) in the case of a Permitted Refinancing of the Debt incurred under the Term Loan Agreement, such Permitted Refinancing is subject to the Intercreditor Agreement or another intercreditor agreement, as applicable, in a form reasonably acceptable to the Administrative Agent, and (ii) except with respect to a Permitted Refinancing of Debt in respect of any

capital lease (as determined in accordance with GAAP) or Debt of Borrowers and their Subsidiaries secured by Purchase Money Security Interests, the Weighted Average Life to Maturity thereof is greater than or equal to, and the final maturity thereof is not earlier than, that of the Debt being refinanced, refunded, renewed, replaced or extended.

“Permitted Refinancing Increase” means, with respect to the refinancing, refunding, renewal, replacement or extension of any Debt, commitments to make loans or advances, existing letters of credit, commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit, an amount equal to (a) any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal, replacement or extension, (b) any unpaid accrued interest and fees on the Debt commitments in make loans or advances, existing letters of credit, commitments in respect of letters of credit, unreimbursed amounts with respect to letters of credit, and letter of credit borrowings being refinanced, refunded, renewed, replaced or extended, and (c) any existing unutilized commitments to make loans or advances, existing letters of credit, unutilized commitments in respect of letters of credit, or unreimbursed amounts with respect to letters of credit in connection with the Debt being refinanced, refunded, renewed, replaced or extended.

“Permitted Secured Letter of Credit Facility” shall have the meaning assigned to such term in Section 10.1(g).

“Person” means any individual, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof, or any other entity

“Plan” means at any time an employee pension benefit plan (including a Multiple Employer Plan but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (i) is sponsored or maintained by any member of the ERISA Group for employees of any member of the ERISA Group, or (ii) has at any time within the preceding five years been maintained by or to which contributions have been made by any entity which was at such time a member of the ERISA Group for employees of any entity which was at such time a member of the ERISA Group.

“Plan of Reorganization” means the chapter 11 plan of reorganization of Parent and certain of its subsidiaries substantially in the form of the Debtors’ Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code ECF No. 1334, Appendix A filed in the main Case of the jointly administered Chapter 11 debtors, Case No. 16-40120 on September 13, 2016, as amended, supplemented or otherwise modified from time to time.

“Platform” has the meaning set forth in Section 16.1(d).

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“Pledge Agreement” means the Pledge Agreement, dated as of the Closing Date, made among Loan Parties and Administrative Agent.

“Prime Rate” means as of a particular date, the prime rate of interest as published on that date in The Wall Street Journal (Eastern Edition), or if The Wall Street Journal ceases to quote such rate, a similar rate quoted by a national publication chosen by the Administrative Agent in its reasonable discretion. If The Wall Street Journal (or similar publication) is not published on a date for which the Prime Rate must be determined, the Prime Rate shall be the prime rate published on the nearest-preceding date.

“Pro Rata” means, with respect to any Lender, a percentage (carried out to the ninth decimal place) determined (a) while Commitments are outstanding, by dividing the amount of such Lender’s Commitment by the Commitments and (b) at any other time, by dividing the aggregate outstanding principal amount of such Lender’s Loans and LC Obligations by the aggregate outstanding principal amount of all Loans and LC Obligations. The initial Pro Rata shares of the Lenders are set forth on Appendix A.

“Pro Rata Share” means, with respect to any amount and in reference to any Lender, the portion of such amount allocable to such Lender on a Pro Rata basis.

“Prohibited Transaction” means any prohibited transaction as defined in Section 4975 of the Code or Section 406 of ERISA for which neither an individual nor a class exemption has been issued by the United States Department of Labor.

“Projections” means, for any fiscal period, projections of the Parent’s and its Subsidiaries’ consolidated and consolidating balance sheets, results of operations and cash flow for such period, all of which shall be in a form reasonably satisfactory to Administrative Agent.

“Protective Advances” has the meaning given such term in Section 2.1(e).

“Purchase Money Security Interest” means Liens upon tangible personal property securing loans to any Loan Party or Subsidiary of a Loan Party or deferred payments by such Loan Party or Subsidiary for the purchase of such tangible personal property.

“Qualified Appraisal” means, with respect to any property, an appraisal of such property conducted in a manner and with such scope and using such methods as are acceptable to Administrative Agent by an appraiser selected by, or acceptable to, Administrative Agent in its Permitted Discretion.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that, at the time its guaranty (or grant of Lien, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or such other Loan Party as constitutes an “eligible contract participant” under the Commodity Exchange Act and which may cause another Person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate” means all right, title, and interest (whether as owner, lessor, or lessee) in any property which constitutes real property and all improvements thereon or thereto; provided that “Real Estate” shall not include (i) Excluded Property, (ii) any asset that shall have been released, pursuant to Section 13.2 from the Liens created in connection with this Agreement, or (iii) any “building”, “structure” or “mobile home” (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Laws).

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“Receivables Assets” means accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Parent or any Subsidiary of the Parent.

“Receivables Purchase Agreement” means that certain Third Amended and Restated Receivables Purchase Agreement dated October 5, 2016, among Arch Receivable Company, LLC, Arch Coal Sales Company, Inc., PNC Bank, National Association, and the other parties thereto, as amended on the Closing Date.

“Receivables Purchase Documents” means the Transaction Documents (as defined in the Receivables Purchase Agreement).

“Recipient” means (a) Administrative Agent, (b) any Lender and (c) LC Issuer, as applicable.

“Reclamation Laws” means all Laws relating to mining reclamation or reclamation liabilities including the Surface Mining Control and Reclamation Act of 1977, as amended, and its state and local counterparts or equivalents, including those applicable in West Virginia and Wyoming.

“Refinancing Term Notes” has the meaning given such term in Section 10.1(d).

“Regions Bank” means Regions Bank, an Alabama bank and its successors and assigns.

“Regions Bank Indemnitees” means Regions Bank and its officers, directors, employees, managers, Affiliates, agents, trustees, consultants, attorneys and other representatives.

“Register” has the meaning given such term in Section 14.1(c).

“Regulated Substances” means, any substance, material or waste, regardless of its form or nature, defined, listed or regulated under Environmental Health and Safety Laws as a “hazardous substance”, “pollutant”, “pollution”, “contaminant”, “hazardous or toxic substance”, “extremely hazardous substance”, “toxic chemical”, “toxic substance”, “toxic waste”, “hazardous waste”, “special handling waste”, “industrial waste”, “residual waste”, “solid waste”, or “regulated substance” or any other material, substance or waste, regardless of its form or nature, which is regulated by the Environmental Health and Safety Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature, including, without limitation, coal refuse, run-of-mine coal, acid mine drainage, petroleum and petroleum products (including crude oil and any fractions thereof), natural gas, coalbed methane gas, synthetic gas and any mixtures thereof, asbestos, urea formaldehyde, polychlorinated biphenyls, mercury and radioactive substances.

“Regulation U” means Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System, as amended from time to time.

“Reimbursement Date” has the meaning given such term in Section 2.4(b).

“Release” means anything defined as a “release” under CERCLA or RCRA (in each case as defined in the definition of Environmental Health and Safety Laws).

“Remedial Action” means any investigation, identification, preliminary assessment, characterization, delineation, feasibility study, cleanup, corrective action, removal, remediation, risk assessment, fate and transport analysis, in-situ treatment, the treatment of discharges or seeps, containment, operation and maintenance or management in-place, control, abatement or other response

actions to Regulated Substances and any closure or post-closure measures, or reclamation activities associated therewith.

“Removal Effective Date” has the meaning set forth in Section 13.7.

“Rent and Charges Reserve” means, without duplication, an amount reasonably determined from time to time by Administrative Agent in its Permitted Discretion as a reserve for (a) rent, transportation costs, fees, charges, and other amounts owing by a Borrower to any Third Party (including any railway), except to the extent that such Third Party has executed and delivered a Third Party Agreement providing that payment of such rent, transportation costs, fees, charges, and other amounts is not required in order for Administrative Agent to exercise its rights under such Third Party Agreement, and (b) without duplication of amounts reserved under clause (a), the amount of all accrued but unpaid or past due rent, transportation costs, fees, charges, or other amounts owing by a Borrower to Third Parties.

“Report” has the meaning given such term in Section 13.2(c).

“Reportable Event” means a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan or a Multiemployer Plan (other than any such event as to which the thirty-day notice period is waived) provided that, in the case of any such reportable event with respect to a Multiemployer Plan, such event shall only be deemed a Reportable Event for purposes of this Agreement if the Parent has knowledge of such event.

“Required Lenders” means, subject to Section 4.2, at least two (2) Lenders (unless there is only one (1) Lender, in which case, such Lender) having (a) Commitments in excess of 50% of the aggregate Commitments or (b) if the Commitments have terminated, Aggregate Revolving Obligations in excess of 50% of all outstanding Aggregate Revolving Obligations; provided, however, that the Commitments and Aggregate Revolving Obligations held by a Defaulting Lender shall be disregarded for purposes of determining Required Lenders.

“Reserves” means the sum of (without duplication) (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) reserves for Royalties, to the extent that such Royalties are unpaid; (e) the aggregate amount of liabilities secured by Liens upon any ABL Priority Collateral which constitutes Eligible Inventory which are senior to Administrative Agent’s Liens (but the imposition of any such reserve shall not waive a Default or an Event of Default arising therefrom); (f) reserves for price adjustments and damages, to the extent such reserve relates to Inventory included in Eligible Inventory, including returns, discounts, claims (including quality adjustments), credits, and allowances of any nature; (g) reserves for special order

goods and deferred shipment sales, to the extent such reserve relates to Inventory included in Eligible Inventory; (h) reserves to reflect events, conditions, contingencies, or risks which, as determined by Administrative Agent in its Permitted Discretion, adversely affect, or would have a reasonable likelihood of adversely affecting the ABL Priority Collateral (taken as a whole), its value (taken as a whole), or the amount that might be received by Administrative Agent from the sale or other disposition or realization upon such ABL Priority Collateral (taken as a whole); (i) to the extent not addressed through the permitted application of eligibility criteria, reserves to reflect testing variances or shrinkage identified as part of Administrative Agent's periodic field examinations or to adjust the value of any Inventory based on the results of, or failure to obtain, a Qualified Appraisal; and (j) such other reserves that Administrative Agent may establish from time to time for such purposes as Administrative Agent shall deem necessary in its Permitted Discretion. Except to the extent otherwise qualified (either in this definition or any related definition used in this definition) or otherwise expressly provided in this Agreement (including, without limitation, Section 4.7), Administrative Agent may implement Reserves and establish the amounts thereof (from time to time) in

its Permitted Discretion. Administrative Agent may establish Reserves as a percentage of any applicable amount or as an amount of money.

“Restricted Payment” shall have the meaning assigned to such term in Section 10.8.

“Revolving Credit Exposure,” on any date, means, for each Lender, the aggregate amount (without duplication) of such Lender's outstanding Loans and its participation in Swingline Loans (or in the case of Swingline Lender, its Swingline Loans (net of any participations therein by other Lenders) and outstanding LC Obligations on such date.

“Revolving Note” means a promissory note executed by Borrowers in favor of a Lender in the form of Exhibit A-1, which note shall be in the amount of such Lender's Commitment and shall evidence the Loans made by such Lender.

“Royalties” means all royalties, fees, expense reimbursement and other amounts payable by a Loan Party under a License or with respect to Mining Title to any property.

“Sale and Leaseback Transaction” has the meaning set forth in Section 10.12.

“Sanctioned Country” means (a) a country, territory or a government of a country or territory, (b) an agency of the government of a country or territory, or (c) an organization directly or indirectly owned or controlled by a country, territory or its government, that is subject to Sanctions.

“Sanctioned Person” means (a) a Person named on the list of “Specially Designated Nationals” or any other Sanctions related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means any sanctions administered or enforced by the United States (including but not limited to the Office of Foreign Assets Control of the U.S. Treasury Department and the U.S. Department of State), the United Nations Security Council, the European Union, and Her Majesty's Treasury or any other relevant sanctions authority.

“SEC” shall mean the Securities and Exchange Commission or any governmental agencies substituted therefor.

“Secured Party” means Administrative Agent, each LC Issuer, each Lender, and each Bank Product Provider; and “Secured Parties” means all of such Persons.

“Secured Party Designation Notice” means a notice in the form of Exhibit H (or other writing in form and substance satisfactory to the Administrative Agent) from a Bank Product Provider to the Administrative Agent to the effect that such Bank Product Provider holds Bank Product Obligations entitled to be secured by the Collateral, (i) describing and setting forth (a) the maximum amount thereof to be secured by the Collateral (which such Bank Product Provider may increase or decrease in respect of such Bank Product by subsequent Secured Party Designation Notice), and (b) the methodology to be used in calculating such amount and (ii) agreeing to be bound by Section 13.13.

“Securitization Subsidiary” means a Subsidiary of Parent (all of the outstanding equity interests of which, other than de minimis preferred stock and director's qualifying shares, if any, are owned, directly or indirectly, by Parent) that is established for the limited purpose of acquiring and financing

Receivables Assets and interests therein of Parent or any Subsidiary of Parent and engaging in activities ancillary thereto.

“Security Agreement” means the Security Agreement, dated as of the Closing Date, made between Loan Parties and Administrative Agent.

“Security Documents” means the Security Agreement, together with all other security agreements and notices of security interests in Intellectual Property filed or to be filed with any applicable filing office or registry, Control Agreements, any pledge agreement and all other documents, instruments, and agreements now or hereafter executed or delivered by a Loan Party to any Secured Party for purposes of securing (or intending to secure), or perfecting (or intending to perfect) Liens securing, any Obligations.

“Senior Officer” means, with respect to any Loan Party or Subsidiary, each of the chief executive officer, president, chief financial officer, treasurer and any vice president of the such Loan Party or Subsidiary and, as to any document delivered on the Closing Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of such Loan Party or Subsidiary..

“Setoff Parties” has the meaning set forth in Section 16.6.

“Settlement Report” means a report delivered by Administrative Agent to the Lenders summarizing the Loans and participations in LC Obligations outstanding as of a given settlement date, allocated among the Lenders on a Pro Rata basis.

“Significant Subsidiary” means individually any Subsidiary of the Parent other than the Non-Loan Party Subsidiaries, and Significant Subsidiaries shall mean collectively all Subsidiaries of the Parent other than the Non-Loan Party Subsidiaries.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Loan Party” means any Loan Party that is, at the time on which the guaranty (or grant of Lien, as applicable) becomes effective with respect to a Swap Obligation, a corporation, partnership, proprietorship, organization, trust or other entity that would not be an “eligible contract participant” under the Commodity Exchange Act at such time but for the effect of Section 5.7(f).

“Standard & Poor’s” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc. and any successor thereto.

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“Stated Commitment Termination Date” means April 27, 2020; provided that if at any time Liquidity remains less than \$250,000,000 for a period of sixty (60) consecutive days, the “Stated Commitment Termination Date” shall be the earlier of (a) the date that is 364 days after the first day of such sixty (60) consecutive day period, and (b) April 27, 2020.

“Subsidiary” means, with respect to any person (herein referred to as the “parent”), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, controlled or held by the parent or one or more subsidiaries of the parent, or (b) whose accounts are consolidated with the accounts of the parent or one or more subsidiaries of the parent in such parent’s or subsidiary’s SEC filings. Unless the context otherwise requires, Subsidiary shall mean a Subsidiary of a Borrower.

“Subsidiary Shares” has the meaning set forth in Section 8.2.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any “International Foreign Exchange Master Agreement”, or any other master agreement (any such agreement or documentation, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Loan” means any Borrowing of Base Rate Loans or LIR Loans funded with Swingline Lender’s funds pursuant to Section 2.3, until such Borrowing is settled among Lenders pursuant to Section 2.3(c).

“Swingline Lender” means Regions Bank, together with its successors and assigns.

“Swingline Note” means a promissory note executed by Borrowers in favor of Swingline Lender in the form of Exhibit A-2, which note shall be in the maximum amount of Swingline Loans which Swingline Lender has agreed to make to Borrowers pursuant to Section 2.3(a) and shall evidence Swingline Loans made by Swingline Lender.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), assessments, fees, or other charges imposed by any Official Body, including any interest, additions to tax or penalties applicable thereto.

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“Term Agent” means Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent and collateral agent under the Term Loan Agreement, and its successors and assigns.

“Term Lenders” means the financial institutions from time to time party to the Term Loan Agreement as lenders.

“Term Loan Agreement” means that certain Credit Agreement dated as of March 7, 2017, among Parent, Term Agent and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time to the extent not prohibited by the Intercreditor Agreement.

“Term Loan Documents” means the Loan Documents (as defined in the Term Loan Agreement).

“Term Loan Obligations” means all of the Obligations (as defined in the Term Loan Agreement as in effect on the Closing Date or as amended in a manner that does not expand the scope thereof).

“Term Loan Priority Collateral” shall have the meaning specified in the Intercreditor Agreement.

“Third Party” means any lessor, mortgagee, mechanic or repairman, warehouse operator or warehouseman, processor, packager, consignee, shipper, customs broker, freight forwarder, bailee, or other third party which may have possession of any Inventory or As-Extracted Collateral or lienholders’ enforcement rights against any Inventory or As-Extracted Collateral.

“Third Party Agreement” means an agreement in form and substance reasonably satisfactory to Administrative Agent pursuant to which a Third Party, as applicable (a) waives or subordinates in favor of Administrative Agent any Liens such Third Party may have in and to any ABL Priority Collateral; (b) grants Administrative Agent access to ABL Priority Collateral which may be located on such Third Party’s premises or in the custody, care, or possession of such Third Party for purposes of allowing Administrative Agent to inspect, remove or repossess, sell, store, or otherwise exercise its rights under this Agreement or any other Loan Document with respect to such ABL Priority Collateral; or (c) with respect to Third Parties other than landlords, agrees upon request to deliver the ABL Priority Collateral to Administrative Agent or in accordance with the Administrative Agent’s instructions, in each case, upon payment of applicable fees and charges.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio of the amounts under the following clauses (a) and (b):

(a) (i) the aggregate amount of Debt (determined in accordance with GAAP) (other than (x) Debt of the type described in clause (c) of the definition thereof constituting payments made or to be made to the U.S. Federal Bureau of Land Management with respect to the acquisition of any U.S. Federal coal lease by any Loan Party or Subsidiary of any Loan Party which payments are either deferred purchase price payments or bonus bid payments related to any such lease and (y) Debt of the type described in clause (d) of the definition thereof except to the extent of any unreimbursed drawings thereunder) of the Parent and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) as of the date of the financial statements most recently delivered by the Parent pursuant to Section 9.16(b) or Section 9.16(c) less (ii) the aggregate amount of Unrestricted Cash as of such date (but excluding any such Unrestricted Cash that constitute proceeds of any Debt for which this Total Net Leverage Ratio was required to be tested), to

(b) the sum of EBITDA of the Parent and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) for the period of four consecutive Fiscal Quarters ending as of the date of such financial statements.

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It is expressly agreed that, for purposes of determining the Total Net Leverage Ratio, the difference between actual funded indebtedness and the fair market value of funded indebtedness recorded as required by the Statement of the Financial Accounting Standards Board No. 141 (as in effect on the Closing Date) will be excluded from indebtedness in the determination of Debt.

“Transferee” means any actual or potential Eligible Assignee or Participant.

“Treasury Services” has the meaning given such term in the definition of “Bank Products.”

“Type” means any type of a Loan (i.e., Base Rate Loan, LIR Loan, or LIBOR Loan) that has the same interest option and, in the case of LIBOR Loans, the same Interest Period.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the perfection of security interests created by the applicable Security Documents.

“United States” means the United States of America.

“Unrestricted Cash” means, for purposes of calculating the Total Net Leverage Ratio, the aggregate amount of cash and Permitted Investments held in accounts on the consolidated balance sheet of Borrowers and their Subsidiaries not to exceed \$300,000,000 in the aggregate, to the extent that the use of such cash for application to payment of the Obligations or other Debt is not prohibited by law or any contract or other agreement and such cash is and Permitted Investments are free and clear of all Liens (other than Liens in favor of Administrative Agent, the Term Agent or any other agent or representative with respect to permitted secured Debt that is subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent) and Liens permitted pursuant to clause (o) of the definition of Permitted Liens.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code, or any person treated as a United States person for purposes of the Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 15.3(g)(ii)(B)(iii).

“Voidable Transfer” has the meaning set forth in Section 16.24.

“Weighted Average Life to Maturity” means, when applied to any Debt on any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

“Withdrawal Liability” means any liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2. **Accounting Terms.** Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Parent and its Subsidiaries delivered to Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if the Parent’s and its Subsidiaries’ certified public accountants concur in such change; provided, however, that, despite the adoption of any such change, Borrower Agent shall (a) in addition to delivery of financial statements pursuant to Section 9.16(b) or (c), and on each date such financial statements are required to be delivered, furnish the adjustments and reconciliations necessary to enable Borrowers and Administrative Agent to determine compliance with the Financial Covenant, which shall be determined in accordance with GAAP but without giving effect to such change, and (b) the Borrowing Base shall continue to be calculated without giving effect to such change (if the effect of such change would be to increase the amount of Availability derived from Eligible Inventory; provided, further, that Borrower Agent shall not be required to deliver such adjustments and reconciliations and may apply such change in the calculation of the Borrowing Base and its related terms if (i) the change is disclosed to Administrative Agent and (ii) Section 11, the definition of “Borrowing Base” and any terms used therein or bearing on the amount of Availability derived therefrom, as applicable, and any other section of this Agreement or any other Loan Document which is affected thereby are amended in a manner satisfactory to Administrative Agent and Required Lenders to take into account the effects of the change). Any of the foregoing to the contrary notwithstanding, all financial statements delivered hereunder shall be prepared, and the Financial Covenant shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

1.3. **Uniform Commercial Code.** Any term used in this Agreement or in any other Loan Document or in any financing statement filed in connection herewith which is defined in the UCC and not otherwise defined in this Agreement or in any other Loan Document shall have the meaning given such term in the UCC, including “Account,” “Account Debtor,” “As-Extracted Collateral,” “Chattel Paper,” “Commercial Tort Claim,” “Commodity Account,” “Consignment,” “Deposit Account,” “Document,” “Electronic Chattel Paper,” “Equipment,” “Farm Products,” “Fixtures,” “General Intangibles,” “Goods,” “Instrument,” “Investment Property,” “Letter-of-Credit Right,” “Payment Intangible,” “Proceeds,” “Securities Account” and “Supporting Obligation.”

1.4. **Rules of Construction.** Unless the context of this Agreement otherwise clearly requires, the following rules of construction shall apply to this Agreement and each of the other Loan Documents: (i) references to the plural include the singular, the plural, the part and the whole and the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”; (ii) the words “hereof,” “herein,” “hereunder,” “hereto” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole and not any particular provision thereof; (iii) article, section, subsection, clause, schedule and exhibit references are to this Agreement or such other Loan Document, as the case may be, unless otherwise specified; (iv) reference to any Person includes such Person’s successors and assigns, and in the case of an Official Body, any other Official Body that shall have succeeded to any or all of functions thereof; (v) reference to any agreement, including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto, document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated, but only to the extent that such amendment, modification, replacement, substitution or restatement is not prohibited by this Agreement or any applicable intercreditor agreement; (vi) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding,” and “through” means “through and including”; (vii) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract

rights, (viii) section headings herein and in each other Loan Document are included for convenience and shall not affect the interpretation of this Agreement or such Loan Document, (ix) unless otherwise specified, all references herein and in any other Loan Document to time of day shall mean and refer to the time of day in Atlanta, Georgia, (x) all references herein and in any other Loan Document to statutes and related regulations shall include all related rules and implementing regulations and any amendments of same and any successor statutes, rules and regulations, and (xi) all references herein and in any other Loan Document to the “discretion” (rather than Permitted Discretion) of Administrative Agent or Lenders shall mean the sole and absolute discretion of Administrative Agent or Lenders, as applicable. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Administrative Agent (and not necessarily calculated in accordance with GAAP). No provision of any Loan Documents shall be construed or interpreted to the disadvantage of any party hereto by reason of such party’s having, or being deemed to have, drafted, structured, or dictated such provision. Any Loan Document signed by a Senior Officer acting in such capacity on behalf of a Loan Party or Borrower Agent shall be conclusively presumed to have been authorized by all necessary action on the part of such Loan Party or Borrower Agent party thereto and such Senior Officer shall be conclusively presumed to have acted on behalf of such party. A Default or an Event of Default shall be deemed “to continue,” be “continuing,” “exist,” or be “in existence” at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing in accordance with this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement.

1.5. **Limited Condition Acquisitions.**

(a) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of testing availability under baskets set forth in this Agreement or any other Loan Document (including baskets measured as a percentage of consolidated total assets, if any), in each case, at the option of the Parent (the Parent’s election to exercise such option in connection with any Limited Condition Acquisition, an “LCA Election”), the date of determination of whether any such action is permitted hereunder may be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the “LCA Test Date”), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive Fiscal Quarters ending prior to the LCA Test Date for which consolidated financial statements of the Parent are available, the Parent would have been permitted to take such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Parent has made an LCA Election and any of the ratios or baskets for

which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in consolidated total assets of the Parent or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken. If the Parent has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket utilization with respect to the incurrence of Debt or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Parent, or the prepayment, redemption, purchase, defeasance or other satisfaction of Debt on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be tested by calculating the utilization of such ratio or basket on a pro forma basis (A) assuming such Limited Condition Acquisition and other transactions in connection therewith

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(including any incurrence of Debt and the use of proceeds thereof) have been consummated and (B) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have not been consummated.

(b) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement or any other Loan Document which requires that no Default or Event of Default, as applicable, has occurred, is continuing or would result from any such action, as applicable, such condition may, at the option of the Parent, be deemed satisfied, so long as no Default or Event of Default, as applicable, exists on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Parent has exercised its option under this Section 1.5, and any such Default or Event of Default occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such Default or Event of Default shall be deemed to not have occurred or be continuing solely for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

(c) In connection with any action being taken in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement or any other Loan Document which requires compliance with any representations and warranties set forth herein, such condition may, at the option of the Parent, be deemed satisfied, so long as the Parent is in compliance with such representations and warranties on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Parent has exercised its option under this Section 1.5, and any such breach of a representation or warranty occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such breach shall be deemed to not have occurred for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

1.6. **Reserved.**

1.7. **Initial Ratio Calculations.** To the extent that any provision of this Agreement requires or tests compliance with (or with respect to) the Total Net Leverage Ratio prior to the initial date upon which the financial statements required by Section 9.16(b) or 9.16(c), as the case may be, are required to be delivered, such ratio shall be calculated as of the period of four consecutive Fiscal Quarters ending December 31, 2016.

SECTION 2. THE CREDIT FACILITIES

2.1. **Commitment.**

(a) **Loans.** Subject to the terms and conditions of this Agreement, each Lender agrees, severally (and not jointly) on a Pro Rata basis up to its Commitment, to make Loans to Borrowers from time to time on any Business Day through the Commitment Termination Date. Subject to the terms and conditions of this Agreement, the Loans may be repaid and reborrowed. No Lender shall have any obligation to honor any request for a Loan if doing so would cause (i) such Lender's Pro Rata Share of the Aggregate Revolving Obligations to exceed such Lender's Commitment or (ii) the Aggregate Revolving Obligations would exceed the lesser of (A) the Borrowing Base and (B) the Commitments.

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(b) **Revolving Notes.** Borrowers shall execute and deliver a Revolving Note to each Lender.

(c) **Termination and Voluntary Reductions of Commitments.** The Commitments shall terminate on the Commitment Termination Date. Borrowers may terminate or from time to time reduce the Commitments by giving not less than 10 Business Days' prior written notice to Administrative Agent. Any request from Borrowers for the reduction of the Commitments must specify the amount of the requested reduction. Each reduction shall be in a minimum amount of \$5,000,000 or any greater integral increment of \$1,000,000. Borrowers may not reduce the Commitments to an amount less than \$20,000,000, except in connection with the termination of the Commitments. All reductions of the Commitments shall be applied on a Pro Rata basis. Except to the extent otherwise agreed in writing by Administrative Agent and the Required Lenders, any request from Borrowers for the termination or reduction of the Commitments shall be irrevocable; provided that, subject to the Borrowers' obligations under Section 15.1(c), Borrowers may condition any prepayment notice on the occurrence of any contemplated Change of Control, Permitted Acquisition, Disposition or refinancing, and may rescind such prepayment notice if such contemplated Change of Control, Permitted Acquisition, Disposition or refinancing shall not be consummated or shall otherwise be delayed.

(d) **Overline; Overadvances.**

(i) Any amount by which the Aggregate Revolving Obligations exceed the Commitments shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swingline Loans; second, to all other Loans which are Base Rate Loans or LIR Loans; third, to any Loans which are LIBOR Loans; and, fourth, to Cash Collateralize the LC Obligations; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents. In no event shall Administrative Agent be required to honor any request

for a Loan when the Aggregate Revolving Obligations exceed the Commitments or if, after giving effect to the making of such Loan, the Aggregate Revolving Obligations would exceed the Commitments.

(ii) Any Overadvance shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swingline Loans; second, to all Loans which are Base Rate Loans or LIR Loans; third to Loans which are LIBOR Loans; and, fourth, to Cash Collateralize the LC Obligations; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents;

(iii) Unless otherwise directed in writing by the Required Lenders, Administrative Agent may require Lenders to honor requests by Borrowers for Overadvance Loans (in which event, and notwithstanding anything to the contrary set forth in this Agreement, Lenders shall continue to make Loans up to their Pro Rata Share of the Commitments) and to forbear from requiring Borrowers to cure an Overadvance, if (1) the Overadvance does not continue for a period of more than thirty (30) consecutive days, following which no Overadvance exists for at least thirty (30) consecutive days before another Overadvance exists, (2) the amount of the Aggregate Revolving Obligations outstanding at any time does not exceed the aggregate of the Commitments at such time (3) the Revolving Credit Exposure of any individual Lender at any time does not exceed such individual Lender's Commitment, and (4) the Overadvance does not exceed \$5,000,000. In no event shall any Borrower or any other Loan Party be deemed to be a beneficiary of this Section 2.1(d) or authorized to enforce any of the provisions of this Section 2.1(d).

(iv) Neither the funding of any Overadvance Loan nor the continued existence of an Overadvance shall constitute any waiver by Administrative Agent or any Lender of any Event of Default which may exist at the time any Overadvance Loan is made or which is caused thereby. Each Lender's

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obligations under this Section 2.1(d) are absolute, unconditional, and irrevocable and are not subject to any counterclaim, right of setoff, charge back, discount, defense, qualification, or exception, and each Lender shall perform such obligations, as applicable, regardless of whether the Commitments have terminated, an Overadvance exists or any condition precedent to the making of Loans has not been satisfied.

(e) Protective Advances. From time to time, Administrative Agent may, in its discretion, make one or more Base Rate Loans to preserve, protect, or defend any Collateral or to increase or improve the likelihood of collecting or obtaining repayment of any Obligations (in each case, if Administrative Agent determines in its discretion that doing so is necessary or desirable) (a "Protective Advance"). Administrative Agent may make a Protective Advance without regard to Availability or the satisfaction of any condition precedent to the making of Loans, unless (A) the Required Lenders have, in writing, revoked Administrative Agent's authority to do so or (B) Administrative Agent has actual knowledge that, after giving effect thereto, the aggregate outstanding principal amount of all Loans made as Protective Advances (i) would exceed \$8,000,000 or (ii) would cause the amount of the Aggregate Revolving Obligations outstanding to exceed the aggregate of the Commitments at such time or any individual Lender's Revolving Credit Exposure to exceed such individual Lender's Commitment at such time. If the terms of the foregoing clauses (A) and (B) are not applicable, Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. Each Lender shall participate on a Pro Rata basis in each Protective Advance. The provisions of this Section 2.1(e) are solely for the benefit of Administrative Agent and the Lenders, and none of the Loan Parties may rely on this Section 2.1(e) or have any standing to enforce its terms.

(f) Increases to Commitments. The Commitments may be increased up to an aggregate amount of \$20,000,000 (the "Commitment Increase"), provided that: (a) Borrowers shall have given to Administrative Agent at least twenty (20) days' notice of their intention to effect a Commitment Increase and the desired amount of such Commitment Increase; (b) such increase does not increase the amount of the Commitment of any Lender without the written consent of such Lender, in such Lender's discretion; (c) to the extent requested by any Lender, Borrowers execute a new Revolving Note with respect to such Lender reflecting the increase in such Lender's Commitment and any additional documents, instruments or agreements Administrative Agent reasonably deems necessary or desirable in connection therewith (including, without limitation, secretary's certificates and authorizing resolutions); (d) as of the date of such Commitment Increase, both before and immediately after giving effect thereto, no Default or Event of Default shall exist and each of the conditions set forth in Section 7.2 (excluding Section 7.2(d)) unless a Letter of Credit has been requested) shall be satisfied; and (e) any such Commitment Increase shall be in a minimum amount of at least \$5,000,000 (or such lesser amount which shall be approved by Administrative Agent) and in integral multiples of \$1,000,000 in excess thereof, and no more than two (2) Commitment Increases shall be permitted in total. A Commitment Increase may be effected by one or more of the current Lenders by increasing their Commitment or one or more new lenders that are consented to by Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) solely to the extent the Administrative Agent's consent would be required for an assignment to such Person pursuant to Section 14.1(b)(iii) and constitute an Eligible Assignee joining this Agreement and providing a Commitment. After any Commitment Increase, all of the terms and conditions of the Loan Documents shall apply to the increased amount of the Commitments (including (i) being on a pari passu basis in terms of the Collateral, right of payment and guarantees with the other Loans, (ii) having the same maturity date as the other Commitments, and (iii) having the same Applicable Margin as the other Loans); provided that Borrowers agree to pay to Administrative Agent, Lenders increasing their respective Commitments and new Lenders such arrangement, commitment and other fees and expenses to be agreed between Borrowers and Administrative Agent in connection with such Commitment Increase. Each Lender hereby acknowledges and agrees that the aggregate Commitments may be increased pursuant to this Section 2.1(f) regardless of whether such Lender approves such

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increase or increases its Commitment hereunder, and Administrative Agent, Borrowers and any Lender increasing or providing a new Commitment may enter into an amendment to this Agreement to give effect to such Commitment Increase and matters incidental thereto without further consent of any other Lender. Administrative Agent shall have no liability to any Borrower or any other Loan Party or to Lenders in connection with any syndication of any Commitment Increase.

2.2. Reserved.

2.3. Swingline Loans; Settlement.

(a) Making of Swingline Loans. Swingline Lender may (but shall not be obligated to) fund any requested Loan with a Swingline Loan, but only if (i) no Default or Event of Default then exists; (ii) Swingline Lender believes in good faith that all conditions under Section 7.2 to the making of

such Swingline Loan have been satisfied or waived by the Required Lenders; (iii) such Loan is not specifically required to be made by all Lenders hereunder; (iv) after giving effect to such Swingline Loan, the aggregate principal amount of all Swingline Loans would not exceed Ten Million Dollars (\$10,000,000); and (v) when a Defaulting Lender exists, unless the Swingline Lender has entered into arrangements satisfactory to it and the Borrowers to eliminate the Swingline Lender's risk with respect to the Defaulting Lender's participation in such Swingline Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swingline Loans in a manner satisfactory to the Swingline Lender and the Administrative Agent.

(b) Swingline Note. Each Swingline Loan shall constitute a Loan for all purposes, except that payments thereon shall be made to Swingline Lender for its own account. The obligation of Borrowers to repay Swingline Loans shall be evidenced by the records of Swingline Lender. Promptly upon Swingline Lender's request, Borrowers shall execute and deliver to Swingline Lender a promissory note (in form and substance reasonably satisfactory to Swingline Lender) to evidence the Swingline Loans (such promissory note, as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Swingline Note").

(c) Settlement. To facilitate administration of the Loans, Swingline Lender and the other Lenders agree that settlement among them with respect to Swingline Loans shall take place weekly on such weekly settlement date as the Administrative Agent may elect, from time to time. On each settlement date, settlement shall be made with each Lender in accordance with the Settlement Report delivered by Swingline Lender to the other Lenders. Between settlement dates, Administrative Agent may apply payments on Loans to Swingline Loans, regardless of any designation by Borrowers or any provision herein to the contrary. If, due to an Insolvency Proceeding with respect to a Borrower or otherwise, any Swingline Loan may not be settled as provided herein, then each Lender shall be deemed to have purchased from Swingline Lender a participation in each unpaid Swingline Loan in an amount equal to its Pro Rata Share thereof and shall transfer the amount of such participation to Swingline Lender in immediately available funds within one Business Day after Swingline Lender's request therefor. Each Lender's obligations under this Section 2.3(c) are absolute, unconditional, and irrevocable and are not subject to any counterclaim, setoff, defense, qualification, or exception, and each Lender shall perform such obligations, as applicable, regardless of whether the Commitments have terminated, an Overadvance exists, or any condition precedent to the making of Loans has not been satisfied. The provisions of this Section 2.3(c) are solely for the benefit of Swingline Lender and the other Lenders, and none of the Loan Parties may rely on this Section 2.3(c) or have any standing to enforce its terms.

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2.4. Letter of Credit Facility.

(a) Issuance of Letters of Credit. LC Issuer agrees to issue Letters of Credit from time to time for Borrowers' account on the terms set forth in this Agreement and any Agreement for Irrevocable Standby Letter of Credit to which any Borrower and LC Issuer are parties, including the following:

(i) LC Issuer shall have no obligation to issue any Letter of Credit unless each of the LC Conditions has been satisfied (as determined by LC Issuer and Administrative Agent).

(ii) If LC Issuer receives written notice from Administrative Agent or a Lender at least five (5) Business Days before issuance of a Letter of Credit that any LC Condition has not been satisfied, LC Issuer shall have no obligation to issue the requested Letter of Credit (or any other Letter of Credit) until such notice is withdrawn in writing by Administrative Agent or such Lender or until the Required Lenders have waived the applicable LC Condition in accordance with this Agreement. Before receipt of any such notice, LC Issuer shall not be deemed to have knowledge of any failure to satisfy any LC Condition.

(iii) Borrowers may request and employ Letters of Credit for the account of any Borrower or any of their Subsidiaries; provided, however, that LC Issuer shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds from which would be made available to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or Sanctioned Country, or in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Official Body shall by its terms purport to restrain or enjoin the LC Issuer from issuing letters of credit generally or such Letter of Credit particularly, or any applicable Law relating to LC Issuer or any request or directive (whether or not having the force of law) from any Official Body with jurisdiction over LC Issuer shall prohibit, or request that LC Issuer refrain from the issuance of letters of credit generally or any such Letter of Credit particularly or shall impose on LC Issuer with respect to any such Letter of Credit any restriction, reserve or capital requirement (for which LC Issuer is not otherwise compensated hereunder) not in effect on the Closing Date or shall impose on LC Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date which LC Issuer deems material to it, including, in each case, but without limitation, from any Change in Law, or (iii) if the issuance of any such Letter of Credit would violate one or more policies of LC Issuer applicable to letters of credit generally. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that the applicable Borrower or Borrowers need not deliver a new LC Application unless requested to do so by LC Issuer.

(iv) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, LC Issuer shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation, or communication in whatever form believed by LC Issuer, in good faith, to be genuine and correct and to have been signed, sent, or made by a proper Person. LC Issuer may consult with and employ legal counsel, accountants, and other experts to advise it concerning its obligations, rights, and remedies with respect to the issuance and administration of Letters of Credit and LC Documents and shall be entitled to act (or refuse to act) upon, and shall be fully protected in any action taken (or refused to be taken) in good faith reliance upon, any advice given by such Persons. LC Issuer may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

(v) Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after giving effect to any permanent reduction in the stated amount of such Letter of Credit pursuant to the terms of such

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Letter of Credit); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any LC Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

(vi) Unless otherwise expressly agreed by the LC Issuer and Borrower Agent when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Letter of Credit and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(vii) Without limitation of the foregoing provisions, in the event that any Lender is at such time a Defaulting Lender, the LC Issuer shall have no obligation to issue any Letter of Credit unless LC Issuer has entered into arrangements satisfactory to LC Issuer (in its sole discretion) with the Borrowers or such Defaulting Lender to eliminate such LC Issuer's Fronting Exposure with respect to such Defaulting Lender (after giving effect to any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of the LC Obligations in a manner satisfactory to LC Issuer and Administrative Agent.

(b) Reimbursement; Participations.

(i) On the date LC Issuer honors any draw under a Letter of Credit (each such date, a "Reimbursement Date"), Borrowers shall reimburse LC Issuer the amount paid by LC Issuer on account of such draw, together with interest from the Reimbursement Date until paid by Borrowers (at the interest rate for Base Rate Loans). The obligation of Borrowers to reimburse LC Issuer for any draw made under a Letter of Credit is absolute, unconditional, and irrevocable, and Borrowers shall make such reimbursement without regard to any lack of validity or enforceability of such Letter of Credit or the existence of any claim, setoff, defense, or other right Borrowers may have at any time against the beneficiary of such Letter of Credit. On each Reimbursement Date, Borrowers shall be deemed to have requested a Borrowing of Base Rate Loans in an amount necessary to pay the amounts due to LC Issuer on such date (regardless of whether Borrower Agent submits a Notice of Borrowing therefor), and each Lender shall fund its Pro Rata Share of such Borrowing, without right of setoff, counterclaim, discount, charge back or other defense and regardless of whether the Commitments have terminated, an Overadvance exists or any condition precedent to the making of Loans has not been satisfied.

(ii) Upon the issuance of a Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from LC Issuer, without recourse or warranty, an undivided interest and participation in all LC Obligations relating to such Letter of Credit in an amount equal to such Lender's Pro Rata Share thereof. If LC Issuer honors any draw under a Letter of Credit and Borrowers do not reimburse the amount thereof on the Reimbursement Date, Administrative Agent (at LC Issuer's request) shall promptly notify Lenders, and each Lender shall promptly (within one Business Day) unconditionally pay to Administrative Agent, for the benefit of LC Issuer, such Lender's Pro Rata Share of such draw. Upon request by a Lender, LC Issuer shall furnish such Lender with copies of any Letters of Credit and LC Documents in its possession at such time.

(iii) The obligations of each Lender to make payments to Administrative Agent for the account of LC Issuer in connection with LC Issuer's honoring any draw under a Letter of Credit are absolute, unconditional, and irrevocable and are not subject to any counterclaim, right of setoff, defense, discount, charge back, qualification, or exception, and such Lender shall perform such obligations, as applicable, (A) irrespective of any lack of validity or unenforceability of any Loan Documents; (B)

regardless of whether the Commitments have been terminated, an Overadvance exists, any condition precedent to the making of any Loan has not been satisfied; (C) regardless of whether any draft, certificate, or other document presented under a Letter of Credit is determined to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; and (D) regardless of the existence of any setoff or defense that any Loan Party may have with respect to any Obligations. LC Issuer assumes no responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. LC Issuer makes no representation, warranty, or guaranty, express or implied, with respect to the Collateral, LC Documents, or any Loan Party. LC Issuer is not responsible for (A) any recitals, statements, information, representations, or warranties contained in, or for the execution, validity, genuineness, effectiveness, or enforceability of, any LC Documents; (B) the validity, genuineness, enforceability, collectibility, value, or sufficiency of any Collateral or the perfection of any Lien therein; or (C) the assets, liabilities, financial condition, results of operations, business, creditworthiness, or legal status of any Loan Party.

(iv) No LC Issuer Indemnitee shall be liable to Administrative Agent, any Lender, or any other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment. LC Issuer shall have no liability to any Lender if LC Issuer refrains from taking any action, or refuses to take any action, under any Letter of Credit or LC Documents until it receives written instructions from the Required Lenders.

(c) Cash Collateral. If any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (i) that an Event of Default exists; (ii) after the Commitment Termination Date; or (iii) within twenty (20) Business Days before the Stated Commitment Termination Date, then Borrowers shall, at LC Issuer's or Administrative Agent's request, Cash Collateralize the stated amount of all outstanding Letters of Credit and pay to LC Issuer the amount of all other LC Obligations which are then outstanding. If Borrowers fail to provide Cash Collateral as required herein, Lenders may (and, upon written request of Administrative Agent, shall) advance, as Loans, the amount of the Cash Collateral required (regardless of whether the Commitments have terminated, an Overadvance exists, or any condition precedent to the making of any Loan has not been satisfied). Without limitation of the foregoing, at any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or LC Issuer (with a copy to the Administrative Agent) the Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure after first giving effect to any Cash Collateral provided by the Defaulting Lender.

SECTION 3. INTEREST, FEES, AND CHARGES

3.1. Interest.

(a) Interest Rates. The principal amount of the Obligations shall bear interest (i) with respect to Base Rate Loans, at the Base Rate plus the Applicable Margin; (ii) with respect to LIBOR Loans, at the Adjusted LIBOR Rate for the applicable Interest Period plus the Applicable Margin; (iii) with respect to LIR Loans, at the LIBOR Index Rate plus the Applicable Margin; and (iv) with respect to any other Obligations which are then due and payable (including, to the extent permitted by law, interest not paid when due), at the Base Rate plus the Applicable Margin for Base Rate Loans; provided, however, the principal amount of the Obligations shall bear interest at the Default Rate (whether before or after any judgment) (A) at all times during the existence of any Loan Party's Insolvency Proceeding and (B) if so elected by Administrative Agent or the Required Lenders, at any time during the existence of any Event of Default. Each Borrower acknowledges that the cost and expense to Administrative Agent and Lenders

due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Administrative Agent and Lenders therefor.

(b) Accrual of Interest. Interest shall accrue from the date the Loan is advanced or an Obligation is incurred or payable until paid by Borrowers. If a Loan is repaid on the day it was made, one day's interest shall accrue.

(c) Payment Dates. Interest accrued on the Loans shall be due and payable in arrears (i) on the first day of each calendar month for the immediately preceding calendar month for all Swingline Loans, LIR Loans, and Base Rate Loans and on the last day of each Interest Period for all LIBOR Loans; (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid; (iii) with respect to Loans, on the Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents or, if no payment date is provided, **ON DEMAND**. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **ON DEMAND**.

(d) Reserved.

(e) Certain Provisions Regarding LIR Loans and LIBOR Loans.

(i) Borrowers may on any Business Day, subject to delivery of a Notice of Conversion/Continuation and the terms of Section 3.1(h), elect to (A) convert any portion of the Base Rate Loans or LIR Loans to a LIBOR Loan; (B) convert Base Rate Loans to LIR Loans; (C) convert LIR Loans to Base Rate Loans; or (D) continue any LIBOR Loan at the end of its Interest Period as a LIBOR Loan. During any Default or Event of Default, Administrative Agent may (and, at the direction of the Required Lenders, shall) declare that no Loan may be made, converted, or continued as a LIBOR Loan.

(ii) Whenever Borrowers desire to convert any Loan to a LIBOR Loan or continue any LIBOR Loan, Borrower Agent shall give Administrative Agent a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in Section 16.1(b)) no later than 11:00 a.m. at least three (3) Business Days before the requested date of such conversion or continuation. Promptly after receiving any such notice, Administrative Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation or request shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the date of such conversion or continuation (which date shall be a Business Day), and the duration of the Interest Period (which, if not specified, shall be deemed to be one month). If, upon the expiration of any Interest Period of any LIBOR Loan, Borrowers shall have failed to deliver a Notice of Conversion/Continuation or a request with respect to such LIBOR Loan, Borrowers shall be deemed to have elected to convert such LIBOR Loan into Base Rate Loans or, to the extent provided in Section 3.1(h), an LIR Loan.

(iii) Administrative Agent does not warrant or accept responsibility for, and the Administrative Agent shall have no liability with respect to, the administration, submission or any other matter related to the rates in the definitions of Adjusted LIBOR Rate or LIBOR Index Rate (or any component parts thereof) or with respect to any comparable or successor rate thereto.

(f) Interest Periods. In connection with the making, conversion, or continuation of any LIBOR Loan, Borrowers shall select an interest period (each, an "Interest Period") therefor, which Interest Period shall be one, two, or three months; provided, however:

(i) each Interest Period shall commence on the date the Loan is made or continued as, or converted into, a LIBOR Loan, and shall expire on the numerically corresponding day in the final

calendar month;

(ii) if any Interest Period commences on a day for which there is no corresponding day in the final calendar month or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month and, if any Interest Period would expire on a day that is not a Business Day, the Interest Period shall expire on the next Business Day; and

(iii) no Interest Period shall extend beyond the Stated Commitment Termination Date.

(g) Number and Amount of LIBOR Loans; Determination of Rate. Each Borrowing of LIBOR Loans when made shall be in a minimum amount of \$1,000,000 or any greater integral multiple of \$500,000. No more than four (4) Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose.

(h) Additional Provisions Relating to LIR Loans. Subject to subsections (a) and (b) of Section 15.1, all Swingline Loans shall constitute LIR Loans. Upon there being more than one Lender, all LIR Loans (other than Swingline Loans) shall convert, automatically and without notice to any Person, into Base Rate Loans.

3.2. Fees.

(a) Upfront Fees. On the Closing Date, Borrowers shall pay to Administrative Agent, for the account of the Lenders, the upfront fees as set forth in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(b) Commitment Fee. On the first day of each calendar month following the Closing Date and on the Commitment Termination Date, Borrowers shall pay to Administrative Agent, in arrears and for the account of the Lenders, a commitment fee in an amount equal to 0.375% per annum times the average amount by which the Commitments exceeded the Aggregate Revolving Obligations (other than Swingline Loans) on each day during the immediately preceding calendar month; provided that (1) no commitment fee shall accrue on the Commitment of a Defaulting Lender so long as such Lender

shall be a Defaulting Lender and (2) any commitment fee accrued with respect to the Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrowers so long as such Lender shall be a Defaulting Lender.

(c) **LC Fees.** On the first day of each calendar month following the date that any Letter of Credit is issued (or renewed or extended), Borrowers shall pay (i) to Administrative Agent, in arrears and for the account of the Lenders a letter of credit fee in an amount equal to (A) a rate per annum equal to the Applicable Margin in effect for LIBOR Loans plus, at all times when the Default Rate with respect to Loans is in effect, 2.00% per annum, times (B) the initial face amount of such Letter of Credit, times (C) the initial stated duration of such Letter of Credit (provided that no letter of credit fee shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and except as otherwise provided in Section 4.2(a)(iii), any letter of credit fee accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrowers so long as such Lender shall be a Defaulting Lender), and (ii) directly to each LC Issuer for its own account a fronting fee (A) with respect to each commercial Letter of Credit or any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrowers and the LC Issuer, computed on the amount of such commercial Letter of Credit or the amount of such increase, as applicable, and payable upon the issuance of such

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commercial Letter of Credit or effectiveness of such amendment, as applicable, and (C) with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable monthly in arrears on the first day of each calendar month following the date that any Letter of Credit is issued (or renewed or extended), on its expiration date and thereafter on demand. In addition, the Borrowers shall pay directly to the LC Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the LC Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable. All of the foregoing fees shall be fully earned upon issuance of the Letter of Credit, or any amendment thereto, as applicable, and none of such fees shall be refundable, in whole or in part, regardless of any cancellation, termination, or draw upon the Letter of Credit.

(d) **Administrative Agent Fees.** Borrowers shall pay to Administrative Agent, for its own account, the fees payable to Administrative Agent which are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(e) **Other Fees.** Borrowers shall pay to each applicable Person the fees payable to such Person which are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(f) **Calculation and Distribution of Interest, Fees, Charges, and Other Amounts.** Unless otherwise specifically provided herein or in any other Loan Document, interest, fees, charges and other amounts which are calculated on a per annum basis shall be calculated as follows: (i) for interest determined by reference to the Base Rate, a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, and (ii) for all other such computations of interest, fees, charges and other amounts, a year of three hundred sixty (360) days, in each case for the actual number of days elapsed in the period during which it accrues. Each determination by Administrative Agent of any interest, fees, charges or interest rate hereunder or under any other Loan Document shall be final, conclusive, and binding for all purposes, absent manifest error. All fees payable under this Section 3.2 are not, and shall not be deemed to be, interest or any other charge for the use, forbearance, or detention of money. A certificate as to amounts payable by Borrowers under Sections 15 and 16.4, timely submitted to Borrower Agent by Administrative Agent or the affected Lender, as applicable, shall be final, conclusive, and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the applicable Person within ten (10) days following receipt of such certificate. All fees shall be fully earned when due and shall not be subject to rebate, refund, or proration, in whole or in part. All fees paid to Administrative Agent for the account of the Lenders, LC Issuer, or any other Person shall be paid by Administrative Agent to such Persons promptly upon its receipt thereof and, with respect to fees payable for the account of the Lenders, in accordance with each such Lender's Pro Rata Share thereof.

3.3. **Maximum Interest.** Any term or provision in this Agreement or in any other Loan Document to the contrary notwithstanding, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "maximum rate"). If Administrative Agent, LC Issuer or any Lender shall receive interest in an amount that exceeds the maximum rate, then such excess shall be applied, first, to the principal of the Obligations second, if Administrative Agent or the Required Lenders so elect, to Cash Collateralize all LC Obligations, and then to Borrowers or such other Person lawfully entitled thereto. In determining whether the interest contracted for or charged or received by Administrative Agent, LC Issuer, or a Lender exceeds the maximum rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest; (b) exclude

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voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 4. LOAN ADMINISTRATION

4.1. **Manner of Borrowing and Funding Loans.**

(a) **Notice of Borrowing.** Borrowers may request new Loans (including Swingline Loans), by delivering to Administrative Agent at its Lending Office a Notice of Borrowing (which notice may be transmitted by electronic mail subject to the limitations set forth in Section 16.1(d)). If the requested Loan is to be a Base Rate Loan or an LIR Loan then such Notice of Borrowing or request must be received by Administrative Agent at or before 11:00 a.m. (or in the case of Swingline Loans, such later time as the Swingline Lender may agree) on the Business Day on which Borrowers desire such Loan to be made. If the requested Loan is to be a LIBOR Loan, then such Notice of Borrowing or request must be received by Administrative Agent at or before 11:00 a.m. on the third Business Day preceding the date on which Borrowers desire such Loan to be made. Any Notice of Borrowing or request received by Administrative Agent after 11:00 a.m. shall be deemed to have been received on the immediately following Business Day. Each Notice of Borrowing and request for a Loan shall specify (i) the amount of the Borrowing; (ii) the requested funding date (which must be a Business Day); (iii) whether the Borrowing is requested to be made as a Swingline Loan, (iv) whether the Borrowing is requested to be made as Base Rate Loans, LIR Loans or LIBOR Loans; and (v) in the case of LIBOR Loans, the duration of the applicable Interest Period. If Borrowers do not specify an Interest Period with respect to any LIBOR Loan, then

the Interest Period for such Loan shall be one month. Each Notice of Borrowing and request for a Loan received by Administrative Agent shall be irrevocable.

(b) Deemed Requests for Funding.

(i) The becoming due of any Obligations shall be deemed to be a request for Base Rate Loans or, to the extent provided in Section 3.1(h), an LIR Loan, on the due date therefor in the amount of such Obligations, and, upon the making of such Loan, Administrative Agent shall apply the proceeds thereof in direct payment of such Obligations.

(ii) If Borrowers have established a controlled disbursement Deposit Account with Administrative Agent (or any of its Affiliates), then the presentation for payment of any check or other item of payment drawn on such Deposit Account at a time when there are insufficient funds on deposit therein to pay the same shall be deemed to be a request for Base Rate Loans or, to the extent provided in Section 3.1(h), an LIR Loan, on the date of such presentation in the amount of the checks and such other Payment Items presented for payment. The proceeds of such Loans may be disbursed directly to the controlled disbursement Deposit Account or other appropriate Deposit Account.

(iii) In order to facilitate the borrowing of Swingline Loans, the Borrowers and the Swingline Lender may mutually agree in their sole discretion to, and are hereby authorized to, enter into an auto borrow agreement in form and substance satisfactory to the Borrowers, the Swingline Lender and the Administrative Agent (the "Auto Borrow Agreement") providing for the automatic advance by the Swingline Lender of Swingline Loans under the conditions set forth in the Auto Borrow Agreement, subject to the conditions set forth therein and herein. At any time an Auto Borrow Agreement is in effect, advances under the Auto Borrow Agreement shall be deemed Swingline Loans for all purposes hereof, except that Borrowings of Swingline Loans under the Auto Borrow Agreement shall be made in accordance with the Auto Borrow Agreement. For purposes of determining the total amount Loans outstanding at any time during which an Auto Borrow Agreement is in effect, the outstanding amount of

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all Swingline Loans shall be deemed to be the sum of the outstanding amount thereof at such time plus the maximum amount available to be borrowed under such Auto Borrow Agreement at such time.

(c) Fundings by Lenders. Except for Swingline Loans, Administrative Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon on the requested funding date for Base Rate Loans and LIR Loans or by 3:00 p.m. at least two (2) Business Days before any requested funding of LIBOR Loans. Each Lender shall fund to Administrative Agent such Lender's Pro Rata Share of each requested Borrowing to the account specified by Administrative Agent in immediately available funds no later than 2:00 p.m. on the requested funding date, unless Administrative Agent's notice is received after the times provided above, in which case each Lender shall fund its Pro Rata Share by 11:00 a.m. on the next Business Day. Subject to its receipt of such amounts from Lenders, Administrative Agent shall disburse the proceeds of the Loans in the lawful manner directed by Borrower Agent. Unless Administrative Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata Share of a Borrowing, Administrative Agent may assume that such Lender has deposited or promptly will deposit its Pro Rata Share with Administrative Agent, and Administrative Agent may disburse a corresponding amount to Borrowers. If all or a portion of a Lender's Pro Rata Share of any Borrowing is not in fact received by Administrative Agent, then Borrowers agree to repay to Administrative Agent **ON DEMAND** the amount of any deficiency, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

4.2. Defaulting Lender.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 16.2(a).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts (other than fees which any Defaulting Lender is not entitled to receive pursuant to Section 4.2(a)(iii)) received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, as a scheduled payment or by prepayment, at maturity, pursuant to Section 12.2 or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to Section 16.6), shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to LC Issuer or the Swingline Lender hereunder; third, to Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 4.6; fourth, as Borrower Agent may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; fifth, if so determined by Administrative Agent and Borrower Agent to be held in a non-interest bearing Deposit Account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize LC Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 4.6; sixth, to the payment of any amounts owing to the Lenders, LC Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, LC Issuer or the Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations

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under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrowers, or any of them, as a result of any judgment of a court of competent jurisdiction obtained by such Borrower or Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if (x) such payment is a payment of the principal amount of any Loans or LC Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or LC Obligations were made at a time when the conditions set forth in Section 7.2 were satisfied or waived, such payment shall be applied solely to the pay the Loans of, and LC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and

unfunded participations in LC Obligations and Swingline Loans are held by the Lenders Pro Rata in accordance with their Commitments without giving effect to Section 4.2(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 4.2(a)(ii) shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Such Defaulting Lender shall not be entitled to receive any commitment fee, any fees with respect to Letters of Credit (except as provided in clause (B) below) or any other fees hereunder for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive fees with respect to Letters of Credit for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 4.6.

(C) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to LC Issuer or Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to LC Issuer's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 7.2 are satisfied at the time of such reallocation (and, unless Borrowers shall have otherwise notified Administrative Agent at such time, Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause such Lender's Revolving Credit Exposure at such time to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

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(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize LC Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.4.

(b) Defaulting Lender Cure. If Borrower Agent, Administrative Agent, Swingline Lender and LC Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held Pro Rata by the Lenders in accordance with the Commitments (without giving effect to Section 4.2(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) LC Issuer shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

4.3. **Borrower Agent.** Each Loan Party hereby designates Parent ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates and Interest Periods, delivery or receipt of communications (including any Notice of Borrowing, Notice of Conversion/Continuation, any electronic mail notice or request for a Borrowing or the conversion, or continuation of any Loan, or any request for the issuance of any Letter of Credit), preparation and delivery of Borrowing Base Certificates and all attachments thereto, financial reports and Compliance Certificates, receipt and payment of Obligations, requests for waivers, amendments, or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Administrative Agent, LC Issuer, or any Lender. Borrower Agent hereby accepts such appointment. Administrative Agent, LC Issuer, and the Lenders may give any notice to, or communication with, a Loan Party hereunder or under any other Loan Document to or with Borrower Agent on behalf of such Loan Party. Each Loan Party agrees that any notice, election, communication, representation, agreement, or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it. Administrative Agent, LC Issuer, and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, the terms of this Section 4.3, provided that nothing contained herein shall limit the effectiveness of, or the right of Administrative Agent, LC Issuer or any Lender to rely upon, any notice (including without limitation a borrowing or conversion notice), instrument, document, certificate, acknowledgment, consent, direction, certification or any other action delivered by any Loan Party pursuant to this Agreement or any other Loan Document.

4.4. **One Obligation.** The Loans, LC Obligations, and other Obligations shall constitute one general, joint and several obligation of Loan Parties and (unless otherwise expressly provided in any Loan Document) shall be secured by Administrative Agent's Lien upon all Collateral; provided, however, that

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Administrative Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Loan Party to the extent of any Obligations jointly or severally owed by such Loan Party.

4.5. **Effect of Termination.** On the Commitment Termination Date, all Obligations shall be immediately due and payable, in full, and each Lender may terminate its and its Affiliates' Bank Products (including, but only with the consent of Administrative Agent, any Treasury Services). All undertakings of all Loan Parties contained in the Loan Documents shall survive any termination, and Administrative Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents, until Payment in Full of all Obligations. Notwithstanding Payment in Full of all Obligations, Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives a written agreement in form and substance reasonably satisfactory to Administrative Agent (which may be in the form of a payoff letter), executed by Loan Parties (or their successors in interest), indemnifying Administrative Agent and Lenders from any such damages. The last paragraph of the definition of "Applicable Margin," 2.4, 13.15.1, 15.2, 15.3, 16.3, 16.4, and 16.23, this section, the obligation of each Loan Party and each Lender with respect to each indemnity given by it in any Loan Document, and each other term, provision, or section of this Agreement or any other Loan Document which states as much, shall survive Payment in Full of the Obligations and any release or termination relating to this Agreement, the other Loan Documents, or the credit facility established hereunder or thereunder.

4.6. **Cash Collateral.** At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent) Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure (after giving effect to Section 4.2(a)(iv) and any Cash Collateral provided by the Defaulting Lender). Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of LC Issuer, and agrees to maintain, a perfected first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Obligations, to be applied in the manner set forth below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and LC Issuer as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, Borrowers will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender). Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 4.6 or Section 4.2 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 4.6 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by Administrative Agent and LC Issuer that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 4.6 may be otherwise applied in accordance with Section 5.5) but shall be released upon the waiver of such Default or Event of Default in accordance with the terms of this Agreement, and (y) the Person providing Cash Collateral and LC Issuer or

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Swingline Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other Obligations.

4.7. **Reserves.** Notwithstanding anything to the contrary set forth herein (including, without limitation, in the definition of Reserves or its component definitions), any Reserve (including the amount of such Reserve) shall (a) bear a reasonable relationship to the circumstances, conditions, events, or contingencies that are the basis for such Reserve and (b) shall be without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria or factored into any of the advance rate percentages under the Borrowing Base. The Administrative Agent agrees to give the Borrower three (3) Business Days' prior written notice of the establishment of any new category (as opposed to amount) of Reserve, or any material increase in the amount of any Reserve (during which period the Administrative Agent shall be reasonably available to discuss any such proposed Reserve or modification to any existing Reserve with the Borrower and the Borrower may take action as may be required so that the event, condition, or matter that is the basis for such Reserve or modification no longer exists, in a manner acceptable to the Administrative Agent in its Permitted Discretion); provided that, such prior notice shall not be required (i) if an Event of Default then exists, (ii) if such modifications to such Reserve result solely by virtue of mathematical calculations of the amount of such Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent reserves and dilution), or (iii) if an event having a Material Adverse Change on the Borrowers and the Guarantors taken as a whole (or on the ability of the Lenders to realize upon the Collateral or the value of the Collateral) has occurred or would result if such Reserve is not immediately established or modified.

SECTION 5. PAYMENTS

5.1. **General Payment Provisions.** All payments of Obligations shall be made in Dollars, without right of offset, counterclaim, discount, charge back or other defense of any kind, free of (and without deduction for) any Taxes except as provided in Section 15.3 and except for any withholding or deduction that is required to be made under applicable Law, and in immediately available funds, not later than 12:00 noon on the due date to the applicable Lending Office of the Administrative Agent, the LC Issuer, the Lenders or other obligee. Any payment after such time shall be deemed made on the next Business Day. Any payment of a LIBOR Loan before the end of its Interest Period shall be accompanied by all amounts due under Section 15.1(c). Any prepayment of Loans shall be applied first to Base Rate Loans or, to the extent provided in Section 3.1(h), LIR Loans, and then to LIBOR Loans.

5.2. **Repayment of Loans.**

(a) **Commitment Termination Date; Prepayments Of Loans.** Loans shall be due and payable in full on the Commitment Termination Date. Loans may be prepaid from time to time, without penalty or premium. Within five (5) Business Days of any sale of assets or series of related sales of assets permitted under Section 10.4(e), or receipt of any Net Insurance/Condemnation Proceeds, the Borrowers shall immediately apply such Net Cash Proceeds or Net Insurance/Condemnation Proceeds to prepay the Loans (or if the Loans are \$0.00, to Cash Collateralize LC Obligations); provided that (i) so long as an Account Control Period does not then exist, such prepayment (or Cash Collateralization) shall only be required to the extent such Net Cash Proceeds or Net Insurance/Condemnation Proceeds exceed \$5,000,000 in the aggregate or to the extent that such prepayment would eliminate an Overadvance or cause the Aggregate Revolving Obligations to equal the Commitments, and (ii) no such prepayment (or Cash Collateralization) shall be

(b) **Concentration Account.** At any time during an Account Control Period, the collected balance in the main Concentration Account as of the end of each Business Day shall, at the beginning of the next Business Day, be applied, first, to the principal balance of the Loans (unless such funds are otherwise required to be applied to some other portion of the Obligations in accordance with this Agreement) and then, to other Obligations, as determined by Administrative Agent. If, as a result of such application, a credit balance exists, the balance shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Default or Event of Default exists. Except to the extent otherwise expressly provided herein, each Borrower irrevocably waives the right to direct the application of any payments or Collateral Proceeds at any time during an Account Control Period, and agrees that at any time during an Account Control Period Administrative Agent shall have the continuing, exclusive right to apply, reverse and reapply the same against the Obligations, in such order or manner as Administrative Agent deems advisable. Any of the foregoing to the contrary notwithstanding, Administrative Agent may charge back to any Concentration Account (or any other account of a Borrower maintained with Administrative Agent) a Payment Item which is returned for inability to collect, plus accrued interest during the period of Administrative Agent's provisional credit for such item before receiving notice of dishonor. Administrative Agent and Lenders assume no responsibility to Borrowers for any Concentration Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

(c) **Other Payments.** Borrowers shall also pay the Loans to the extent otherwise required pursuant to the terms of this Agreement and the other Loan Documents.

5.3. **Reserved.**

5.4. **Payment of Other Obligations.** Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **ON DEMAND**.

5.5. **Post-Default Allocation of Payments.**

(a) **Allocation.** Notwithstanding anything herein to the contrary, during an Event of Default, if so directed by the Required Lenders or at Administrative Agent's discretion, monies to be applied to the Obligations, whether arising from payments by Loan Parties, realization on Collateral, setoff, or otherwise, shall be allocated as follows:

- (i) **first**, to all costs and expenses, including Extraordinary Expenses, owing to Administrative Agent in its capacity as Administrative Agent;
- (ii) **second**, to all costs and expenses reimbursable by Borrowers owing to LC Issuer and the Lenders;
- (iii) **third**, to all amounts owing to Swingline Lender on Swingline Loans (including principal and interest);
- (iv) **fourth**, to all amounts owing to LC Issuer with respect to that portion of the LC Obligations which constitutes unreimbursed draws under Letters of Credit;
- (v) **fifth**, to all Obligations constituting fees to the extent not already paid above (other than any then constituting Bank Product Obligations);
- (vi) **sixth**, to all Obligations constituting interest to the extent not already paid above

(other than any then constituting Bank Product Obligations);

(vii) **seventh**, to (A) all Loans, (B) LC Obligations (including the Cash Collateralization of that portion of the LC Obligations constituting undrawn amounts under outstanding Letters of Credit, and (C) Bank Product Obligations, if and to the extent that the applicable Bank Product Provider thereof has delivered a Secured Party Designation Notice to Administrative Agent, up to the amount of (if any) of Reserves that the applicable Bank Product Provider has in writing requested that Administrative Agent implement in regard thereto as of the time of determination (whether or not any such Reserve has been implemented);

(viii) **eighth**, to all other Bank Product Obligations described in **sub-clause (C)** of **clause (vii)** above, to the extent not already paid;

(ix) **ninth**, to all other Obligations, including Bank Product Obligations, if and to the extent not already paid pursuant to either **clause (vii)** or **clause (viii)**; and

(x) **lastly**, the balance, if any, after all of the Obligations have been indefeasibly Paid in Full, to the Borrowers or as otherwise required under applicable Laws or the Intercreditor Agreement.

Amounts shall be applied to each of the foregoing categories of Obligations in the order presented above before being applied to the following category. Where applicable, all amounts to be applied to a given category will be applied on a pro rata basis among those entitled to payment in such category. In determining the amount to be applied to Obligations within any given category, the pro rata share of each Bank Product Provider shall be based on the lesser of (x) the amount presented in the most recent Secured Party Designation Notice from such Bank Product Provider to Administrative Agent and (y) the actual amount of such Obligations, calculated in accordance with a methodology presented to and approved by Administrative Agent by such Bank Product Provider to Administrative Agent. Administrative Agent has no duty to investigate the actual amount of any such Obligations and, instead, is entitled to rely in all respects on the Bank Product Provider's reasonably detailed written accounting thereof. If such Bank Product Provider does not submit such accounting of its

own accord and in a timely manner, Administrative Agent, may instead rely on any prior accounting thereof. No Secured Party Designation Notice (including any to increase the maximum dollar amount thereof) shall be effective if received by Administrative Agent during the existence of an Event of Default (until such Event of Default is waived in accordance with the terms of this Agreement) or to the extent a Reserve equal to such amount (if instituted by Administrative Agent after giving effect thereto) would cause an Overadvance. The allocations set forth in this Section are solely to determine the rights and priorities of the Secured Parties among themselves and may be changed by agreement among them without the consent of any Loan Party. No Loan Party is entitled to any benefit under this Section or has any standing to enforce this Section. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or such Loan Party's assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this [Section 5.5\(a\)](#).

(b) **Erroneous Application.** Administrative Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount ought to have been made shall be to recover the amount from the Person which actually received it (and, if such amount was received by any Secured Party, then such Secured Party, by accepting the benefits of this Agreement, agrees to return it).

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5.6. **Sharing of Payments.** If any Lender shall, by exercising any right of setoff, charge back or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligations greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Loans and such other Obligations of the other Lenders, or make such other adjustments as shall be equitable (as determined by Administrative Agent in its commercially reasonable judgment), so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided, however, that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by a Loan Party pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Commitments, Loans, or participations in Swingline Loans or LC Obligations to any Transferee; and

(iii) no Lender or Participant may exercise any right of setoff except as provided in [Section 16.6](#).

5.7. **Nature and Extent of each Borrower's Liability.**

(a) **Joint and Several Liability.** Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Administrative Agent, LC Issuer and the Lenders the prompt payment and performance of, all Obligations and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Payment in Full of the Obligations (or as otherwise provided in [Section 16.29](#)), and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination, or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument, or agreement to which any Loan Party is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent, or indulgence of any kind by Administrative Agent, LC Issuer, or any Lender with respect thereto; (iii) the existence, value, or condition of, or failure to perfect a Lien, or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Administrative Agent, LC Issuer, or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Loan Party or Subsidiary; (v) any election by Administrative Agent, LC Issuer, or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Loan Party, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent, LC Issuer or any Lender against any Loan Party for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Payment in Full of all Obligations.

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(b) **Waivers.**

(i) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Administrative Agent or any other Secured Party to marshal assets or to proceed against any Loan Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor, or accommodation co-obligor other than Payment in Full of all Obligations. It is agreed among each Borrower, Administrative Agent, LC Issuer and the Lenders that the provisions of this [Section 5.7](#) are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Administrative Agent, LC Issuer and the Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business and can be expected to benefit such business.

(ii) Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this [Section 5.7](#). If, in taking any action in connection with the exercise of any rights or remedies, Administrative Agent, LC Issuer or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Loan Party or other Person, whether because of any applicable Law pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Loan Party might otherwise have had. Any election of remedies that results in denial or impairment of the right of Administrative Agent, LC Issuer or any Lender to seek a deficiency judgment against any Loan Party shall not impair any Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Administrative Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not

be paid by Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 5.7, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Administrative Agent, LC Issuer or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this Section 5.7 shall be limited to the greater of (A) all amounts for which such Borrower is primarily liable, as described below and (B) such Borrower's Allocable Amount.

(ii) If any Borrower makes a payment under this Section 5.7 of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately before such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the

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maximum amount that could then be recovered from such Borrower under this Section 5.7 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any other applicable Debtor Relief Law.

(iii) Nothing contained in this Section 5.7 shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then remade or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses, and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

(d) Joint Enterprise. Each Borrower has requested that Administrative Agent, LC Issuer and the Lenders make this credit facility available to Borrowers on a combined basis, to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and Borrowers believe that consolidation of their credit facilities will enhance the borrowing power of each Borrower and ease the administration of their relationship with credit providers (including Administrative Agent, LC Issuer and the Lenders), all to the mutual advantage of Borrowers. Borrowers acknowledge and agree that Administrative Agent, LC Issuer and Lenders' willingness to extend credit to Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Borrowers and at Borrowers' request.

(e) Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity, to payment, subrogation, reimbursement, exoneration, contribution, indemnification, or setoff, that it may have at any time against any other Loan Party, howsoever arising, to Payment in Full of all Obligations.

(f) Keepwell. Borrowers hereby agree to cause each Qualified ECP Guarantor to jointly and severally absolutely, unconditionally and irrevocably undertake to provide such funds or other support as may be needed from time to time by each Specified Loan Party to honor all of such Specified Loan Party's obligations under its guaranty and the Security Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under its undertaking pursuant to this Section 5.7 for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under its guaranty, voidable under the Bankruptcy Code and other applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 5.7 shall remain in full force and effect until Payment in Full of the Obligations. Each Borrower, for itself and on behalf of each Qualified ECP Guarantor, intends that this Section 5.7 (and any corresponding provision of any applicable guaranty) constitute, and this Section 5.7 (and any corresponding provision of any applicable guaranty) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Loan Party for all purposes of section 1a (18)(A)(v)(II) of the Commodity Exchange Act.

**SECTION 6.
[RESERVED]**

**SECTION 7.
CONDITIONS PRECEDENT**

7.1. Conditions Precedent to Initial Loans. In addition to the conditions set forth in Section 7.2 and Administrative Agent's receipt of the documentation required by Section 9.20(c), the obligations of Administrative Agent, LC Issuer and each Lender to fund any requested Loan, issue any Letter of Credit, or otherwise make any extension of credit or financial accommodation to or for the benefit or

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account of any Borrower hereunder is subject to the satisfaction (as determined by Administrative Agent) or waiver in accordance with the terms of this Agreement (of each of the following conditions precedent (the date of such satisfaction or waiver, the "Closing Date")):

(a) Loan Documents. Notes shall have been executed by Borrowers and delivered to each Lender that, before the Closing Date, has requested the issuance of a Note. This Agreement and each other Loan Document shall have been duly executed and delivered to Administrative Agent by each of the signatories thereto.

(b) Evidence of Filings; Lien Searches. Administrative Agent shall have received acknowledgments of all filings or recordations (other than those filings with respect to As-Extracted Collateral that may be recorded on a post-closing basis in accordance with Section 9.20) necessary to perfect its Liens in the Collateral, and UCC, Lien, and Intellectual Property searches and all other searches and other evidence satisfactory to Administrative Agent that

such Liens are the only Liens upon the Collateral (other than Permitted Liens), other than those searches that may be conducted on a post-closing basis in accordance with Section 9.20.

(c) Term Loan Documents; Receivables Purchase Documents; Intercreditor Agreement. Administrative Agent shall have received executed copies of (i) the Term Loan Agreement and the other Term Loan Documents, (ii) the Receivables Purchase Agreement and the other Receivables Purchase Documents (including any amendment to any Receivables Purchase Document entered into in connection with the closing of this Agreement in form and substance satisfactory to the Administrative Agent), and (iii) the Intercreditor Agreement.

(d) Reserved.

(e) Closing Certificate. Administrative Agent shall have received a certificate, in form and substance satisfactory to it, from a knowledgeable Senior Officer of the Parent (on behalf of each Borrower) certifying that, after giving effect to the initial Loans and transactions hereunder, (i) the Borrowers and their Subsidiaries on a consolidated basis are Solvent; (ii) no Default or Event of Default exists; and (iii) the representations and warranties set forth in Section 8 are true and correct.

(f) Officer's Certificates. Administrative Agent shall have received a certificate of the corporate (company) secretary or another knowledgeable and duly authorized officer of each Loan Party, certifying (i) that attached copies of such Loan Party's Organizational Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted by the appropriate governing body, have not been amended, modified, or revoked, and constitute all resolutions adopted with respect to the credit facility contemplated in this Agreement and the other Loan Documents; and (iii) to the title, name, and signature of each Person authorized to sign the Loan Documents on behalf of such Loan Party. Administrative Agent may conclusively rely on each such certificate until it is otherwise notified by the applicable Loan Party in writing.

(g) Organizational Documents; Good Standing Certificates. Administrative Agent shall have received copies of the Organizational Documents of each Loan Party, certified currently (if requested by Administrative Agent) by the Secretary of State or other appropriate official of such Loan Party's jurisdiction of organization. Administrative Agent shall have received good standing certificates for each Loan Party issued by the Secretary of State or other appropriate official of such Loan Party's jurisdiction of organization and, if reasonably requested by Administrative Agent, each jurisdiction where such Loan Party's material business activities or ownership of material property necessitates qualification.

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(h) Opinions of Counsel. Administrative Agent shall have received written opinions of counsel to the Loan Parties, as well as any local counsel to Loan Parties, in form and substance satisfactory to Administrative Agent.

(i) Insurance. Administrative Agent shall have received copies of policies and certificates of insurance for the insurance policies carried by Loan Parties, all of which shall be in compliance with Section 9.3 and any other provisions of the Loan Documents relevant thereto, together with such lender's loss payable and additional insured endorsements showing Administrative Agent as agent for the Secured Parties, each of which shall be in form and substance satisfactory to Administrative Agent.

(j) Due Diligence. Administrative Agent shall have completed its business, financial and legal due diligence of Loan Parties, including the receipt of Qualified Appraisals on Borrowers' Inventory and financial statements for the Fiscal Year of Loan Parties ending on or about December 31, 2016, and the results, form, and substance of such due diligence shall be satisfactory to Administrative Agent.

(k) Material Adverse Change. No event or circumstance that, taken alone or in conjunction with other events or circumstances has resulted in, or could be expected to result in, a Material Adverse Change shall have occurred since the date of the audited financial statements of the Parent and its Subsidiaries described in the Historical Statements.

(l) Debt and Capital Structure. Administrative Agent shall be satisfied with the Loan Parties' debt and capital structure.

(m) Payment of Fees. Borrowers shall have paid all fees and expenses to be paid to Administrative Agent and Lenders on the Closing Date (including pursuant to the Fee Letter) or Administrative Agent shall be satisfied with all arrangements made to pay such fees and expenses on the Closing Date with the proceeds of Loans to be made on the Closing Date.

(n) Reserved.

(o) Governmental and Third Party Consents. The Borrowers shall have received all governmental, shareholder, and third party consents and approvals that are required in connection with the transactions contemplated hereby and, to the extent applicable, all waiting periods relating thereto shall have expired and no investigation or inquiry by any Official Body regarding this Agreement or any other Loan Document or any transaction contemplated herein shall be ongoing.

(p) Reliance Letter. Administrative Agent shall have received a reliance letter, in form and substance satisfactory to Administrative Agent, from Hilco Valuation Services with respect to the inventory appraisal and related report dated January 6, 2017.

(q) No Litigation. There shall be no litigation or other proceeding in which any Loan Party or any Subsidiary is a party defendant which would constitute an Event of Default under Section 12.1(f) or that could result in a Material Adverse Change.

(r) Perfection Certificate. Administrative Agent shall have received a complete and executed Perfection Certificate.

(s) PATRIOT Act. The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

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7.2. **Conditions Precedent to All Extensions of Credit.** The obligations of Administrative Agent, LC Issuer and the Lenders to fund any Loans, issue any Letter of Credit or grant any other financial accommodation to or for the benefit of Borrowers (including on the Closing Date), shall be subject to the satisfaction or waiver (in accordance with the terms hereof) of the following conditions precedent:

- (a) **No Default.** No Default or Event of Default shall exist at the time of, or result from, such funding, issuance, or grant;
- (b) **Accuracy of Representations and Warranties.** The representations and warranties of each Loan Party in this Agreement and the other Loan Documents shall be true and correct in all material respects on the date of, and after giving effect to, such funding, issuance, or grant (provided that any representation or warranty that is qualified as to “materiality,” “Material Adverse Change” or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such date;
- (c) **No Material Adverse Change.** No event shall have occurred or circumstance shall have existed since the Closing Date which has had or could be expected to result in a Material Adverse Change;
- (d) **LC Conditions.** With respect to issuance of any Letter of Credit, each of the LC Conditions shall be satisfied or waived in accordance with the terms of this Agreement; and
- (e) **Notice of Borrowing.** With respect to any Loan, Administrative Agent shall have received a Notice of Borrowing.

Each request (or deemed request) by Borrowers for funding of a Loan, issuance of a Letter of Credit, or grant of an accommodation shall constitute a representation by Loan Parties that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance, or grant.

SECTION 8. REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent, LC Issuer and the Lenders to, as applicable, enter into this Agreement, provide their respective Commitments, make Loans, issue Letters of Credit, and make any other extension of credit or financial accommodation provided for herein or in the other Loan Documents, each Loan Party makes the following representations and warranties, all of which shall survive the execution and delivery of this Agreement and the other Loan Documents and each of which shall be deemed made as of the Closing Date and as of the date of each request for the making of a Loan, the issuance of a Letter of Credit, or the making of any other extension of credit or financial accommodation hereunder or under the other Loan Documents:

8.1. **Organization and Qualification.** Each Loan Party and each Subsidiary of each Loan Party is a corporation, partnership or limited liability company, duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization. Each Loan Party and each Subsidiary of each Loan Party has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, except where the failure to have such power would not reasonably be expected to result in any Material Adverse Change. Each Loan Party and each Subsidiary of each Loan Party is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing

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or qualification necessary and where the failure to so qualify would reasonably be expected to result in a Material Adverse Change.

8.2. **Shares of Borrower; Subsidiaries; and Subsidiary Shares.** As of the Closing Date, **Schedule 8.2** states the name of each of the Parent’s Subsidiaries, its jurisdiction of incorporation, its authorized capital stock, the issued and outstanding shares (referred to herein as the “**Subsidiary Shares**”) and the owners thereof if it is a corporation, its outstanding partnership interests (the “**Partnership Interests**”) and the owners thereof if it is a partnership and its outstanding limited liability company interests, the voting rights associated therewith (the “**LLC Interests**”) and the owners thereof if it is a limited liability company. As of the Closing Date, **Schedule 8.2** also sets forth for each Subsidiary of the Parent and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary. As of the Closing Date, **Schedule 8.2** also sets forth the jurisdiction of incorporation of the Borrowers, their authorized capital stock or other equity interests (the “**Borrower Shares**”) and the voting rights associated therewith. The Parent and each Subsidiary of the Parent has good title to all of the Subsidiary Shares, Partnership Interests and LLC Interests it purports to own, free and clear in each case of any Lien, other than Permitted Liens. Except as set forth on **Schedule 8.2**, all Borrower Shares, Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, and all Borrower Shares, all Partnership Interests, all LLC Interests and all Subsidiary Shares are fully paid and nonassessable. All capital contributions and other consideration required to be made or paid in connection with the issuance of the Partnership Interests and LLC Interests have been made or paid, as the case may be, except where the failure to do so would not result in a Material Adverse Change. As of the Closing Date, there are no options, warrants or other rights outstanding to purchase any such Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on **Schedule 8.2**.

8.3. **Power and Authority.** Each Loan Party has full power to enter into, execute, deliver and carry out this Agreement and the other Loan Documents to which it is a party, to incur the Debt contemplated by the Loan Documents and to perform its Obligations under the Loan Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part.

8.4. **Validity and Binding Effect.** This Agreement has been duly and validly executed and delivered by each Borrower, and each other Loan Document which any Loan Party is required to execute and deliver on or after the date hereof will have been duly executed and delivered by such Loan Party on the required date of delivery of such Loan Document. This Agreement and each other Loan Document constitutes, or will constitute, legal, valid and binding obligations of each Loan Party which is or will be a party thereto on and after its date of delivery thereof, enforceable against such Loan Party in accordance with its terms, except to the extent that enforceability of any of such Loan Document may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors’ rights generally or limiting the right of specific performance.

8.5. **No Conflict.** Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party, nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will (a) conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the certificate of incorporation, bylaws, certificate of limited partnership,

partnership agreement, certificate of formation, limited liability company agreement or other Organizational Documents of any Loan Party or any Subsidiary of any Loan Party or (ii) except as would not reasonably be expected to result in a Material Adverse Change, any Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any Subsidiary of any Loan Party is a party or by which any Loan Party or any Subsidiary of any Loan Party is bound or subject to, or (b) result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Loan

Party or any Subsidiary of any Loan Party (other than the Liens granted under the Loan Documents and Permitted Liens securing the Term Loan Obligations).

8.6. **Litigation.** Except as set forth on Schedule 8.6, there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Official Body which individually or in the aggregate would reasonably be expected to result in a Material Adverse Change. None of the Loan Parties nor any Subsidiary of any Loan Party is in violation of any order, writ, injunction or any decree of any Official Body which would reasonably be expected to result in a Material Adverse Change.

8.7. **Financial Statements.**

(a) **Historical Statements.** The Parent has delivered to the Lenders or their affiliates copies of its audited consolidated year-end financial statements for and as of the end of the Fiscal Year ended December 31, 2016 (the "Historical Statements"). The Historical Statements were compiled from the books and records maintained by the Parent's management, are correct and complete in all material respects and fairly represent the consolidated financial condition of the Parent and its Subsidiaries as of their dates and the results of operations for the fiscal periods then ended and have been prepared in accordance with GAAP consistently applied.

(b) Since December 31, 2016, there has been no Material Adverse Change.

8.8. **Margin Stock.** None of the Loan Parties nor any Subsidiary of any Loan Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U). No part of the proceeds of any Loan, Letter of Credit or other credit extension made to such Loan Party will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock (within the meaning of Regulation U).

8.9. **Full Disclosure.** Neither this Agreement nor any other Loan Document, nor any certificate, statement, agreement or other documents furnished in writing by or on behalf of a Loan Party or any Subsidiary thereof to the Agent or any Lender in connection herewith (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains with respect to the Parent and its Subsidiaries any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not materially misleading; provided that to the extent any such certificate, statement, agreement or other document was based upon or constitutes a forecast or projection, such Loan Party represents only that the relevant Loan Party acted in good faith and utilized assumptions believed by it to be reasonable at the time made available to the Lenders (it being understood that any such forecasts or projections are subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, that no assurance can be given that any such forecasts or projections will be realized and that actual results may differ from any such forecasts or projections and such differences may be material). All information set forth in the Perfection Certificate delivered on the Closing Date is true and correct in all material respects as of the Closing Date, and all information set forth in any Perfection Certificate delivered to Administrative Agent after the Closing Date shall be true and correct in all material respects as of the date that such Perfection Certificate is delivered.

8.10. **Taxes.** Except where failure to do so would not reasonably be expected to result in a Material Adverse Change, (a) all federal and state, local and other tax returns required to have been filed by or with respect to any Loan Party and any Subsidiary of any such Loan Party have been filed, and (b)

payment or adequate provision has been made for the payment of all Taxes that have or may become due pursuant to said tax returns or to assessments received, except to the extent that such Taxes are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. As of the Closing Date, other than as set forth on Schedule 8.10, there are no agreements or waivers extending the statutory period of limitations applicable to any federal income tax return of any Loan Party or Subsidiary of any Loan Party.

8.11. **Consents and Approval.** No consent, approval, exemption, order or authorization of, or registration or filing with, any Official Body or any other Person is necessary under any Law in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents by any Loan Party, except for any consents (i) that have been obtained prior to the Closing Date and are in full force and effect or (ii) of which the failure to obtain would not reasonably be expected to result in a Material Adverse Change.

8.12. **No Event of Default; Compliance with Instruments and Material Contracts.** No event has occurred and is continuing and no condition exists or will exist after giving effect to the borrowings of Loans and issuance of Letters of Credit on the Closing Date under or pursuant to the Loan Documents which constitutes an Event of Default or Default. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of (a) any term of its certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other Organizational Documents or (b) any agreement or instrument to which it is a party or by which it or any of its properties may be subject or bound where such violation described in this clause (b) could reasonably be expected to result in a Material Adverse Change. All Material Contracts to which any Loan Party or Subsidiary of any Loan Party is bound are valid, binding and enforceable upon such Loan Party or Subsidiary and to the best knowledge of the Parent upon each of the other parties thereto in accordance with their respective terms except in each case to the extent the same could not reasonably be expected to result in a Material Adverse Change. None of the Loan Parties or their Subsidiaries is bound by any Contractual Obligation, or subject to any restriction in any Organizational Document, or any requirement of Law which could reasonably be expected to result in a Material Adverse Change.

8.13. **Insurance.** As of the Closing Date, **Schedule 8.13** lists all material insurance policies to which any Loan Party or Subsidiary of any Loan Party is a party, all of which are valid and in full force and effect as of the Closing Date. Such policies provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each Loan Party and each Subsidiary of each Loan Party in accordance with prudent business practice in the industry of the Loan Parties and their Subsidiaries.

8.14. **Compliance with Laws.** The Loan Parties and their Subsidiaries are in compliance (a) with Anti-Terrorism Laws and Anti-Corruption Laws in all material respects, and (b) in all material respects with all other applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in **Section 8.18**, but including all Mining Laws (to the extent not covered by Environmental Health and Safety Laws which are specifically addressed in **Section 8.18**)) in all jurisdictions in which any Loan Party or Subsidiary of any Loan Party is doing business except (in the case of this clause (b)) where the failure to do so would not reasonably be expected to result in a Material Adverse Change.

8.15. **Investment Companies.** None of the Loan Parties is an “investment company” registered or required to be registered under the Investment Company Act of 1940.

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8.16. **Plans and Benefit Arrangements.** Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change:

(a) The Parent and each other member of the ERISA Group are in compliance with any applicable provisions of ERISA with respect to all Benefit Arrangements, Plans, and Multiemployer Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the knowledge of any Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any liability of the Parent or any other member of the ERISA Group. No Plan is in “at risk” status within the meaning of Section 303(i) of ERISA or Section 430(i) of the Code. The Parent and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan and Multiemployer Plan, the Parent and each other member of the ERISA Group (i) have fulfilled their obligations under the minimum funding standards of ERISA and the Code, (ii) have not applied for a waiver of the minimum funding standards under Section 302(c) of ERISA or Section 412(c) of the Code; (iii) have not incurred any liability to the PBGC, and (iv) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA or the Code. All Plans, Benefit Arrangements and, to the knowledge of any Borrower, Multiemployer Plans have been administered in accordance with their terms and applicable Law.

(b) Neither the Parent nor any other member of the ERISA Group has instituted proceedings to terminate any Plan.

(c) No event requiring notice to the PBGC under Section 303(k)(4) of ERISA or Section 430(k) of the Code has occurred or is reasonably expected to occur with respect to any Plan, and no amendment with respect to which security is required under Section 436(f) of the Code has been made or is reasonably expected to be made to any Plan.

(d) To the extent that any Benefit Arrangement is insured, the Parent and all other members of the ERISA Group have paid when due all premiums required to be paid. To the extent that any Benefit Arrangement is funded other than with insurance, the Parent and all other members of the ERISA Group have made when due all contributions required to be paid.

(e) Neither the Parent nor any other member of the ERISA Group has withdrawn from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA. To the knowledge of the Parent, no Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA.

(f) Neither the Parent nor any member of the ERISA Group (i) currently has, or with the last six years has had, any obligation to contribute to a Multiemployer Plan, (ii) has incurred any Withdrawal Liability that remains outstanding, or (iii) has incurred any liability in connection with, a transaction described in Section 4212(c) of ERISA, except to the extent such liability has been fully satisfied or discharged.

8.17. **Employment Matters.**

(a) Each of the Loan Parties and each of their Subsidiaries is in compliance with the Labor Contracts and all applicable federal, state and local labor and employment Laws including those related to wage and hour, equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, except where the failure to comply could not reasonably be expected to result in a Material Adverse Change. There are no outstanding

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grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Loan Parties or any of their Subsidiaries which in any case could reasonably be expected to result in a Material Adverse Change.

(b) Except as could not reasonably be expected to result in a Material Adverse Change: (i) each of the Loan Parties, each of their respective Subsidiaries and each of the “related persons” (as defined in the Coal Act) of each Loan Party and each Subsidiary of each Loan Party are in compliance with the Coal Act; (ii) none of the Loan Parties, any Subsidiary of any Loan Party nor any related person of any Loan Party or its Subsidiaries has any liability under the Coal Act except with respect to premiums or other payments required thereunder which have been paid when due; (iii) the Loan Parties and their respective Subsidiaries are in compliance with the Black Lung Act; and (iv) none of the Loan Parties nor any of their Subsidiaries has any liability under the Black Lung Act except with respect to premiums, contributions or other payments required thereunder which have been paid when due.

8.18. **Environmental Health and Safety Matters.** Except as set forth on **Schedule 8.18**:

(a) the Loan Parties and their Subsidiaries and the Real Estate are and have been in substantial compliance with all Environmental Health and Safety Laws and Environmental Health and Safety Orders (if any such orders are in effect), except where the failure to so comply could not reasonably be

expected to result in a Material Adverse Change;

(b) (i) the Loan Parties and their Subsidiaries hold and are operating in compliance with applicable Environmental Health and Safety Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change, (ii) none of the Loan Parties has received any written notice from an Official Body that such Official Body has or intends to suspend, revoke or adversely amend or alter, whether in whole or in part, any such Environmental Health and Safety Permit, and (iii) there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Official Body challenging an application for, or the modification, amendment or issuance of, any Environmental Health and Safety Permit, except, in the case of either (i), (ii) or (iii), which could not reasonably be expected to result in a Material Adverse Change;

(c) there are no pending or, to the knowledge of any Loan Party, threatened Environmental Health and Safety Claims against any Loan Party or any Subsidiary of any Loan Party, in each case which could reasonably be expected to result in a Material Adverse Change;

(d) neither the Loan Parties nor their Subsidiaries, nor the Real Estate, are subject to any Environmental Health and Safety Orders, except where the existence of any such Environmental Health and Safety Orders could not reasonably be expected to result in a Material Adverse Change; and

(e) no Lien or encumbrance on the ownership, occupancy, use or transferability of real property, whether owned or leased (other than Permitted Liens), authorized by Environmental Health and Safety Laws exists against any Real Estate, whether owned or leased, of any Loan Party or any Subsidiary which could reasonably be expected to result in a Material Adverse Change, and none of the Loan Parties has any reason to believe that such a Lien or encumbrance (other than Permitted Liens) may be imposed, attached or be filed or recorded against any Real Estate, whether owned or leased, of any Loan Party or any Subsidiary, which Lien or encumbrance could reasonably be expected to result in a Material Adverse Change.

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8.19. **Title to Real Estate.** Each Loan Party and each Subsidiary of each Loan Party has (a) Mining Title to all Active Operating Properties that are necessary or appropriate for the Parent and its Subsidiaries to conduct their respective operations in all material respects, (b) and except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, good and valid title to all of their other respective assets, in the case of both the foregoing items (a) and (b) of this sentence, free and clear of all Liens and encumbrances except Permitted Liens, and subject to the terms and conditions of the applicable leases; provided, however, a Loan Party or a Subsidiary of a Loan Party shall not be in breach of the foregoing in the event that (i) it fails to own a valid leasehold interest which, either considered alone or together with all other such valid leaseholds which it fails to own, is not material to the continued operations of such Loan Party or Subsidiary of such Loan Party or (ii) such Loan Party's or such Subsidiary's interest in a leasehold is less than fully marketable because the consent of the lessor to future assignments has not been obtained.

8.20. **Patents, Trademarks, Copyrights, Licenses, Etc.** Each Loan Party and each Subsidiary of each Loan Party owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights, without conflict with the rights of others, necessary for the Loan Parties to own and operate their properties and to carry on their businesses as presently conducted and planned to be conducted by such Loan Parties and Subsidiaries, except where the failure to so own or possess with or without such conflict would not reasonably be expected to result in a Material Adverse Change.

8.21. **Security Interests.** The Security Documents are effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. Upon (a) the filing of financing statements relating to said security interests in each office and in each jurisdiction where required in order to perfect the security interests described above, (b) taking possession of possessory Collateral by Administrative Agent (or by the Term Agent as bailee for Administrative Agent pursuant to the Intercreditor Agreement, if applicable) with respect to possessory Collateral and (c) the entering of Control Agreements, the Liens created by the Security Agreement and the Pledge Agreement in favor of Administrative Agent for the benefit of the Secured Parties will constitute fully perfected first priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute ABL Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral, in each case, to the extent perfection can be obtained by filing such financing statements, by entering into such Control Agreements or by taking possession of such possessory Collateral.

8.22. **Regulated Entity.** None of the Parent or any of its Subsidiaries, nor, to the knowledge of any Borrower, any Senior Officer of any Borrower, or any director, officer, employee, or agent of the Parent or any of the Parent's Subsidiaries is a Person that is, or is owned or controlled by, Persons that are, (i) the subject of any Sanctions, or (ii) located, organized or resident in any Sanctioned Country. The Parent and its Subsidiaries and, to the knowledge of any Borrower, their respective directors, officers, and employees, and their respective agents that will act in any capacity in connection with or benefit from the credit facility established hereby, are in compliance in all material respects with (x) all applicable Sanctions and (y) all Anti-Corruption Laws.

8.23. **Status of Pledged Collateral.** All the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral to be pledged pursuant to the Pledge Agreement are or will be upon issuance validly issued and nonassessable and owned beneficially and of record by the pledgor thereof free and clear of any Lien or restriction on transfer, except for (a) Permitted Liens securing the Term Loan Obligations or other permitted secured Debt that is subject to an intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and (b) other Permitted Liens arising by

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operation of law, and as otherwise provided by the Pledge Agreement and except as the right of the Secured Parties to dispose of the Subsidiary Shares, Partnership Interests or LLC Interests may be limited by the Securities Act of 1933, as amended, and the regulations promulgated by the Securities and Exchange Commission thereunder and by applicable state securities laws. There are no shareholder, partnership, limited liability company or other agreements or understandings with respect to the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral, except for the partnership agreements and limited liability company agreements described on **Schedule 8.23**. The Loan Parties have delivered true and complete copies of such partnership agreements and limited liability company agreements to the Administrative Agent.

8.24. **Surety Bonds.** All surety, reclamation and similar bonds required to be maintained by the Parent or any of its Subsidiaries under any Environmental Health and Safety Laws or Contractual Obligation are in full force and effect except for any failure which individually or when taken together

with all failures under all such bonds would not reasonably be expected to result in a Material Adverse Change, and were not and will not be terminated, suspended, revoked or otherwise adversely affected by virtue of the consummation of the financing (including the making of all Loans and issuance of all Letters of Credit) contemplated by this Agreement, provided that certain of such bonds may be terminated, suspended or revoked so long as, taken together, such events could not reasonably be expected to result in a Material Adverse Change. All required guaranties of, and letters of credit with respect to, such surety, reclamation and similar bonds are in full force and effect except where such failure to be in full force and effect could not reasonably be expected to result in a Material Adverse Change.

8.25. **Coal Supply Agreements.** As of the Closing Date, all Coal Supply Agreements to which the Parent or any of its Subsidiaries is subject or by which it is bound are in full force and effect, except for any failure which individually or when taken together with all failures under all Coal Supply Agreements would not reasonably be expected to result in a Material Adverse Change.

8.26. **Solvency; Fraudulent Transfer.** As of the Closing Date, after giving effect to the transactions contemplated hereby on such date, Borrowers and their Subsidiaries, on a consolidated basis, are Solvent. No transfer of property is being made and no obligation is being incurred by any Loan Party or any of its Subsidiaries in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party or any of its Subsidiaries.

8.27. **Reserved.**

8.28. **Reserved.**

8.29. **Updates to Schedules.** Should any of the information or disclosures provided on any of the Schedules attached hereto become outdated or incorrect in any material respect, Borrowers (a) may at any time, or (b) shall, in connection with the delivery of a Joinder Agreement with respect to any Loan Party, provide the Administrative Agent, in writing, with such revisions or updates to such Schedule as may be necessary or appropriate to update or correct the same; provided, however, that no Schedule shall be deemed to have been amended, modified or superseded by any such correction, revisions or update, nor shall any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedule be deemed to have been cured thereby, unless and until the Administrative Agent shall have accepted in writing such revisions or updates to such Schedules (other than revisions or updates to **Schedules 8.2** and **8.23**, which result solely from actions of the Loan Parties permitted hereunder, which revised schedules shall be deemed to be accepted by the Administrative Agent upon delivery of such Schedules by Borrowers thereto).

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SECTION 9. AFFIRMATIVE COVENANTS AND CONTINUING AGREEMENTS

Until Payment in Full of the Obligations and termination of the Commitments:

9.1. **Preservation of Existence, Etc.** The Parent shall maintain its legal existence as a corporation. Each other Borrower shall maintain its legal existence as a corporation, limited partnership or limited liability company, as the case may be, except as otherwise expressly permitted in **Section 10.3** or **Section 10.4**. The Borrowers shall cause each of their respective Subsidiaries (other than Immaterial Subsidiaries) to maintain its legal existence as a corporation, limited partnership or limited liability company, as the case may be, except as otherwise expressly permitted in **Section 10.3** or **Section 10.4**. Each Borrower shall maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify or maintain such qualification could not reasonably be expected to result in a Material Adverse Change. Each Borrower shall cause each of its Subsidiaries (other than Immaterial Subsidiaries) to maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify would not reasonably be expected to result in a Material Adverse Change.

9.2. **Payment of Liabilities, Including Taxes, Etc.** Except where failure to do so could not reasonably be expected to result in a Material Adverse Change, the Borrowers shall, and shall cause each of their respective Subsidiaries to, duly pay and discharge all Taxes imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid after becoming due, might become a lien or charge upon any properties of the Parent or any Subsidiary of the Parent other than any such Tax or claim which is being contested in good faith and by proper proceedings and with respect to which there are proper reserves as required by GAAP.

9.3. **Maintenance of Insurance.** Each Loan Party shall, and shall cause each of its Subsidiaries to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers, including self-insurance to the extent customary. The Loan Parties shall deliver to the Agent (x) on the Closing Date and annually thereafter an original certificate of insurance of the Loan Parties' independent insurance broker describing and certifying as to the existence of the insurance on the Collateral required to be maintained by this Agreement and the other Loan Documents, together with a copy of the endorsement described in the next sentence attached to such certificate and, (y) at the reasonable request of the Agent, from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties. Such policies of insurance shall contain special endorsements, in form and substance reasonably acceptable to the Agent, which shall (i) specify the Agent as an additional insured, mortgagee and lender loss payee as its interests may appear, with the understanding that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of the applicable Loan Parties and not that of the insured, (ii) provide that the interest of the Agent, the Lenders and the LC Issuer shall be insured regardless of any breach or violation by the applicable Loan Parties of any warranties, declarations or conditions contained in such policies or any action or inaction of the applicable Loan Parties or others insured under such policies, (iii) provide to the extent commercially available that no cancellation of such policies for any reason (including non-payment of premium) shall be effective until at least ten (10) days after receipt by the Agent of written

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notice of such cancellation, (iv) be primary without right of contribution of any other insurance carried by or on behalf of any additional insureds with respect to their respective interests in the Collateral, and (v) provide that inasmuch as the policy covers more than one insured, all terms, conditions, insuring

agreements and endorsements (except limits of liability) shall operate as if there were a separate policy covering each insured. The applicable Loan Parties shall notify the Agent promptly of any casualty or condemnation event causing a loss or decline in value of the Collateral in excess of \$50,000,000 (or, in the case of ABL Priority Collateral, in excess of \$5,000,000) and the estimated (or actual, if available) amount of such loss or decline. Upon the occurrence of an Event of Default under Sections 12.1(a) (unless that has been waived), 12.1(k) or 12.1(l), monies constituting insurance proceeds or condemnation proceeds (pursuant to the Mortgages, if any) shall be paid to the Agent and applied in accordance with Section 5.5 and the Loan Documents.

9.4. **Maintenance of Properties and Leases.** Except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, the Borrowers shall, and shall cause each of their respective Subsidiaries to, maintain and preserve all of its respective material properties, necessary or useful in the proper conduct of the business of such Borrower or such Subsidiary of such Borrower, in good working order and condition, ordinary wear and tear excepted (except as otherwise expressly permitted by this Agreement). Without limiting the generality of the foregoing, the Borrowers shall, and shall cause each of their respective Subsidiaries to, maintain in full force and effect all material patents, trademarks, service marks, trade names, copyrights, licenses and franchises necessary for the ownership and operation of its properties and business if the failure to so maintain the same would constitute a Material Adverse Change.

9.5. **Inspections; Appraisals.** Borrowers shall, and shall cause each Loan Party to:

(a) **Inspections.** Permit Administrative Agent and its agents from time to time, subject to reasonable notice and during normal business hours (except when a Default or Event of Default exists), to visit, inspect, and appraise the properties of any Loan Party or Subsidiary, inspect, audit, and make extracts from any Loan Party's or Subsidiary's books and records and discuss with such Person's officers, employees, agents, advisors, and independent accountants such Person's business, financial condition, assets, prospects, and results of operations. Lenders may participate in any such visit or inspection at their own expense. Neither Administrative Agent nor any Lender shall have any duty to any Loan Party or Subsidiary to make any inspection, appraisal or report nor to share any results of any inspection, appraisal, or report with any Loan Party or Subsidiary. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Administrative Agent and Lenders for their own purposes, and no Loan Party or Subsidiary shall be entitled to receive them, or rely upon them.

(b) **Reimbursements.** Reimburse Administrative Agent in accordance with the requirements of Section 16.3 and Section 16.4, as applicable, for all charges, costs, and expenses of Administrative Agent and its agents in connection with (i) field examinations of any Loan Party's or Subsidiary's books and records or any other financial or Collateral matters as Administrative Agent deems appropriate, up to one time per Fiscal Year (or, if Liquidity is less than \$275,000,000 at any time during a Fiscal Year, up to two times during such Fiscal Year) and (ii) appraisals of Inventory, up to one time per Fiscal Year (or, if Liquidity is less than \$275,000,000 at any time during a Fiscal Year, up to two times during such Fiscal Year); provided, however, that if an examination or appraisal is initiated during the existence of a Default or Event of Default, all charges, costs, and expenses therefor shall be reimbursed by Loan Parties without regard to such limits. Subject to and without limiting the foregoing, if any field examination is conducted using Administrative Agent's internal field examination group, Borrowers specifically agree to pay the standard charges of Administrative Agent's internal field examination group (including Administrative Agent's then standard per-person charges for each day that an employee or agent of Administrative Agent or its Affiliates is engaged in any field examination

activities). This Section shall not be construed to limit Administrative Agent's right to conduct field examinations or obtain appraisals at any time and from time to time in its discretion, or use third parties for such purposes.

9.6. **Keeping of Records and Books of Account.** Each Borrower shall, and shall cause each Subsidiary of a Borrower to, maintain and keep proper books of record and account which enable each Borrower and its Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by applicable Laws of any Official Body having jurisdiction over any Borrower or any Subsidiary of a Borrower, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

9.7. **Compliance with Laws.** The Borrowers shall, and shall cause each of their Subsidiaries to, comply with (a) all Anti-Terrorism Laws and Anti-Corruption Laws in all material respects, and (b) all other applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in Section 9.8) in all respects, provided that it shall not be deemed to be a violation of this Section 9.7(b) if any failure to comply with any Law would not result in fines, penalties, costs, other similar liabilities or injunctive relief which in the aggregate could not reasonably be expected to result in a Material Adverse Change.

9.8. **Environmental Health and Safety Matters.** The Borrowers shall, and shall cause each of their respective Subsidiaries to:

- (i) comply with applicable Environmental Health and Safety Laws and Environmental Health and Safety Orders;
- (ii) obtain, maintain in full force and effect and comply with the terms and conditions of all Environmental Health and Safety Permits;
- (iii) take reasonable precautions to prevent Contamination on the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party;
- (iv) take reasonable precautions against the imposition, attachment, filing or recording of any Lien (other than Permitted Liens) or other encumbrance authorized by Environmental Health and Safety Laws (other than Permitted Liens) to be imposed, attached or be filed or recorded against the Real Estate or any other real property owned or leased by any of them; and
- (v) perform or pay for performance of any Remedial Actions necessary to (A) comply with Environmental Health and Safety Laws or respond to any Environmental Health and Safety Claim and Environmental Health and Safety Order related to the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, or (B) to manage Contamination at, in, on, under, emanating to or from or otherwise affecting the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party; except, in the case of each of clauses (i)-(v) above, as could not reasonably be expected to result in a Material Adverse Change; provided, in each case, that a failure to take such actions described above shall not be a violation of this Section 9.8 if the applicable Loan Party or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental Health and Safety Laws.

9.9. **Further Assurances.** Each Borrower shall, and shall cause each Loan Party to, at its expense, promptly, (a) execute and deliver to Administrative Agent, LC Issuer and the Lenders, or cause to be executed and delivered to Administrative Agent, LC Issuer and the Lenders, all documents, agreements, and instruments which are, in Administrative Agent's reasonable determination, necessary to

(i) correct any omissions in the Loan Documents or any agreement relating to Bank Products; (ii) more fully state the obligations set out in this Agreement or in any other Loan Document or agreement relating to Bank Products; (b) obtain any consents, as may be necessary or reasonably appropriate in connection therewith as may be reasonably requested by Administrative Agent; and (c) deliver such instruments, assignments, or other documents or agreements, and take such actions, as Administrative Agent reasonably deems appropriate under applicable Law to evidence or perfect Administrative Agent's Lien in and to any Collateral; provided, however, that no Loan Party shall be required to deliver Security Documents as to any leasehold interest held by such Loan Party in Real Estate the perfection of a Lien in which requires a consent from a third party such as an Official Body, landlord, fee owner or a similar party (in each case other than an Affiliate of such Loan Party) and such consent has not been received despite the fact that such Loan Party has used commercially reasonable efforts to obtain the same.

9.10. **Equity Interests in Bonding Subsidiaries.** In the event that the Parent or any Subsidiary of the Parent is required to pledge the equity interests of any Bonding Subsidiary in favor of any provider of surety bonds required by the lessor of the leasehold interest held by such Bonding Subsidiary as otherwise permitted by Section 10.14, then prior to the granting of such lien, the Borrowers shall use commercially reasonable good faith efforts to grant a third priority perfected lien in such equity interests to Administrative Agent for the benefit of the Secured Parties subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent and the Parent.

9.11. **Requirements for Permitted Joint Ventures.** With respect to any Permitted Joint Venture, neither the Parent nor any Subsidiary of the Parent shall be required to pledge the equity interests of such Permitted Joint Venture if and to the extent such equity interests shall constitute Excluded Property, provided that, in the case of a Person that becomes a Permitted Joint Venture after the Closing Date and whose equity interests shall constitute Excluded Property, upon the date that such Person becomes a Permitted Joint Venture, (a) the equity interests of such Permitted Joint Venture shall be held by a JV Holding Company and (b) the equity interests in such JV Holding Company shall constitute Collateral.

9.12. **Requirements for Significant Subsidiaries.**

(a) Within forty-five (45) days (or such longer period as may be extended by the Administrative Agent in its reasonable discretion) after any Significant Subsidiary is formed or acquired after the Closing Date or a Subsidiary becomes a Significant Subsidiary, the Borrowers shall: (i) cause each such Significant Subsidiary to execute a Joinder Agreement pursuant to which it shall join as a joint and several Borrower under this Agreement and the other Loan Documents to which Borrowers are parties, and if such Significant Subsidiary is to be a Guarantor, a Guaranty and a Joinder Agreement pursuant to which it shall join as a joint and several Guarantor under the other Loan Documents to which Guarantors are parties; (ii) execute and deliver to the Administrative Agent documents, modified as appropriate to relate to such Significant Subsidiary, in the forms described in Sections 7.1(e), 7.1(f), and 7.1(h) and deliver to the Administrative Agent such other documents and agreements as the Administrative Agent may reasonably request.

(b) Within forty-five (45) days (or such longer period as may be extended by the Administrative Agent in its reasonable discretion) after any Significant Subsidiary is formed or acquired after the Closing Date or a Subsidiary becomes a Significant Subsidiary, the Borrowers shall cause such new Significant Subsidiary to, unless the Administrative Agent otherwise agrees in its reasonable discretion, (i) execute and deliver to the Administrative Agent a Perfection Certificate relating to such Significant Subsidiary, (ii) execute and deliver to the Administrative Agent for the benefit of the Secured Parties a joinder agreement to the Security Agreement substantially in the form attached to the Security Agreement and a joinder to the Pledge Agreement substantially in the form attached to the Pledge

Agreement, pursuant to which such Significant Subsidiary shall grant a lien in and pledge its assets (including equity interests it owns in any other Significant Subsidiary), other than Excluded Property, to the Administrative Agent for the benefit of the Secured Parties on a first priority perfected basis (subject only to Permitted Liens) with respect to assets that constitute ABL Priority Collateral and second priority perfected basis (subject only to Permitted Liens) with respect to assets that constitute Term Loan Priority Collateral, (iii) execute and deliver to the Administrative Agent a joinder to the Intercreditor Agreement in the form attached to the Intercreditor Agreement, (iv) subject to the Intercreditor Agreement, cause all of the issued and outstanding capital stock, partnership interests, member interests or other equity interests of such Significant Subsidiary (except to the extent constituting Excluded Property) that are owned by another Loan Party to be pledged on a first priority perfected basis to the Administrative Agent for the benefit of the Secured Parties pursuant to the Pledge Agreement, (v) execute and deliver to the Administrative Agent for the benefit of the Secured Parties any other applicable Security Documents in form and substance satisfactory to the Administrative Agent in its reasonable discretion, including without limitation, patent, trademark and copyright security agreements necessary or reasonably requested by the Administrative Agent to grant first priority (subject to the Intercreditor Agreement) perfected liens and security interests (subject only to Permitted Liens) in favor of the Administrative Agent for the benefit of the Secured Parties in substantially all of the assets of such new Significant Subsidiary (other than Excluded Property), including proper financing statements under the UCC of the applicable jurisdictions of organization covering the Collateral described in the relevant Security Documents and appropriate equity certificates and powers evidencing the Collateral pledged pursuant to the Pledge Agreement, (vi) obtain UCC, lien, tax, mortgage, leasehold mortgage, and judgment searches (including searches of the applicable real estate indexes), with the results, form scope and substance of such searches to be reasonably satisfactory to the Administrative Agent and (vii) deliver opinions of legal counsel with respect to such new Significant Subsidiary, including opinions of local counsel in each applicable jurisdiction, as such opinions may be reasonably requested by the Administrative Agent and with such opinions to be reasonably satisfactory to the Administrative Agent in its reasonable discretion.

(c) Any document, agreement, or instrument executed or issued pursuant to this Section 9.12 shall be a "Loan Document" for purposes of this Agreement. Unless otherwise agreed to by Administrative Agent in its reasonable discretion, none of the property of any such Significant Subsidiary shall be included in the calculation of the Borrowing Base unless and until such Significant Subsidiary is a Borrower and Administrative Agent shall have (1) conducted a field examination and, if applicable, obtained a Qualified Appraisal of such property (with each such field examination and appraisal being at such Significant Subsidiaries' sole cost and expense and in excess of any other field examination or appraisal otherwise permitted by this Agreement or the other Loan Documents to be charged to the Loan Parties) and found the results thereof satisfactory, (2) received a revised Borrowing Base

Certificate (and all supporting documentation and reports) giving effect to such property and its inclusion in such calculation, and (3) established such Reserves in connection therewith as Administrative Agent shall require in its Permitted Discretion.

9.13. **Subordination of Intercompany Loans.** The Borrowers agree that any intercompany Debt, loans or advances owed by (i) any Loan Party to any other Loan Party and (ii) any Loan Party to any Non-Loan Party Subsidiary shall be subordinated to the payment of the Obligations.

9.14. **Reserved.**

9.15. **Use of Proceeds.** The Borrowers will use the proceeds of Loans and Letters of Credit solely (i) to pay fees and expenses incurred in connection with the loan transactions contemplated hereby, and (ii) for working capital needs and general corporate purposes of the Borrowers and their Subsidiaries. The Borrowers will not, directly or indirectly, use the proceeds of any Loan or Letter of Credit or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other

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Person, (a) to fund any activities or business of or with any Person that, at the time of such funding, is, or whose government is, the subject of Sanctions, or in any Sanctioned Country or (b) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit, whether as underwriter, advisor, investor, or otherwise) or that would violate Regulation U. No part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws.

9.16. **Borrowing Base Reporting; Financial and Other Information.** The Borrowers shall provide Administrative Agent with the following:

(a) **Borrowing Base Certificate.** A Borrowing Base Certificate fully completed and executed, delivered to Administrative Agent no later than (i) at any time other than during an Account Control Period, the 15th day of each Fiscal Month, prepared as of the end of the immediately preceding Fiscal Month, and (ii) during an Account Control Period, the third Business Day of each week, prepared as of the last Business Day of the immediately preceding week. Borrower Agent shall attach the following to each Borrowing Base Certificate, each of which shall be in form and substance reasonably satisfactory to Administrative Agent and certified by Borrower Agent's Senior Officer to be complete and accurate in all material respects:

(i) **Liquidity.** A report setting forth Liquidity determined as of the date of such Borrowing Base Certificate (together with supporting detail in a form reasonably acceptable to Administrative Agent).

(ii) **Inventory Reports.** A summary of Inventory by location and type (in the case of coal inventory, by tons), together with such other information regarding Borrowers' Inventory as Administrative Agent may reasonably request, accompanied by such supporting detail and documentation as shall be reasonably satisfactory to Administrative Agent.

(iii) **Accounts Payable Reports.** A summary report (in form and substance reasonably satisfactory to Administrative Agent), including a listing of (A) each Loan Party's accounts payable for any vendor that holds a material portion of the Inventory of a Loan Party; (B) the number of days which have elapsed since the original date of invoice of such account payable; (C) the name and address of each Person to whom such account payable is owed; and (D) such other information concerning accounts payable as Administrative Agent may reasonably request from time to time.

(iv) **Other Reports.** Such other reports (each of which shall be in form and substance reasonably satisfactory to Administrative Agent) as Administrative Agent may reasonably request from time to time, each prepared with respect to such periods and with respect to such information and reporting as Administrative Agent may reasonably request from time to time.

(b) **Quarterly Financial Statements.** Within forty-five (45) calendar days after the end of each of the first three Fiscal Quarters in each Fiscal Year (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), financial statements of the Parent and its Subsidiaries, consisting of a consolidated balance sheet as of the end of such Fiscal Quarter, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the Fiscal Quarter then ended and the Fiscal Year through that date, all in reasonable detail and certified (subject to normal year-end audit adjustments) by the Chief Executive Officer, President, Treasurer or Chief Financial Officer of the Parent as having been prepared in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous Fiscal Year. The Parent will be deemed to have complied

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with the delivery requirements with respect to the consolidated financial statements required to be delivered under this [Section 9.16\(b\)](#) if within forty-five (45) days after the end of its Fiscal Quarter (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), the Parent delivers to the Agent (for delivery to each of the Lenders) a copy of the Parent's Form 10Q as filed with the SEC and the financial statements contained therein meet the requirements described in this Section.

(c) **Annual Financial Statements.** Within ninety (90) days after the end of each Fiscal Year (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), financial statements of the Parent and its Subsidiaries consisting of a consolidated balance sheet as of the end of such Fiscal Year, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the Fiscal Year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding Fiscal Year, and certified, in the case of the consolidated financial statements, by independent certified public accountants of nationally recognized standing reasonably satisfactory to the Agent (it being understood and agreed that as of the Closing Date Ernst & Young LLP is reasonably satisfactory). The certificate or report of accountants shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and shall not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Loan Party under any of the Loan Documents. The Parent will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this [Section 9.16\(c\)](#) if within ninety (90) days after the end of its Fiscal Year (or such earlier date, from time to time established by the SEC in accordance with the Exchange Act), the Parent delivers to the

Agent (for delivery to each of the Lenders) a copy of the Parent's Annual Report and Form 10K as filed with the SEC and the financial statements and certification of public accountants contained therein meet the requirements described in this Section.

(d) Compliance Certificate and Collateral Information. (i) Concurrently with any delivery of financial statements under Section 9.16(b) and (c), a Compliance Certificate, and (ii) concurrently with any delivery of financial statements under Section 9.16(c), (x) a Perfection Certificate with then-current information and (y) a supplement to Schedule A to the Security Agreement with respect to any matter hereafter arising that, if existing or occurring at the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby, and, in each case of this clause (ii), such Perfection Certificate or Schedule shall be appropriately marked to show the changes made therein; provided that any information disclosed on any such updated Perfection Certificate or Schedule provided to the Agent pursuant to this clause (ii) shall be deemed to revise the representations and warranties set forth in Section 3 of the Security Agreement from and after the date of delivery.

(e) SEC Website. (A) The delivery by the Parent to the Agent of annual reports on Form 10-K of the Parent and its consolidated Subsidiaries shall satisfy the requirements of Section 9.16(c) solely to the extent such annual reports include the information specified herein and (B) the delivery by the Parent to the Agent of quarterly reports on Form 10-Q of by the Parent and its consolidated Subsidiaries shall satisfy the requirements of Section 9.16(b) solely to the extent such quarterly reports include the information specified herein.

(f) Notices. Written notice to the Agent for distribution to the Lenders:

(i) promptly after any Senior Officer of any Borrower has learned of the occurrence of any Default or Event of Default;

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(ii) promptly after any Senior Officer of any Borrower has learned of any event which would reasonably be expected to result in a Material Adverse Change;

(iii) [Reserved]

(iv) two Business Days prior to the consummation of a transaction permitted under Section 10.4 (an "Asset Sale") (or merger, consolidation or amalgamation that constitutes an Asset Sale), or such later date as the Agent may agree in its sole discretion, of (i) Collateral that is included in the Borrowing Base with an aggregate value in excess of \$2,500,000 (measured at the time of such Asset Sale) to any Person other than a Borrower or (ii) any capital stock or other equity interests of a Borrower to any Person other than a Borrower that results in the disposition of Collateral that is included in the Borrowing Base with an aggregate value in excess of \$2,500,000 (measured at the time of such Asset Sale);

(v) promptly in the event that at any time any Loan Party receives or otherwise gains knowledge that (A) an Overadvance exists, in which case such notice shall also include the amount of such Overadvance or (B) an Account Control Period has begun; and

(vi) promptly upon receipt of notice or knowledge of any Loan Party thereof, of any loss, damage or destruction to any ABL Priority Collateral in excess of \$5,000,000, whether or not covered by insurance;

(g) Certain Events. Written notice to the Agent for distribution to the Lenders of:

(i) any acquisition of assets with a fair market value in excess of \$2,500,000 pursuant to Section 10.3 during an Account Control Period;

(ii) any Investment (other than pursuant to Sections 10.11(a), (b), (c) or (e)) during an Account Control Period in excess of \$2,500,000;

(iii) any Restricted Payment (other than pursuant to Sections 10.8(b) or (d)) during an Account Control Period in excess of \$2,500,000;

(iv) any payment with respect to subordinated Debt during an Account Control Period in excess of \$2,500,000;

(v) any incurrence of Debt during an Account Control Period in excess of \$2,500,000;

(vi) any Disposition (other than pursuant to Sections 10.4(a), (b) or (d)) during an Account Control Period in excess of \$2,500,000;

(vii) the occurrence of any event for which any Borrower is required to make a mandatory prepayment pursuant to Section 5.2(a);

(viii) the occurrence of any mandatory prepayment with respect to any of the Term Loan Obligations;

(ix) any material amendment to the Organizational Documents of any Loan Party; and

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(x) any material change in accounting policies or financial reporting practices by any Loan Party.

(h) Environmental Health and Safety Matters. Reasonably prompt written notice upon any Borrower or applicable Subsidiary obtaining actual knowledge of any of the following which has resulted or could reasonably be expected to result in a Material Adverse Change: (a) the existence of material Contamination; (b) the receipt by any Borrower or any of its Subsidiaries of a material Environmental Health and Safety Claim or Environmental Health and Safety Order; (c) the imposition, attachment, filing or recording against the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party of a Lien (other than a Permitted Lien) or other encumbrance authorized under Environmental Health and Safety Laws; (d) the inability to obtain

or renew a material Environmental Health and Safety Permit, a notice from an Official Body that it has, will or intends to suspend, revoke or adversely amend or alter, in whole or in part, any Environmental Health and Safety Permit or knowledge that a Person has filed a suit or claim or instituted a proceeding challenging the application for, or the modification, amendment or issuance of any Environmental Health and Safety Permit; or (e) any violation of Environmental Health and Safety Laws, Environmental Health and Safety Permits or Environmental Health and Safety Order by the Parent or any of its Subsidiaries; provided, in each case, that a failure to provide such written notice shall not be a violation of this Section 9.16(h) if the Parent or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental Health and Safety Laws.

(i) Other Reports and Information.

(i) Any reports, notices or proxy statements generally distributed by the Parent to its stockholders on a date no later than the date supplied to such stockholders and regular or periodic reports, including Forms 10-K, 10-Q and 8-K, registration statements and prospectuses, filed by the Parent or any other Loan Party with the SEC, provided that, subject to Section 9.16(d), the foregoing reports shall be deemed to have been delivered on the date on which such report is posted on the SEC's web site at www.sec.gov, and such posting shall be deemed to satisfy this reporting requirement,

(ii) Promptly upon their becoming available to any Borrower, a copy of any material order in any material proceeding to which such Borrower or any other Loan Party is a party issued by any Official Body,

(iii) Within thirty (30) days of the end of each month, consolidated monthly income summaries of the Parent and its consolidated Subsidiaries,

(iv) Promptly upon request, such other reports and information as the Agent, any of the LC Issuer or any of the Lenders may from time to time reasonably request, and

(v) Promptly upon request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(j) Projections. Within thirty (30) days after the commencement of each Fiscal Year, Projections for such Fiscal Year, prepared on a quarter-by-quarter basis. Such Projections shall represent the Parent's reasonable estimate of the future financial performance of the Parent and its Subsidiaries for the periods set forth therein and shall have been prepared on the basis of assumptions that the Parent believes are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such

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Projections, and such differences may be material). The Parent shall provide Administrative Agent with prompt written notice of any material amendment or change approved by the board of directors or other governing Persons or body of the Parent with respect to such Projections.

9.17. Reserved.

9.18. Cash Management; Deposit Accounts. Borrowers shall, and shall cause Loan Parties to:

(a) Payments on Account of the Sale of Receivables. On or before the Closing Date, (a) establish one or more Concentration Accounts and, thereafter, maintain each such Concentration Account and (b) direct each Securitization Subsidiary to make all payments in respect of a sale of Receivables Assets to such Securitization Subsidiary pursuant to a Permitted Receivables Financing (including each payment made pursuant to the Receivables Purchase Documents) to a Concentration Account;

(b) Making Deposits. Hold in trust for Administrative Agent and during any Account Control Period promptly (but, in any event, on the Business Day immediately following its receipt thereof) deposit into a Concentration Account all tangible Payment Items and cash such Loan Party receives on account of the payment of any of such Loan Party's Accounts (other than any portion thereof that constitutes Term Loan Priority Collateral) or as Proceeds of any Inventory or other Collateral (other than any portion thereof that constitutes Term Loan Priority Collateral);

(c) Maintenance of Accounts. Not establish or maintain any Deposit Accounts other than Deposit Accounts (i) either (x) maintained at Administrative Agent or (y) maintained at any bank other than Administrative Agent but subject to Administrative Agent's Article 9 Control on terms acceptable to Administrative Agent; and (ii) that are Excluded Accounts;

(d) Control. To the extent requested by Administrative Agent from time to time, promptly (but, in any event, within ten (10) Business Days) (or such longer period as the Administrative Agent may agree in its sole discretion) after request take all actions reasonably requested by Administrative Agent to establish or continue Administrative Agent's Article 9 Control over any of Loan Parties' Deposit Accounts; and

9.19. Reserved.

9.20. Post-Closing Matters.

(a) As-Extracted Collateral Matters. On or before July 5, 2017 (or such later date as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver or cause to be delivered to Administrative Agent each of the following, in each case in form and substance satisfactory to Administrative Agent: (i) UCC financing statements with respect to As-Extracted Collateral, duly recorded in each jurisdiction in which any Loan Party owns, leases or has an interest in any minehead, and in each other jurisdiction necessary to perfect Administrative Agent's Liens in any Collateral constituting As-Extracted Collateral under the UCC, (ii) Lien searches confirming that Administrative Agent's Liens upon As-Extracted Collateral of the Loan Parties are the only Liens upon such As-Extracted Collateral (other than Permitted Liens), and (iii) legal opinions from local counsel to Loan Parties in form and substance reasonably acceptable to the Administrative Agent with respect to the Administrative Agent's security interest in the As-Extracted Collateral described in the UCC financing statements.

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(b) Control Agreements. On or before the earlier of (i) June 26, 2017, and (ii) the tenth (10th) Business Day following the commencement of an Account Control Period (or such later date under clause (i) or (ii) as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver or cause to be delivered to Administrative Agent a Control Agreement with respect to each Deposit Account, Commodity Account and Securities Account listed on Schedule D to the Security Agreement.

(c) Borrowing Base Certificate. Prior to the first funding of any Loan, issuance of any Letter of Credit, or other extension of credit or financial accommodation to or for the benefit or account of any Borrower, the Borrowers shall deliver to Administrative Agent a Borrowing Base Certificate (and any supporting reports as Administrative Agent may reasonably require) prepared as of March 31, 2017 (or, if such first funding, issuance or other extension occurs at any time after a Borrowing Base Certificate has been delivered pursuant to Section 9.16(a)), prepared as of the date required for the Borrowing Base Certificate most recently delivered pursuant to Section 9.16(a).

(d) Insurance Endorsements. On or before May 27, 2017 (or such later date as the Administrative Agent may agree in its sole discretion), the Borrowers shall deliver or cause to be delivered to Administrative Agent endorsements issued by each applicable insurer with respect to each property and casualty insurance policy of any Loan Party, in each case naming Administrative Agent as lender loss payee in accordance with Section 9.3.

SECTION 10. NEGATIVE COVENANTS

Until Payment in Full of the Obligations and termination of the Commitments:

10.1. Debt. The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, at any time create, incur, assume or suffer to exist any Debt, except:

(a) The Obligations;

(b) Debt (including, without limitation, letters of credit) on account of any demand, request or requirement of any Official Body for any surety bond, letter of credit or other financial assurance pursuant to any Mining Laws, Reclamation Laws or Environmental Health and Safety Laws, or any related Permit, in each case, in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances;

(c) Debt permitted by Section 8.02(a)(iii) of the Term Loan Agreement as in effect on the Closing Date (the "Incremental Term Notes");

(d) Debt permitted by Section 8.02(a)(iv) of the Term Loan Agreement as in effect on the Closing Date (the "Refinancing Term Notes");

(e) unsecured (i) Debt of any Loan Party payable to any other Loan Party (including Disqualified Equity Interests issued to any Loan Party), it being understood and agreed that such Debt (other than Disqualified Equity Interests) is subordinated to the Obligations of the Loan Parties under the Loan Documents, (ii) Debt of any Non-Loan Party Subsidiary payable to any other Non-Loan Party Subsidiary, (iii) loans or guaranties from any Non-Loan Party Subsidiary to any Loan Party, it being understood and agreed that such Debt (other than Disqualified Equity Interests) is subordinated to the Obligations of the Loan Parties under the Loan Documents, and (iv) Debt of any Non-Loan Party Subsidiary payable to any Loan Party to the extent such Debt would constitute a permitted Investment under Section 10.11(p);

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(f) Debt of the Parent and its Subsidiaries existing on the Closing Date and included on Schedule 10.1 and any Permitted Refinancings thereof;

(g) Debt of the Parent or any Subsidiary of the Parent under a letter of credit facility in an aggregate face amount, when combined with the aggregate amount of the Commitments then outstanding and the aggregate amount of Debt then outstanding under Section 10.1(h), not to exceed in the aggregate the greater of \$300,000,000 and 16.50% of Consolidated Net Tangible Assets so long as: (A) the purpose of such facility is to provide letters of credit necessary in the business of the Parent and its Subsidiaries, including without limitation to secure surety and other bonds, and (B) such Debt, if secured, is only secured as permitted by clause (l) of the definition of Permitted Liens (a "Permitted Secured Letter of Credit Facility");

(h) Debt of Securitization Subsidiaries pursuant to Permitted Receivables Financings in an aggregate principal amount, when combined with the aggregate amount of the Commitments then outstanding and the aggregate face amount of letters of credit issued and outstanding pursuant to Section 10.1(g), does not exceed in the aggregate the greater of \$300,000,000 and 16.50% of Consolidated Net Tangible Assets;

(i) Debt or other obligations of the Parent and its Subsidiaries in respect of any capital lease (as determined in accordance with GAAP) or Debt of the Parent and its Subsidiaries secured by Purchase Money Security Interests so long as the aggregate amount for the Parent and its Subsidiaries of all Debt and other obligations permitted by this Section 10.1(i) shall not exceed, at any time outstanding the greater of \$150,000,000 and 8.25% of Consolidated Net Tangible Assets;

(j) Debt (x) of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary) in connection with any Permitted Acquisition or Permitted Joint Venture or Debt of any Person that is assumed by the Parent or any Subsidiary in connection with any Permitted Acquisition or Permitted Joint Venture; provided that (i) such Debt was not incurred in contemplation of such Permitted Acquisition or Permitted Joint Venture and (ii) immediately prior and after giving pro forma effect to the assumption of such Debt, the Total Net Leverage Ratio is no greater than 3.00:1.00 as if such Debt was assumed at the beginning of the most recent four consecutive Fiscal Quarters ending prior to such assumption for which consolidated financial statements of the Parent have been (or were required to be) delivered to the Administrative Agent pursuant to Section 9.16(b) or 9.16(c) or (y) constituting a Permitted Refinancing of the foregoing;

(k) subject to Section 10.11 and Section 10.14, Debt of any Bonding Subsidiary payable to the Parent;

(l) Debt of the Parent pursuant to the Term Loan Agreement in an aggregate principal amount when combined with the aggregate amount of Incremental Term Notes and Refinancing Term Notes, that does not exceed in the aggregate the sum of (i) \$300,000,000 plus (ii) the Incremental Debt Cap (as defined in the Term Loan Agreement as in effect on the Closing Date);

(m) Debt (i) in respect of Swap Agreements entered into in the ordinary course of business consistent with past practice or (ii) arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds or other cash management services including, but not limited to, treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements, in each case entered into or arising in the ordinary course of business;

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(n) Debt (including any Permitted Refinancing thereof) secured by Liens permitted by clause (n) of the definition of Permitted Liens;

(o) Guaranties in respect of Debt otherwise permitted hereunder;

(p) Debt relating to the financing of insurance policy premiums in the ordinary course of business;

(q) other Debt in an aggregate principal amount not to exceed the greater of \$50,000,000 and 2.75% of Consolidated Net Tangible Assets; provided that the amount of Debt permitted by this clause (q) that is secured shall not exceed the greater of \$25,000,000 and 1.25% of Consolidated Net Tangible Assets; and

(r) Debt of Non-Loan Party Subsidiaries which, when combined with the aggregate amount of Investments permitted pursuant to Section 10.11(p), does not exceed at any one time the greater of \$10,000,000 and 0.50% of Consolidated Net Tangible Assets.

10.2. **Liens; Negative Pledge.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, (i) at any time create, incur, assume or suffer to exist any Lien on any of its respective property or assets, tangible or intangible, now owned or hereafter acquired, except Permitted Liens, and (ii) at any time, directly or indirectly, enter into any Contractual Obligation that prohibits or restricts the Borrowers' or their respective Subsidiaries' ability to grant a security interest or Lien on any of the Collateral to the Agent or any of the other Secured Parties in connection with this Agreement or any other Loan Document (as such Agreement or Loan Documents may be amended, restated, modified or supplemented); provided that the foregoing clause (ii) shall not apply to any Contractual Obligations which:

(a) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Parent, so long as such Contractual Obligations were not entered into solely in contemplation of such Person becoming a Subsidiary of the Parent and do not extend beyond such Subsidiary and its subsidiaries;

(b) arise in connection with any Permitted Lien under clause (g) of such definition to the extent such restrictions relate to the assets (and any proceeds in respect thereof) which are the subject of such Lien;

(c) arise under loan documents or other agreements in connection with Debt permitted by Section 10.1 (other than secured Debt permitted by Section 10.1(i)) (including the Term Loan Documents and documents in connection with the Permitted Secured Letter of Credit Facility), and documents in connection with the Permitted Refinancing of any of the foregoing; provided that such restrictions (i) apply solely to Non-Loan Party Subsidiaries or (ii) are no more restrictive with respect to the Parent and its Subsidiaries than the limitations (taken as a whole) set forth in the Loan Documents and do not materially impair the ability of the Loan Parties to grant the security interests to Administrative Agent contemplated by the Loan Documents or pay the Obligations under the Loan Documents as and when due (as reasonably determined in good faith by the Parent), it being understood and agreed that the Term Loan Documents as of the Closing Date satisfy this clause (ii);

(d) are contained in agreements relating to any Disposition permitted by Section 10.4 solely with respect to the assets that are the subject of such Disposition;

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(e) are customary provisions in joint venture agreements and other similar agreements applicable solely to such joint venture or the equity interests therein;

(f) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby, so long as such restrictions relate solely to the assets subject thereto;

(g) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Parent or any Subsidiary;

(h) are customary limitations existing under or by reason of leases entered into in the ordinary course of business;

(i) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business;

(j) are customary provisions restricting assignment of any agreements;

(k) are restrictions imposed by any agreement relating to any Permitted Receivables Financing to the extent that such restrictions relate to the assets (and any proceeds in respect thereof) that are the subject of such Permitted Receivables Financing; or

(l) are set forth in any agreement evidencing an amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the Contractual Obligations referred to in clauses (a) through (k) above; provided that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Parent, not materially less favorable to the Loan Party with

respect to such limitations than those applicable pursuant to such Contractual Obligation prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

10.3. **Liquidations, Mergers, Consolidations, Acquisitions.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, dissolve, liquidate or wind up its affairs, or consummate any merger or consolidation, or acquire by purchase, lease or otherwise all or substantially all of the assets or capital stock of any other Person, provided that:

(a) (i) any Loan Party, other than the Borrowers, may consolidate or merge into the Parent and the security interest granted by the Parent pursuant to the Security Documents shall remain in full force and effect, (ii) any Non-Loan Party Subsidiary may consolidate or merge into any other Non-Loan Party Subsidiary, (iii) any Non-Loan Party Subsidiary may consolidate or merge into any Loan Party, so long as such Loan Party survives such merger or consolidation and the security interest granted by the Loan Parties pursuant to the Security Documents shall remain in full force and effect, (iv) any transaction otherwise permitted by Section 10.4 and Section 10.11 shall be permitted under this Section 10.3, and (v) any Borrower, other than the Parent, may consolidate or merge into any other Borrower, and any other Loan Party may consolidate or merge into any Borrower, so long as such Borrower survives such merger or consolidation and the security interest granted by the Borrowers pursuant to the Security Documents shall remain in full force and effect; provided that, solely with respect to clauses (i), (iii) and (v) of this clause (a), no Default or Event of Default exists or would result therefrom;

(b) the Parent or any Subsidiary may acquire, whether by purchase or by merger, (A) all of the ownership interests of another Person or (B) all or substantially all of the assets of another Person or of a business or division of another Person, provided that each of the following requirements is met (any acquisition made in accordance with this clause (b) being referred to herein as a "Permitted Acquisition"):

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(i) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be substantially the same as, or shall support or be complementary to, one or more line or lines of business conducted by the Loan Parties and shall comply with Section 10.7, in the case of any merger a Loan Party shall be the surviving entity after giving effect to such transaction and, to the extent that a Significant Subsidiary is acquired or formed in connection with or as a result of such acquisition, the Loan Parties shall comply with the provisions of Section 10.6 and Section 9.12 and, to the extent the assets or business acquired constitute Collateral, the Loan Parties shall comply with the provisions of Section 9.9;

(ii) no Default or Event of Default shall exist immediately prior to and immediately after giving effect to any such Permitted Acquisition; provided that, subject to Section 1.5, in the case of any Limited Condition Acquisition, at the option of the Parent, this Section 10.3(b)(ii) may be deemed satisfied so long as no Default or Event of Default exists on the date the definitive agreements for such Limited Condition Acquisition are entered into;

(iii) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, shall be located in the United States and the Person acquired (if applicable) shall be organized under the laws of any State of the United States; provided that the Parent or any of its Subsidiaries shall be permitted to consummate Permitted Acquisitions that do not satisfy the requirements of this clause (iii) in an aggregate amount of up to the greater of \$30,000,000 and 1.50% of Consolidated Net Tangible Assets;

(iv) both immediately before and immediately after giving effect to any Permitted Acquisition, Borrowers are in compliance with the Financial Covenant;

(c) Borrowers or any of their Subsidiaries may acquire by purchase, lease or otherwise all or substantially all of the assets or equity interests of a Securitization Subsidiary; and

(d) any Subsidiary of the Parent (other than a Borrower) that holds only *de minimis* assets and is not conducting any material business may dissolve or otherwise wind up its affairs.

10.4. **Disposition of Assets or Subsidiaries.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, sell, convey, assign, license, lease, abandon, securitize or enter into a securitization transaction, or otherwise transfer or dispose of (collectively, to "Dispose"; and "Disposition" shall have a correlative meaning), voluntarily or involuntarily, any of its properties or assets, tangible or intangible (including sale, assignment, discount or other disposition of accounts, contract rights, chattel paper, equipment, general intangibles with or without recourse or of capital stock, shares of beneficial interest, partnership interests or limited liability company interests of a Subsidiary of the Parent), except:

(a) (i) transactions involving the sale of Inventory in the ordinary course of business, (ii) any Disposition of assets in the ordinary course of business which are no longer necessary or required in the conduct of any Loan Party's business or the grant in the ordinary course of business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests, (iii) any sale of accounts arising from the export outside of the U.S. of goods or services by any Loan Party, provided that, in the case of this clause (iii), (x) at the time of any such sale, no Event of Default shall exist or shall result from such sale, (y) such sale shall be for fair market value and (z) the consideration to be paid to the Parent and its Subsidiaries as permitted by this clause (iii) shall consist solely of cash, (iv) any lease, sublease or non-exclusive license of assets (with a Loan Party as the lessor, sublessor or licensor) in the ordinary course of business, provided that the interests of the Loan Parties in any such lease, sublease or license are subject to the Agent's first priority Lien (subject only to Permitted Liens) in and to the assets

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of the Loan Parties that constitute ABL Priority Collateral and second priority Liens (subject only to Permitted Liens) in and to the assets of the Loan Parties that constitute Term Loan Priority Collateral, and (v) transfers of condemned property as a result of the exercise of "eminent domain" or other similar policies to the respective Official Body or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of properties that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement;

(b) (i) any Disposition of assets by any Loan Party or any Subsidiary of a Loan Party which is a Guarantor to any Borrower, (ii) any Disposition of assets by any Non-Loan Party Subsidiary to any Loan Party or (iii) any Disposition of assets by any Non-Loan Party Subsidiary to any other

(c) any Disposition of property by the Parent or any of its Subsidiaries of assets with a fair market value (as reasonably determined by the Parent in good faith) of less than \$5,000,000;

(d) any Disposition (including by capital contribution) of Receivables Assets pursuant to a Permitted Receivables Financing;

(e) (i) any Disposition where the fair market value (as reasonably determined by the Parent in good faith) of the assets subject thereto, when aggregated with the fair market value of all other assets subject to Dispositions made within the same Fiscal Year are less than \$50,000,000; provided that (A) at the time of any such Disposition, no Event of Default shall exist or shall result from such Disposition and (B) the Net Cash Proceeds for all such Dispositions are applied as a mandatory prepayment of the Loans in accordance with, and to the extent required under, the provisions of Section 5.2; plus (ii) any other Disposition of assets; provided that (in the case of this clause (ii) only): (A) at the time of any such Disposition, no Event of Default shall exist or shall result from such disposition, (B) such Disposition shall be for fair market value (as determined by the Parent in good faith), (C) the consideration to be paid to the Parent and its Subsidiaries as permitted by this clause (e) shall consist of cash in an amount that is not less than 75% of such consideration; provided, however, for purposes of this clause (C), the following will be deemed to be cash: (1) any reclamation and other liabilities arising under applicable Permits, applicable workers' compensation acts and the federal black lung laws and other liabilities associated with the applicable employees, in each case that are assumed by the transferee with respect to the applicable sale, transfer or lease pursuant to a customary assumption or similar agreement (which agreement shall release the applicable Loan Parties from all such liabilities so assumed), (2) any letters of credit with respect to the reimbursement of which the Borrower or its Subsidiaries are obligated, to the extent such letters of credit relate to the assets or business subject to such sale, transfer or lease and are cancelled no later than 60 days following such sale, transfer or lease and for which the transferee with respect to the applicable sale, transfer or lease has guaranteed or indemnified the reimbursement of any drawing thereunder on customary terms and (3) any Designated Non-Cash Consideration received by the Borrower or any of its Subsidiaries in such Disposition (provided that (x) the aggregate fair market value of such Designated Non-Cash Consideration, as reasonably determined by the Borrower in good faith, taken together with the fair market value at the time of receipt of all other Designated Non-Cash Consideration received pursuant to this clause (3) minus (y) the amount of Net Cash Proceeds previously realized in cash from prior Designated Non-Cash Consideration shall not exceed \$75,000,000) and (D) the Net Cash Proceeds for all such Dispositions of ABL Priority Collateral are applied as a mandatory prepayment of the Loans and/or to Cash Collateralize LC Obligations in accordance with, and to the extent required under, the provisions of Section 5.2(a);

(f) any Disposition of assets as part of an Investment which is either (i) an Investment in a Permitted Joint Venture which is permitted by Section 10.6 or (ii) an Investment permitted by Section 10.11;

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(g) any transactions otherwise permitted by Section 10.3 or Section 10.8; and

(h) those Dispositions set forth on Schedule 10.4.

10.5. **Affiliate Transactions.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, enter into or carry out any transaction (including purchasing property or services from or selling property or services to) with any Affiliate of the Parent involving an aggregate consideration in excess of \$5,000,000 unless (1) such transaction is not otherwise prohibited by this Agreement, (2) with respect to any Investment in, Disposition to or Restricted Payment to any Affiliate of the Parent (other than a Loan Party), both immediately before and immediately after giving effect to such transaction, Borrowers are in compliance with the Financial Covenant, and (3) such transaction is either (a) entered into upon fair and reasonable arm's-length terms and conditions or (b) in the event that there is no comparable third party transaction, would be entered into by a prudent Person in the position of the Parent or such Subsidiary (as determined by the Parent in good faith); provided, however that this Section 10.5 shall not prohibit (i) the consummation of the transactions contemplated hereby (including the transactions pursuant to the Term Loan Agreement), (ii) any dividend, distribution or Investment which is not otherwise prohibited by this Agreement, (iii) any transaction described on Schedule 10.5 (including any modification, extension or renewal thereof on terms no less favorable to the parties thereto than the terms of such transaction as described on such Schedule) which is not otherwise prohibited by this Agreement, (iv) any transaction provided for in, or in connection with, a Permitted Receivables Financing, (v) any transaction between or among Loan Parties and (vi) payments to directors and officers of the Parent and its Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the Organizational Documents or other corporate action of the Parent or its Subsidiaries, respectively, or pursuant to applicable Law.

10.6. **Subsidiaries, Partnerships and Joint Ventures.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) Non-Loan Party Subsidiaries (including any Securitization Subsidiary which is the subject of clause (iii) below), (ii) any Significant Subsidiary which has complied with Section 9.12, and (iii) any Securitization Subsidiary whose equity interests are pledged to Administrative Agent for the benefit of the Secured Parties (pursuant to the Pledge Agreement).

Neither the Parent nor any Subsidiary of the Parent shall become or agree to become a joint venturer or hold a joint venture interest in any joint venture except that the Loan Parties may make an Investment in a Permitted Joint Venture, so long as the Parent and its Subsidiaries at all times are in compliance with all requirements of the following clauses (a) through (f) or to the extent otherwise permitted under Section 10.11:

(a) the Permitted Joint Venture is either a corporation, limited liability company, trust, or a limited partnership or another form of an entity or arrangement that permits the Parent and its Subsidiaries to limit their liability, as a matter of Law, for the obligations of the Permitted Joint Venture;

(b) the Investment is either (A) of the type described in clauses (a), (b) or (d) of the definition of Investments, or (B) of the type described in clauses (c) or (e) of the definition of Investments and, on the date such Investment is made, the amount of the Guaranty or other obligation, as the case may be, is reasonably estimable;

(c) other than the amount of an Investment permitted under clause (b) immediately above of the type described in clause (c) or clause (e) of the definition of Investments, there is no recourse to any

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Loan Party or any Subsidiary of any Loan Party for any Debt or other liabilities or obligations (contingent or otherwise) of the Permitted Joint Venture;

(d) the Total Net Leverage Ratio shall be no more than 2.50:1.00 after giving pro forma effect to the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive Fiscal Quarters ending prior to the Investment for which consolidated financial statements of the Parent are available;

(e) to the extent that the equity interests owned, directly or indirectly, by the Parent in such Permitted Joint Venture constitutes Excluded Property, such equity interests shall be held by a JV Holding Company and the equity interest of such JV Holding Company shall constitute Collateral; and

(f) no Default or Event of Default shall exist immediately prior to and immediately after giving effect to any such Investment in a Permitted Joint Venture.

10.7. **Continuation of or Change in Business.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, engage in any business other than the business of the Loan Parties and their Subsidiaries, substantially as conducted and operated by the Loan Parties and their Subsidiaries, taken as a whole, as of the Closing Date or business that supports or is complimentary to such business or is a reasonable extension thereof.

10.8. **Restricted Payments.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any shares of capital stock or other equity interests of the Parent or any Subsidiary of the Parent or directly or indirectly redeem, purchase, retire or otherwise acquire for value any shares of any class of the capital stock or other equity interests of the Parent or any Subsidiary of the Parent or set aside any amount for any such purposes (any of the above, a "Restricted Payment"), except:

(a) Restricted Payments so long as both immediately before and immediately after giving effect to any Restricted Payment under this clause (a), Borrowers are in compliance with the Financial Covenant;

(b) any Subsidiary of the Parent may declare and pay dividends or make any other distribution (by reduction of capital or otherwise) to, or repurchase its capital stock or equity interests from, the Parent or any other Subsidiary of the Parent (or, in the case of non-wholly owned Subsidiaries of the Parent, to the Parent or any other Subsidiary that is a direct or indirect parent of such non-wholly-owned Subsidiary and to each other owner of equity interests of such non-wholly owned Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Parent or its applicable Subsidiary) based on their relative ownership interests);

(c) (i) so long as no Event of Default shall exist immediately prior to or after giving effect to any such stock purchase or redemption, stock purchases or redemptions (other than repurchases described in clause (ii) of this Section 10.8(c)) in connection with the rights of employees or members of the board of directors of the Parent or any of its Subsidiaries of any capital stock or equity interests issued pursuant to an employee or board of directors equity subscription agreement, equity option agreement or equity ownership arrangement or other compensation plan permitted to be issued hereunder, provided that the aggregate consideration of such stock purchase and redemptions made pursuant to this clause (i) shall not, in any Fiscal Year, exceed \$5,000,000 and (ii) repurchases of equity interests deemed to occur upon (A) the exercise of stock options if the equity interests represent a portion of the exercise price thereof or (B)

the withholding of a portion of equity interests issued to employees and other participants under an equity compensation program of the Parent and its Subsidiaries, in each case to cover withholding tax obligations of such persons in respect of such issuance;

(d) dividends or other distributions payable solely in capital stock or equity interests; or

(e) the Parent may declare and make Restricted Payments in an amount not exceeding in the aggregate \$5,000,000 during any Fiscal Year.

10.9. **Payment of Other Debt.** (a) The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity in any manner any Debt that is owed to a third party that is subordinated to the Obligations or Debt that is secured by a Lien ranking junior to the Liens securing the Obligations (excluding, for the avoidance of doubt, permitted unsecured Debt, any Permitted Receivables Financing and the Term Loan Obligations), except:

(i) the conversion (or exchange) of any such Debt to, or the payment of any such Debt from the proceeds of the issuance of, the common stock or other equity interests of the Borrower (other than Disqualified Equity Interests);

(ii) for a Permitted Refinancing thereof;

(iii) payments of or in respect of any such Debt so long as both immediately before and after giving effect to any such prepayment, redemption, purchase or defeasance of any Debt under this Section 10.9(a)(iii), Borrowers are in compliance with the Financial Covenant; or

(iv) so long as no Event of Default has occurred and is continuing or would exist immediately after giving effect to any such payment, other payments of or in respect of any such Debt in an aggregate amount not to exceed the greater of \$30,000,000 and 1.50% of Consolidated Net Tangible Assets.

(b) The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, prepay, redeem, purchase or defease, in each case on a voluntary (and not mandatory) basis, prior to the scheduled maturity thereof in any manner any principal amount of any Debt (other than (w) the Obligations, (x) any permitted refinancing of such Debt in accordance with the applicable provisions of Section 10.1, (y) any intercompany Debt and (z) to the extent set forth in Section 10.9(a)), unless both immediately before and after giving effect to any such prepayment, redemption, purchase or defeasance of any Debt under this Section 10.9(b), Borrowers are in compliance with the Financial Covenant.

10.10. **No Restriction in Agreements on Dividends or Certain Loans.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, enter into or be bound by any agreement (a) which prohibits or restricts, in any manner the payment of dividends by any of its Subsidiaries (whether in cash, securities, property or otherwise), or (b) which prohibits or restricts in any manner the making of any loan to any Borrower by any of its

Subsidiaries or payment of any Debt or other obligation owed to any Loan Party, other than, in each case, (i) restrictions applicable to a Securitization Subsidiary in connection with a Permitted Receivables Financing, (ii) restrictions imposed by any applicable law, rule or regulation (including applicable currency control laws and applicable state or provincial corporate statutes restricting the payment of dividends or any other distributions in certain circumstances), (iii) restrictions in effect under any Contractual Obligation outstanding on the Closing Date, and (iv) restrictions pursuant to any Contractual Obligation described in clauses (a) through (l) of Section 10.2.

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10.11. **Loans and Investments.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, at any time make any Investment in notes or securities of, or any partnership interest (whether general or limited) or limited liability company interest in, or any other Investment or interest in, or make any capital contribution to, any other Person, or agree, become or remain liable to do any of the foregoing, except:

(a) trade credit extended on usual and customary terms in the ordinary course of business and stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to any Borrower or any Subsidiary in satisfaction of judgments;

(b) (i) Investments by the Parent or any of its Subsidiaries in any Loan Party and (ii) Investments by any Non-Loan Party Subsidiary in any other Non-Loan Party Subsidiary;

(c) (i) Permitted Investments and Investments in cash and (ii) any Investments arising in connection with any Swap Agreements;

(d) Investments in Permitted Joint Ventures as permitted by Section 10.6;

(e) bonds required in the ordinary course of business of the Parent and its Subsidiaries, including without limitation, surety bonds, royalty bonds or bonds securing performance by the Parent or a Subsidiary of the Parent under bonus bids;

(f) loans by the Parent to any Bonding Subsidiary; provided, however (i) prior to any loan being made to any Bonding Subsidiary, such loan shall be evidenced by a note, reasonably satisfactory to the Agent, and such note shall be pledged pursuant to the applicable Security Document to the Agent for the benefit of the Secured Parties and (ii) any loans by the Parent to any Bonding Subsidiary shall in each and every case be subject to Section 10.14;

(g) other Investments so long as both immediately before and immediately after giving effect to any such Investment under this clause (g), Borrowers are in compliance with the Financial Covenant;

(h) other Investments, in connection with or related to the operations of the Parent and its Subsidiaries, not exceeding in the aggregate \$5,000,000 during any Fiscal Year;

(i) [Reserved];

(j) Investments by the Borrowers of the type described in clause (a) of the definition of Investments in any Bonding Subsidiary, provided that any such Investments by a Borrower in any Bonding Subsidiary shall in each case be subject to Section 10.14;

(k) any transaction which is an Investment permitted by Section 10.3 (including, without limitation, any Permitted Acquisition), Section 10.4 (including, without limitation, Investments arising out of the receipt by any Borrower or any Subsidiary of noncash consideration for the sale of assets permitted thereunder) or Section 10.8;

(l) any guaranty which is permitted under Section 10.1;

(m) (A) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and (B) loans or advances to employees made in the ordinary course of business and consistent with past practice, provided that such loans and advances to all such employees

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do not exceed an aggregate amount outstanding at any time equal to the greater of \$10,000,000 and 0.50% of Consolidated Net Tangible Assets;

(n) Investments existing as of the Closing Date and set forth on Schedule 10.11, and extensions, renewals, modifications, restatements or replacements thereof; provided that no such extension, renewal, modification, restatement or replacement shall increase the amount of the original loan, advance or investment, except by an amount equal to any premium or other reasonable amount paid in respect of the underlying obligations and fees and expenses incurred in connection with such extension, renewal, modification, restatement or replacement;

(o) to the extent constituting an Investment, the repurchase, repayment, defeasance or retirement of any Debt of the Parent or any Subsidiary to the extent such repurchase, prepayment or retirement is expressly permitted hereunder; and

(p) Investments by Borrowers and Guarantors in Non-Loan Party Subsidiaries, which, when combined with the aggregate amount of Debt permitted pursuant to Section 10.1(r), does not exceed at any time the greater of \$10,000,000 and 0.50% of Consolidated Net Tangible Assets.

10.12. **Sale and Leaseback Transactions.** The Borrowers shall not, and shall not permit any of their respective Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Person (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Parent or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Person to any Person (other than the Parent or any of its Subsidiaries) in connection with such lease (such transaction, a "Sale and Leaseback Transaction"); provided that the foregoing shall not prohibit any such Sale and Leaseback Transaction in which such lease, to the extent constituting Debt, is permitted to be incurred under Section 10.1 and in which the leased property is permitted to be Disposed of by Section 10.4.

10.13. **Changes in Organizational Documents and Loan Party Information.**

(a) The Borrowers shall not, and shall not permit any of their respective Subsidiaries that are Loan Parties to, amend in any respect their respective certificate of incorporation (including any provisions or resolutions relating to capital stock), by-laws, certificate of limited partnership, partnership agreement, certificate of formation or limited liability company agreement if such change would be materially adverse to the Lenders as determined by the Borrower in good faith (provided that any amendment of any provision in the limited liability company agreement, operating agreement or partnership agreement of any Loan Party that permits a pledgee of such Loan Party's limited liability, membership or partnership interests (or such pledgee's designee or any purchaser of such interests) to be substituted for the member or partner under such agreement upon the exercise of such pledgee's rights with respect to its collateral shall be deemed to be materially adverse to the Lenders).

(b) The Borrowers shall not, and shall not permit any of their respective Subsidiaries that are Loan Parties to, effect any change (i) in any such Loan Party's legal name, (ii) in the location of its chief executive office, (iii) in its identity or organizational structure, (iv) in its Federal Taxpayer Identification Number (or equivalent thereof) or organizational identification number, if any or (v) in its jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), unless it shall have given the Administrative Agent prior written notice thereof (or, solely in the case of the Borrowers, ten (10)

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calendar days' prior written notice thereof) clearly describing such change and providing such other information in connection therewith as the Administrative Agent may reasonably request.

(c) No Borrower shall make any change in its Fiscal Year.

10.14. **Transactions With Respect to the Bonding Subsidiaries.** Except as otherwise expressly permitted under this Agreement, the Borrowers shall not permit any Bonding Subsidiary to (a) own any assets other than a leasehold interest, as lessee, in a coal lease where the lessor is a Person that is not an Affiliate of the Parent and cash and Permitted Investments necessary to assure either the lessor of such leasehold interest of the performance of all obligations by such Bonding Subsidiary thereunder or to assure the provider of surety bonds described in the following clause (b) that such Bonding Subsidiary is able to perform its obligations to such provider under the described surety bonds; and (b) incur any Debt or other obligation or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) except those to the lessor of the coal lease owned by such Bonding Subsidiary and those in favor of the provider of the surety bonds which provide payment assurances to such lessor under the coal lease owned by such Bonding Subsidiary related to the cost of acquiring such leasehold interest, the bonus bid and royalty payments thereunder and the costs and expenses incidental to such lease; provided, however that in lieu of any surety bond such Bonding Subsidiary may request that the Parent obtain a letter of credit on behalf of such Bonding Subsidiary and such Bonding Subsidiary may incur reimbursement obligations in connection therewith.

**SECTION 11.
FINANCIAL COVENANTS**

11.1. **Financial Covenant.** Until Payment in Full of the Obligations and termination of the Commitments, Borrowers shall comply, or cause compliance with, the following covenant:

(a) **Minimum Liquidity.** At all times, Borrowers shall cause Liquidity to equal or exceed \$175,000,000.

**SECTION 12.
EVENTS OF DEFAULT; REMEDIES UPON DEFAULT**

12.1. **Events of Default.** An "Event of Default" shall mean the occurrence or existence of any one or more of the following events or conditions (whatever the reason therefor and whether voluntary, involuntary or effected by operation of Law):

(a) **Payments of Obligations.** The Parent or any other Loan Party shall fail to pay (i) any principal of (or premium with respect to) any Loan or any LC Obligation when due hereunder (whether at stated maturity, on demand, upon acceleration, or otherwise), or (ii) any interest on any Loan or on any LC Obligation or any fee owing hereunder or under the Fee Letter, or any other Obligations within three (3) Business Days after such interest, fee or other Obligation becomes due in accordance with the terms hereof or thereof.

(b) **Breach of Warranty.** Any representation or warranty made at any time by or on behalf of any Borrower herein or by any of the Loan Parties in any other Loan Document, or in any certificate, other instrument or statement furnished pursuant to the provisions hereof or thereof, shall prove to have been false or incorrect in any material respect (or, if subject to a materiality or Material Adverse Change qualification, in any respect) as of the time it was made, deemed made or furnished.

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(c) **Breach of Negative Covenants or Certain Other Covenants.** Any of the Loan Parties shall default in the observance or performance of any covenant contained in Section 9.1, 9.3 (with respect to the ABL Priority Collateral), 9.5, 9.15, 9.16(f)(i), 9.16(f)(ii), 9.18, Section 10, or Section 11.

(d) **Breach of Other Covenants.** Any of the Loan Parties shall default in the observance or performance of (i) any covenant contained in Section 9.16(a) and such default shall continue unremedied for a period of (A) five (5) Business Days, at any time other than during an Account Control Period, or (B) three (3) Business Days, at any time during an Account Control Period, (ii) any covenant contained in Section 9.16(b), 9.16(c) or 9.16(d) and such default shall continue unremedied for a period of fifteen (15) days, or (iii) any other covenant, condition or provision hereof or of any other Loan Document and such default shall continue unremedied for a period of thirty (30) days after the earlier of (A) any Senior Officer of any Borrower becomes aware of the occurrence thereof or (B) the date upon which Parent has received written notice of such default from the Administrative Agent.

(e) **Defaults in Other Agreements or Debt; Bonding Matters.**

(i) A default or event of default shall occur at any time under the terms of any other agreement involving borrowed money or the extension of credit or any Debt under which any Loan Party or a Subsidiary of any Loan Party may be obligated as a borrower, guarantor, counterparty or other party (including Bank Product Agreements) in excess of \$50,000,000 in the aggregate, and such default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto) any indebtedness or other obligation when due (whether at stated maturity, by acceleration or otherwise) or if such default or event of default permits or causes (or with the giving of notice would permit or cause) the acceleration of any such indebtedness or other obligation or the termination of any commitment to lend in amount in excess of \$50,000,000.

(ii) One or more surety, reclamation or similar bonds securing obligations of any Borrower or any Subsidiary of the Parent (or any required guaranties thereof or required letters of credit with respect thereto) with an aggregate face amount of \$50,000,000 or more shall be actually terminated, suspended or revoked prior to the full and complete satisfaction or discharge of such obligations by any Borrower or any Subsidiary of the Parent and not replaced within 30 days of such termination, suspension or revocation; provided that any Borrower or any Subsidiary of the Parent shall be permitted to replace such surety bonds with self-bonding obligations to the extent permitted by any Person to which satisfaction of the obligations secured by such bonds are owed prior to full satisfaction of the obligations secured by such bonds.

(f) Judgments or Orders. Any judgments or orders (including with respect to any Environmental Health and Safety Claims and Environmental Health and Safety Order) (x) for the payment of money in excess of \$50,000,000 in the aggregate shall be entered against any Loan Party or any Subsidiary of any Loan Party by a court having jurisdiction in the premises or (y) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change shall be entered against any Loan Party, which judgment, in either case, is not discharged, vacated, bonded or stayed pending appeal within a period of thirty (30) days from the date of entry; provided, however, that any such judgment or order under subclause (x) of this clause (f) shall not be an Event of Default under this Section 12.1(f) if and for so long as the amount of such judgment or order in excess of \$50,000,000 is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof (and such insurer has been notified of the potential claim and does not dispute coverage).

(g) Loan Document Unenforceable. Any of the Loan Documents shall cease to be legal, valid and binding agreements enforceable against any Loan Party executing the same or such party's

successors and assigns (as permitted under the Loan Documents) in accordance with the respective terms thereof or shall in any way be terminated (except in accordance with its terms), or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby, or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document or the validity or priority of a Lien as required by the Security Documents on a portion of the Collateral that is not *de minimis*.

(h) Uninsured Losses. There shall occur any material uninsured damage to or loss, theft or destruction of any of the Collateral in excess of \$50,000,000 (or, in the case of the ABL Priority Collateral, \$5,000,000) (it being understood that the amount of deductibles payable in connection with such claim shall not be included in such threshold) or the Collateral or any other of the Loan Parties' or any of their Subsidiaries' assets in excess of \$50,000,000 (or, in the case of the ABL Priority Collateral, \$5,000,000) in the aggregate are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter.

(i) Events Relating to Plans and Benefit Arrangements. Any of the following occurs, in each case, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Change: (i) any Reportable Event, which could reasonably be expected to constitute grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan or a Multiemployer Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) any Loan Party or any member of the ERISA Group shall fail to make any contributions when due, after the expiration of any applicable grace period, to a Plan; or (v) the Parent or any member of the ERISA Group is assessed Withdrawal Liability with respect to a Multiemployer Plan.

(j) Change of Control. (i) Any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Exchange Act) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) 50% or more of the voting capital stock of the Borrower or (ii) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of the Parent on the first day of such period, (2) were nominated for election by the Parent, or (3) were approved for appointment by the board of directors of the Parent shall cease to constitute a majority of the board of directors of the Parent; provided that the appointment of any directors of the Parent pursuant to the Plan of Reorganization shall not result in an Event of Default (a "Change of Control").

(k) Involuntary Proceedings. A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Loan Party or Material Subsidiary of a Loan Party in an involuntary case under any applicable Debtor Relief Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of such Loan Party or Subsidiary for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(l) Voluntary Proceedings. Any Loan Party or Material Subsidiary of a Loan Party shall commence a voluntary case under any applicable Debtor Relief Law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or other similar official) of itself or for any substantial part of its property or shall make a

general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing.

12.2. **Remedies upon Default.**

(a) **Termination and Acceleration.** Upon the occurrence of an Event of Default under Sections 12.1(k) or (l), all Commitments shall, automatically and without notice to any Person, terminate and all Obligations (other than Obligations under any Swap Agreements between a Loan Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements) shall, automatically and without notice to any Person, become immediately due and payable, without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by Loan Parties to the fullest extent permitted by applicable Law. During the existence of any other Event of Default, Administrative Agent may (and, at the written direction of the Required Lenders, shall) do one or more of the following at any time and from time to time:

(i) declare any Obligations immediately due and payable (other than Obligations under any Swap Agreements between a Loan Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements), whereupon they shall be due and payable without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by Loan Parties to the fullest extent permitted by applicable Law;

(ii) refuse to make Loans, cause the issuance of any Letters of Credit, make any other extensions of credit or grant any other financial accommodations to or for the benefit of any Loan Parties; (B) terminate, reduce, or condition any Commitment; (C) make any adjustment to the Borrowing Base (including by instituting additional Reserves); and (D) require Loan Parties to Cash Collateralize LC Obligations, Bank Product Obligations, and other Obligations that are contingent or not yet due and payable (and, if Loan Parties do not, for whatever reason, promptly provide such Cash Collateral, Administrative Agent may provide such Cash Collateral with the proceeds of a Loan and each Lender shall fund its Pro Rata Share thereof regardless of whether an Overadvance exists or would result therefrom or any condition precedent to the making of any such Loan has not been satisfied); and

(iii) exercise such other rights and remedies which may be available to it under this Agreement, the other Loan Documents, and agreements relating to Bank Products, or applicable Law (including the rights of a secured party under the UCC), all of which shall be cumulative.

(b) **Safekeeping.** Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto, for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whatsoever, and the same shall be at all times at Loan Parties' sole risk.

12.3. **License.** Each Loan Party hereby grants to Administrative Agent during the existence of any Event of Default an irrevocable, non-exclusive license or other right to use, license, or sublicense (without payment of any royalty or other compensation to such Loan Party or any other Person) any or all of such Loan Party's Intellectual Property, computing hardware, brochures, promotional and advertising materials, labels, packaging materials, and other property in connection with the advertising for sale or lease, marketing, selling, leasing, liquidating, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer

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programs used for the compilation or printout thereof. Each Loan Party's rights and interests in and to any Intellectual Property shall inure to Administrative Agent's benefit.

12.4. **Receiver.** Subject to the Intercreditor Agreement, in addition to any other remedy available to it, Administrative Agent, upon the request of the Required Lenders, shall have the absolute right, during the existence of an Event of Default, to seek and obtain the appointment of a receiver to take possession of and operate and/or dispose of the business and assets of any Loan Party and Subsidiaries, and Loan Parties hereby consent (for themselves and on behalf of the Subsidiaries) to such rights and such appointment and hereby waive any objection Loan Parties may have thereto or the right to have a bond or other security posted by Administrative Agent or any Lender in connection therewith.

12.5. **Deposits; Insurance.** Subject to the Intercreditor Agreement, Loan Parties (a) authorize Administrative Agent to, during the existence of an Event of Default, settle, collect, and apply against the Obligations any refund of insurance premiums or any insurance proceeds payable to any Loan Party on account of any Loss or otherwise and (b) irrevocably appoints Administrative Agent as its attorney-in-fact to endorse any check or draft or take other action necessary to obtain such funds.

12.6. **Remedies Cumulative.** All rights and remedies of Administrative Agent or any other Secured Party contained in the Loan Documents, the UCC, and applicable Law are cumulative and not in derogation or substitution of each other. In particular, the rights and remedies of Administrative Agent and the other Secured Parties may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that Administrative Agent or the other Secured Parties may have, whether under any Loan Document, the UCC, applicable Law and shall include the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Loan Party of this Agreement or any of the other Loan Documents. Administrative Agent and the other Secured Parties may at any time or times, proceed directly against any Loan Party to collect the Obligations without prior recourse to any other Loan Party or the Collateral. All rights and remedies of Administrative Agent and the other Secured Parties shall continue in full force and effect until Payment in Full of all Obligations.

SECTION 13. ADMINISTRATIVE AGENT

13.1. **Appointment, Authority, and Duties of Administrative Agent; Professionals.**

(a) **Appointment and Authority.** Each Lender, LC Issuer and other Secured Party hereby irrevocably appoints Regions Bank to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to (i) take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto and (ii) enter into all Loan Documents to which Administrative Agent is intended to be a party and accept all Security Documents for Administrative Agent's benefit and the Pro Rata benefit of the Lenders, all of which shall be binding upon the Secured Parties. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive authority to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (ii) execute and deliver as Administrative Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document from any Borrower or other Person; (iii) act

as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (iv) manage, supervise, or otherwise deal with Collateral; and (v) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, applicable Law, or otherwise. Subject to Section 16.2(a)(iv)(E),

Administrative Agent alone shall be authorized to determine whether any Inventory constitutes Eligible Coal Inventory or Eligible Parts and Supplies Inventory, or whether to impose or release any Reserve, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any other Secured Party or other Person (other than the Loan Parties) for any error in judgment. It is understood and agreed that the use of the term "agent" (or any other similar nomenclature) herein or in any other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Each Secured Party hereby acknowledges the Intercreditor Agreement may be entered into by Administrative Agent on behalf of the Secured Parties pursuant to the terms of this Agreement (and amended from time to time with the consent of Required Lenders) and agrees to be bound by all of its terms.

(b) Duties; Delegation. The duties of Administrative Agent shall be ministerial and administrative in nature, and Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement or the other Loan Documents. Administrative Agent shall not have a fiduciary relationship with any Lender, LC Issuer, Secured Party, Participant or other Person, whether by reason of this Agreement or any other Loan Document or any transaction relating hereto or thereto or otherwise, and regardless of whether a Default or Event of Default exists. The conferral upon Administrative Agent of any right shall not imply a duty on Administrative Agent's part to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement. Administrative Agent may perform its duties through agents and employees and may consult with and employ Administrative Agent Professionals and shall be entitled to act upon (or refrain from acting), and shall be fully protected in any action taken (or omitted to be taken) in good faith reliance upon, any advice given by any Administrative Agent Professional. Administrative Agent shall not be responsible for the negligence or misconduct of any agents, employees or Administrative Agent Professionals selected by it. Except as otherwise may be expressly set forth herein or in any of the other Loan Documents, Administrative Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its agents, employees or Administrative Agent Professionals in any capacity.

(c) Instructions of Required Lenders. The rights and remedies conferred upon Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by applicable Law. Administrative Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with this Agreement or any other Loan Document, and may seek assurances to its satisfaction from Lenders of their indemnification obligations under Section 13.5 against all Claims which could be incurred by Administrative Agent in connection with any act (or failure to act). Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Administrative Agent shall not incur liability to any Person by reason of so refraining. Instructions of the Required Lenders shall be binding upon all Lenders, and no Lender or any other Person shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent's acting or refraining from acting in accordance with the instructions of the Required Lenders. Notwithstanding the foregoing, instructions by and consent of all Lenders (except any Defaulting Lender) shall be required in the circumstances described in Section 16.2(a)(iv). The Required Lenders, without the prior written consent of each Lender, may not direct Administrative Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans or terminate the Commitments of one Lender without terminating the Commitments of all Lenders. Administrative Agent shall not be required to take any action which, in its opinion, or in the opinion of its legal counsel, is contrary to applicable Law or any Loan Document or could subject any Administrative Agent Indemnitee

to liability, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law.

13.2. Agreements Regarding Guarantors, Collateral and Field Examination Reports.

(a) Lien Releases; Release of Guarantors; Care of Collateral. Each Secured Party authorizes Administrative Agent to (i) release any Lien with respect to any Collateral (A) upon Payment in Full of the Obligations, (B) that Borrower Agent certifies in writing to Administrative Agent is Excluded Property (and Administrative Agent may rely conclusively on any such certificate without further inquiry); provided that such certification shall not be required with respect to Excluded Property under clause (a) or clause (f) of such definition, or (C) that is the subject of a Disposition which Borrower Agent certifies in writing to Administrative Agent is permitted under this Agreement (including under Section 10.4) (and Administrative Agent may rely conclusively on any such certificate without further inquiry) or to which Required Lenders or such other number or percentage of Lenders may be required to give such consent under Section 16.2 have otherwise consented, (ii) subordinate its Liens in any Collateral in favor of any other Lien if Borrower Agent certifies that such other Lien is a Permitted Lien entitled to priority over Administrative Agent's Liens (and Administrative Agent may rely conclusively on any such certificate without further inquiry), (iii) release any Guarantor from its obligations under any Guaranty and the Security Documents pursuant to any transaction permitted hereunder pursuant to which such Guarantor becomes a Non-Loan Party Subsidiary or ceases to be a Subsidiary (including, without limitation, in the event the ownership interests in such Loan Party are sold or otherwise disposed of or transferred to persons other than Loan Parties in a transaction permitted under this Agreement (including under Section 10.4)) or to which Required Lenders (or such other number or percentage of Lenders as may be required to give such consent under Section 16.2) have otherwise consented, (iv) subordinate its Liens or enter into non-disturbance agreements satisfactory to Administrative Agent in its Permitted Discretion with respect to any Term Loan Priority Collateral in connection with any easements, permits, licenses, rights of way, surface leases or other surface rights or interests permitted to be granted hereunder, and (v) release each Loan Party from its obligations under the Loan Documents (other than those obligations that survive Payment in Full of the Obligations or termination of the applicable Loan Document) upon Payment in Full of the Obligations. Administrative Agent shall have no obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by a Loan Party or any other Person, or is cared for, protected, insured or encumbered, nor to assure that Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under this Agreement or any other Loan Document pursuant to this Section 13.2(a).

(b) **Possession of Collateral.** Administrative Agent and the Lenders appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or under Article 9 Control of such Lender, to the extent such Liens are perfected by possession or Article 9 Control. If any Lender obtains possession or Article 9 Control of any Collateral, it shall notify Administrative Agent thereof and, promptly upon Administrative Agent's request, deliver such Collateral to Administrative Agent or otherwise deal with such Collateral in accordance with Administrative Agent's instructions.

(c) **Reports.** Administrative Agent shall promptly forward to LC Issuer and each Lender (upon any such Person's request therefor), when complete, copies of any field audit, field examination, or appraisal report prepared by or for Administrative Agent with respect to any Loan Party or Subsidiary or any Collateral (each, a "Report"). LC Issuer and each Lender agrees (i) that neither Regions Bank nor

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Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report and shall not be liable for any information contained in or omitted from any Report; (ii) that the Reports are not intended to be comprehensive audits or examinations of any Person, thing, or matter and that Administrative Agent or any other Person performing any such audit, examination, or appraisal will inspect only specific information regarding the subject matter thereof and will rely significantly upon the books and records, as well as upon representations of, the Persons (and their officers and employees) subject to such audit, examination, or appraisal; and (iii) to keep all Reports confidential and strictly for LC Issuer's or such Lender's internal use and not to distribute any Report (or the contents thereof) to any Person (except to such Person's Participants, attorneys, and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each of LC Issuer and the Lenders agrees to indemnify, defend and hold harmless Administrative Agent and any other Person preparing a Report (excepting therefrom any Loan Party) from any action LC Issuer or such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising in connection with any third parties that obtain any information contained in a Report through LC Issuer or such Lender.

(d) **Rights of Individual Secured Parties.** Anything contained in any of the Loan Documents to the contrary notwithstanding, each of the Loan Parties, Administrative Agent and each other Secured Party hereby acknowledge and agree that (i) no Secured Party except Administrative Agent shall have any power, right or remedy hereunder individually to realize upon any of the Collateral or to enforce this Agreement or any other Loan Document, it being understood and agreed that all such powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and thereof, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, Administrative Agent or any other Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition and Administrative Agent, as agent for and representative of the Secured Parties (but not any of the other Secured Parties in their respective individual capacities) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale or other disposition.

13.3. **Reliance By Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, facsimile, Internet or intranet website posting, or other distribution), or any statement made to it orally or by telephone believed by it to be genuine and to have been made, signed, sent, or otherwise authenticated, as applicable, by the proper Person. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or LC Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or LC Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or LC Issuer in accordance with Section 16.1 before the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other Administrative Agent Professionals selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

13.4. **Action Upon Default.** Administrative Agent shall be entitled to assume that no Default or Event of Default has occurred and is continuing and shall not be deemed to have knowledge of any Default or Event of Default unless, in its capacity as a Lender it has actual knowledge thereof, or it has received written notice from any other Lender or any Loan Party specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify Administrative Agent and the other Lenders thereof in writing specifying in detail the nature thereof.

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Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of Administrative Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations under any Loan Documents, or exercise any right that it might otherwise have under applicable Law to credit bid at foreclosure sales, UCC sales, or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Borrower where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

13.5. **Indemnification of Administrative Agent Indemnitees.** EACH SECURED PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ADMINISTRATIVE AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY LOAN PARTIES (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF LOAN PARTIES UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY ADMINISTRATIVE AGENT INDEMNITEE, PROVIDED SUCH CLAIM RELATES TO OR ARISES FROM AN ADMINISTRATIVE AGENT INDEMNITEE'S ACTING AS OR FOR ADMINISTRATIVE AGENT (IN ITS CAPACITY AS ADMINISTRATIVE AGENT). In Administrative Agent's discretion, it may reserve for any such Claims made against an Administrative Agent Indemnitee and may satisfy any judgment, order, or settlement relating thereto, from proceeds of Collateral before making any distribution of Collateral proceeds to any other Secured Parties. If Administrative Agent is sued by any receiver, bankruptcy trustee, debtor-in-possession, or other Person for any alleged preference or fraudulent transfer, then any monies paid by Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs, and expenses (including attorneys' fees) incurred in the defense of same, shall be reimbursed to Administrative Agent by each Lender to the extent of its Pro Rata Share. All payment obligations under this Section 13.5 shall be due and payable **ON DEMAND**.

13.6. **Limitation on Responsibilities of Administrative Agent.** Administrative Agent shall not be liable for any action taken or not taken by it under any Loan Document (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 16.2) or (b) in the absence

of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment. Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Loan Party or any Secured Party of any obligations under the Loan Documents. Administrative Agent does not make to Lenders any express or implied warranty, representation, or guarantee with respect to any Obligations, Collateral, Loan Documents, or Borrower. No Administrative Agent Indemnitee shall be responsible to any Secured Party for (a) any recitals, statements, information, representations, or warranties contained in any Loan Documents; (b) the execution, validity, genuineness, effectiveness, or enforceability of any Loan Documents; (c) the genuineness, enforceability, collectibility, value, sufficiency, location, or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; (d) the validity, enforceability or collectibility of any Obligations; or (e) the assets, liabilities, financial condition, results of operations, business, creditworthiness, or legal status of any Loan Party or Account Debtor. No Administrative Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document, or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 7 or

elsewhere herein or in any other Loan Document. Administrative Agent shall have no liability with respect to the administration, submission or any other matter related to the rates in the definition Adjusted LIBOR Rate or with respect to any comparable or successor rate thereto.

13.7. **Resignation; Successor Administrative Agent.** Subject to the appointment and acceptance of a successor Administrative Agent as provided below, Administrative Agent may resign at any time by giving at least thirty (30) days prior written notice thereof to Lenders and Borrowers. Upon receipt of such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent which shall be (i) a Lender or an Affiliate of a Lender (in each case excluding Defaulting Lenders) or (ii) a commercial bank that is organized under the laws of the United States or any state or district thereof, or an Affiliate of such bank, and (provided no Default or Event of Default exists) is reasonably acceptable to the Borrower Agent. If no successor agent is appointed before the effective date of the resignation of Administrative Agent, then Administrative Agent may appoint a successor agent meeting the qualifications set forth above, provided that if Administrative Agent shall notify Borrowers and Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral security held by Administrative Agent on behalf of the Lenders or LC Issuer under any of the Loan Documents the retiring Administrative Agent shall continue to hold such Collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications, and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and LC Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent (with consent from the Borrower Agent unless a Default or Event of Default then exists) as provided for above in this paragraph. Upon acceptance by a successor Administrative Agent of an appointment to serve as Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this paragraph) but shall continue to have the benefits of the indemnification set forth in Sections 13.5, 16.3, and 16.4. Notwithstanding any Administrative Agent's resignation, the provisions of this Section 13 shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Administrative Agent. Any successor to Regions Bank by merger or acquisition of equity interests or its Loans hereunder shall continue to be Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above. In addition to the foregoing, and notwithstanding anything to the contrary contained herein, if the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law by notice in writing to the Borrower Agent and such Person remove such Person as the Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders (with consent from the Borrower Agent unless a Default or Event of Default then exists) and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders (the "Removal Effective Date"), then, such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the Required Lenders instituting such removal shall continue thereafter as co-Administrative Agents unless and until a successor Administrative Agent is appointed and accepts such appointment.

13.8. **Separate Collateral Agent.** It is the intent of the parties that there shall be no violation of any applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any applicable Law, Administrative Agent with consent from the Borrower Agent unless a Default or Event of Default then exists (such consent not be unreasonably

withheld) may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Administrative Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as Administrative Agent. Lenders shall execute and deliver such documents as Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign, or be removed, then all the rights and remedies of such agent, to the extent permitted by applicable Law, shall vest in and be exercised by Administrative Agent until appointment of a new agent.

13.9. **Due Diligence and Non-Reliance.** Each Secured Party acknowledges and agrees that it has, independently and without reliance upon Administrative Agent or any other Secured Party, and based upon such documents, information, and analyses as it has deemed appropriate, made its own credit analysis of each Loan Party and its own decision to enter into this Agreement and to fund Loans, issue Letters of Credit, participate in LC Obligations hereunder, make or participate in other credit extensions to Loan Parties hereunder and grant other financial accommodations to or on behalf of any Loan Party pursuant hereto. Each Secured Party has made such inquiries concerning the Loan Documents, the Collateral and each Loan Party as such Lender believes necessary. Each Secured Party further acknowledges and agrees that the other Secured Parties, including Administrative Agent, have made no representations or warranties concerning any Loan Party or Subsidiary, any Collateral, or the legality, validity, sufficiency, or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon the other Secured Parties, including Administrative Agent, and based upon such financial statements, documents, and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, issuing Letters of Credit, participating in LC Obligations, making or participating in other credit extensions to Loan Parties and granting

other financial accommodations to or on behalf of any Loan Party and in taking or refraining from any action under any Loan Documents. Except as expressly required hereby and except for notices, reports, and other information expressly requested by a LC Issuer or any Lender, Administrative Agent shall have no duty or responsibility to provide LC Issuer, any Lender or any other Secured Party with any notices, reports, or certificates furnished to Administrative Agent by any Loan Party or Subsidiary or any credit or other information concerning the affairs, financial condition, business, or properties of any Loan Party or Subsidiary which may come into possession of Administrative Agent or any of its Affiliates.

13.10. **Remittance of Payments.**

(a) **Remittances Generally.** All payments by any Lender to Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Administrative Agent and request for payment is made by Administrative Agent by 11:00 a.m. on a Business Day, payment shall be made by such Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Administrative Agent to any Lender shall be made by wire transfer, in the type of funds received by Administrative Agent. Any such payment shall be subject to Administrative Agent's right of offset for any amounts due from such Lender under the Loan Documents.

(b) **Failure to Pay.** If any Lender fails to pay any amount when due by it to Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrowers be entitled to receive credit for any interest paid by a Lender to Administrative Agent.

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(c) **Recovery of Payments.** If Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Administrative Agent from a Loan Party and such related payment is not received, then Administrative Agent may recover such amount from each Secured Party that received it. If Administrative Agent determines at any time that an amount received under any Loan Document must be returned to a Loan Party or paid to any other Person pursuant to applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Administrative Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Administrative Agent to any Obligations are later required to be returned by Administrative Agent pursuant to applicable Law, each Lender shall pay to Administrative Agent, on demand, such Lender's Pro Rata Share of the amounts required to be returned.

13.11. **Administrative Agent in its Individual Capacity.** As a Lender, Administrative Agent shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders," or any similar term, as and when used herein or in any other Loan Document, unless otherwise expressly provided, shall include Administrative Agent in its capacity as a Lender. Each of Administrative Agent and its Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, be a Bank Product Provider to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, Borrowers and their Affiliates, as if Administrative Agent were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In their individual capacity, Administrative Agent and its Affiliates may receive information regarding Borrowers, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that Administrative Agent and its Affiliates shall be under no obligation to provide such information to Lenders if acquired in such individual capacity and not as Administrative Agent hereunder.

13.12. **Administrative Agent Titles.** Each Lender, other than Administrative Agent, that is designated (on the cover page of this Agreement or otherwise) by Administrative Agent as an "Arranger," "Documentation Agent," or "Syndication Agent" or words of similar type or effect shall not have any right, power, responsibility, or duty under any Loan Documents other than those applicable to all Lenders and shall in no event be deemed to have any fiduciary relationship with any other Lender or Secured Party.

13.13. **Bank Product Providers.** Each holder of Bank Product Obligations not party to this Agreement agrees to be bound by this Agreement in relation to Bank Products. Each holder of Bank Product Obligations shall indemnify, defend and hold harmless Administrative Agent Indemnitees, to the extent not reimbursed by Loan Parties, against all Claims that may be incurred by or asserted against any Administrative Agent Indemnitee in connection with such provider's Bank Product Obligations. Anything contained in any of the Loan Documents to the contrary notwithstanding, no Bank Product Provider will create (or be deemed to have created) in its favor any rights in connection with the management or release of any Collateral or of the Obligations of Borrowers or any other Loan Party under the Loan Documents except as otherwise may be expressly provided herein or in the other Loan Documents. By accepting the benefits of the Collateral, each Bank Product Provider shall be deemed to have appointed Administrative Agent as its agent and agreed to be bound by the Loan Documents as a holder of Bank Product Obligations, subject to the limitations set forth herein. Furthermore, it is understood and agreed that each Bank Product Provider, in its capacity as such, shall not have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Loan Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Loan Documents) other than in its capacity (if any) as a Lender and, in any case, only as expressly provided herein or therein

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13.14. **No Third Party Beneficiaries.** This Section 13 is an agreement solely among Administrative Agent, LC Issuer, Lenders and the other Secured Parties and shall survive Payment in Full of the Obligations. This Section 13 does not confer any rights or benefits upon Loan Parties or any other Person, and no Loan Party or other Person shall have any standing to enforce this Section 13. As between Loan Parties and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by LC Issuer, the Lenders and the other Secured Parties, as applicable.

13.15. **Certifications From Lenders and Participants; PATRIOT Act; No Reliance.**

(a) **PATRIOT Act Certifications.** Each Lender or assignee or Participant of a Lender that is not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender, assignee or Participant is not a "shell" and certifying to other matters as

required by Section 313 of the PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the PATRIOT Act.

(b) **No Reliance.** Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, Participants or assignees, may rely on Administrative Agent to carry out such Lender's, Affiliate's, Participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 1020.220 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such other Anti-Terrorism Laws.

13.16. **Bankruptcy.**

(a) **Proofs of Claim.** In case of the pendency of any Insolvency Proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or LC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such Insolvency Proceeding or otherwise: (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, LC Issuer and Administrative Agent (including any claim for compensation, expenses, disbursements and advances of Lenders, LC Issuer and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, LC Issuer and Administrative Agent arising hereunder) allowed in such Insolvency Proceeding; and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, or other similar official in any such judicial proceeding is hereby authorized by each Lender and LC Issuer to make such payments directly to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and/or LC Issuer, to pay to Administrative Agent any amount due

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for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent hereunder.

(b) **Credit Bids.** The holders of the Obligations hereby irrevocably authorize Administrative Agent, acting at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of all or some of the Obligations pursuant to a deed in lieu of foreclosure, strict foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including Sections 363, 1123 or 1129 thereof, or any similar applicable Law in any other jurisdictions to which a Loan Party is subject, or (b) at any sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent of, or at the direction of) Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the holders thereof shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the equity interests or debt instruments of the acquisition vehicle(s) used to consummate such purchase). In connection with any such credit bid (i) Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle(s) (provided that any actions by Administrative Agent with respect to such acquisition vehicle(s), including any disposition of the assets or equity interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and (ii) to the extent that any Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (whether as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt which is credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the holders of the Obligations pro rata and the equity interests or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled without the need for any Lender or any acquisition vehicle to take any further action.

SECTION 14. ASSIGNMENTS AND PARTICIPATIONS

14.1. **Successors and Assigns.**

(a) **Successors and Assigns Generally.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Documents except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement or any other Loan Document, whether expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

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(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans and obligations hereunder at the time owing to it) and the other Loan Documents; provided that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it (in each case with respect to any credit facility) or contemporaneous assignments to Approved Funds that equal at least to the amounts specified in subsection (b)(i)(B) of this Section in the aggregate) or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitments (which for this purpose includes Loans and Obligations in respect thereof outstanding thereunder) or, if any of the Commitments are not then in effect, the principal outstanding balance of the Loans and other Obligations of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment Agreement, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of any Commitments and/or Loans, unless each of the Administrative Agent and, so long as no Event of Default shall have occurred and is continuing, the Borrower Agent otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Commitments and Loans assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default shall have occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower Agent shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of Commitments under revolving credit facilities if such assignment is to a Person that is not a Lender with a Commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the LC Issuer (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of any Commitment; and

(D) the consent of the Swingline Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of any Commitment.

(iv) Assignment Agreement. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement, together with a processing and recordation fee in

the amount of \$3,500, unless waived, in whole or in part by the Administrative Agent in its discretion. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made by any Lender to (A) any Borrower or other Loan Party or any of a Borrower's or a Loan Party's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) the Term Agent or any Term Lender.

(vi) No Assignment to Natural Persons. No such assignment shall be made by any Lender to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower Agent and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each LC Issuer, each Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swingline Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 15.2, 15.3 and 16.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The Borrowers will execute and deliver on request, at their own expense, Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and Obligations owing to, each

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Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than (w) a natural Person, (x) a Borrower or other Loan Party, (y) any of a Borrower's or other Loan Party's Affiliates or Subsidiaries, or (z) the Term Agent or any Term Lender) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the LC Issuer and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 16.3 with respect to any payments made by such Lender to its Participant(s). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in (iii) or (iv) of Section 16.2(a) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 15.1, 15.2 and 15.3 (subject to the requirements and limitations therein, including the requirements under Section 15.3 (it being understood that the documentation required under Section 15.3 shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 15.4 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 15.2 or 15.3, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with Borrowers to effectuate the provisions of Section 15.4 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 16.6 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, or any promissory notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 15. YIELD PROTECTION

15.1. Making or Maintaining LIBOR Loans or LIR Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), with respect to any LIBOR Loans or LIR Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBOR Loans or LIR Loans on the basis provided for in the definition of Adjusted LIBOR Rate or LIBOR Index Rate, as applicable, Administrative Agent shall on such date give notice to Borrower Agent and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Loans or LIR Loans until such time as Administrative Agent notifies Borrower Agent and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Borrowers with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrowers and such Loans shall be automatically made or continued as, or converted to, as applicable, Base Rate Loans without reference to the Adjusted LIBOR Rate component of the Base Rate.

(b) Illegality or Impracticability of LIBOR Loans or LIR Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Administrative Agent) that the making, maintaining or continuation of its LIBOR Loans or LIR Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice to Borrower Agent and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Loans or LIR Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a LIBOR Loan or LIR Loan then being requested by a Borrower pursuant to a Notice of

Borrowing or a Notice of Conversion/Continuation, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan without reference to the LIBOR component of the Base Rate, (3) the Affected Lender's obligation to maintain its outstanding LIBOR Loans or LIR Loans (the "Affected Loans") shall be terminated at the earlier of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans without reference to the Adjusted LIBOR Rate component of the Base Rate on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Loan or LIR Loan then being requested by a Borrower pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Borrowers shall have the option, subject to the provisions of Section 15.1(a), to rescind such Notice of Borrowing or Notice of Conversion/Continuation as to all Lenders by giving

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notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 15.1(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Loans or LIR Loans in accordance with the terms hereof.

(c) Compensation for Breakege or Non Commencement of Interest Periods. Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable out-of-pocket losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its LIBOR Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender sustains: (i) if for any reason (other than a default by such Lender) a borrowing of any LIBOR Loans does not occur on a date specified therefor in a Notice of Borrowing or request for borrowing, or a conversion to or continuation of any LIBOR Loans does not occur on a date specified therefor in a Notice of Conversion/Continuation or a request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its LIBOR Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), including as a result of an assignment in connection with the replacement of a Lender pursuant to Section 15.4(b); or (iii) if any prepayment of any of its LIBOR Loans is not made on any date specified in a notice of prepayment given by Borrowers.

(d) Booking of LIBOR Loans. Any Lender may make, carry or transfer LIBOR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of LIBOR Loans. Calculation of all amounts payable to a Lender under this Section 15.1 and under Section 15.2 shall be made as though such Lender had actually funded each of its relevant LIBOR Loans through the purchase of a LIBOR deposit bearing interest at the rate obtained pursuant to sub-clause (i) of part (a) of the definition of LIBOR in an amount equal to the amount of such LIBOR Loans and having a maturity comparable to the relevant Interest Period and through the transfer of such LIBOR deposit from an offshore office of such Lender to a domestic office of such Lender in the United States; provided, however, each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 15.1 and under Section 15.2.

(f) Certificates for Reimbursement. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender, as specified in paragraph (c) of this Section and the circumstances giving rise thereto shall be delivered to Borrower Agent and shall be conclusive absent manifest error. In the absence of any such manifest error, Borrowers shall pay such Lender or such LC Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(g) Delay in Requests. Borrowers shall not be required to compensate a Lender pursuant to this Section for any such amounts incurred more than six (6) months prior to the date that such Lender delivers to Borrower Agent the certificate referenced in Section 15.1(f).

15.2. Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

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(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBOR Rate or the LIBOR Index Rate) or LC Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or LC Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such LC Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, LC Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, LC Issuer or other Recipient, Loan Parties will pay to such Lender, LC Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, LC Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender (including Swingline Lender) or LC Issuer determines that any Change in Law affecting such Lender or LC Issuer or any lending office of such Lender or LC Issuer or such Lender's or LC Issuer's holding company, if any, regarding capital or

liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's or LC Issuer's capital or on the capital of such Lender's or LC Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender hereunder or the Loans made by, or participations in Letters of Credit and Swingline Loans held by, such Lender, or the Letters of Credit issued by such LC Issuer, to a level below that which such Lender or LC Issuer or such Lender's or LC Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or LC Issuer's policies and the policies of such Lender's or LC Issuer's holding company with respect to capital adequacy and liquidity), then from time to time Loan Parties will pay to such Lender or LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or LC Issuer or such Lender's or LC Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or LC Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or LC Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and the circumstances giving rise thereto shall be delivered to Borrower Agent and shall be conclusive absent manifest error. In the absence of any such manifest error, Loan Parties shall pay such Lender or LC Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or LC Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or LC Issuer's right to demand such compensation, provided that Loan Parties shall not be required to compensate a Lender or LC Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or LC Issuer, as the case may be, delivers to Borrowers the

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certificate referenced in Section 15.2(c) and notifies Borrower Agent of such Lender's or LC Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

15.3. Taxes.

(a) LC Issuer. For purposes of this Section 15.3, the term "Lender" shall include LC Issuer and the term "Law" shall include FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of the applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by such Withholding Agent, then such Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Official Body in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Official Body in accordance with applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnification. (i) The Loan Parties shall jointly and severally indemnify each Recipient and shall make payment in respect thereof within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Official Body. A certificate as to the amount of any such payment or liability delivered to Borrower Agent by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Lender Indemnity. Each Lender shall severally indemnify within ten (10) Business Days after demand therefor (i) the Administrative Agent for any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) the Administrative Agent and the Loan Parties for any Taxes attributable to such Lender's failure to comply with the provisions of Section 14.1(d) relating to the maintenance of a Participant Register and (iii) the Administrative Agent and the Loan Parties for any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent or, with respect to clauses (ii) and (iii), any Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Official Body. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent or, with respect to clauses (ii) and (iii), any Loan Party shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent and the Loan Parties to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise

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payable by Administrative Agent or a Loan Party to the Lender from any other source against any amount due to Administrative Agent or a Loan Party, as applicable, under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to an Official Body pursuant to this Section, such Loan Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Official Body evidencing such payment, a copy of a return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(g) Status of Lenders; Tax Documentation. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower Agent and Administrative Agent, at the time or times reasonably requested by Borrower Agent or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower Agent or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Agent or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower Agent or

Administrative Agent as will enable Borrower Agent or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to Borrower Agent and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Agent or Administrative Agent), executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Agent or Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable, or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or W-8BEN-E, as applicable, or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for

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portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit I-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable, or any successor form); or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit I-2** or **Exhibit I-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit I-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Agent or Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit Borrower Agent or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower Agent and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower Agent or Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrowers or Administrative Agent as may be necessary for Borrower Agent and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Agent and Administrative Agent in writing of its legal inability to do so.

(h) **Treatment of Certain Refunds.** Unless required by applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Official Body with respect to such refund). Such indemnifying party, upon the request of the

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indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (h) (plus any penalties, interest or other charges imposed by the relevant Official Body) in the event that such indemnified party is required to repay such refund to such Official Body. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax

subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) **Status of the Agent.** The Administrative Agent shall deliver to the Borrower Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which the Administrative Agent becomes the administrative agent hereunder or under any other Loan Document (and from time to time thereafter upon the reasonable request of the Borrower Agent) executed copies of either (i) IRS Form W-9 (or any successor form) or (ii) a U.S. branch withholding certificate on IRS Form W-8IMY (or any successor form) evidencing its agreement with the Borrowers to be treated as a U.S. person (with respect to amounts received on account of any Lender) and IRS Form W-8ECI (with respect to amounts received on its own account), with the effect that, in either case, the Borrowers will be entitled to make payments hereunder to the Administrative Agent without withholding or deduction on account of U.S. federal withholding Tax.

(j) **Survival.** Each party's obligations under this Section 15.3 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

15.4. **Mitigation Obligations; Designation of a Different Lending Office; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under Section 15.2, or requires Borrowers to pay any Indemnified Taxes or additional amounts to any Lender or any Official Body for the account of any Lender pursuant to Section 15.3, then such Lender shall (at the request of Borrowers) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 15.2 or Section 15.3, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under Section 15.2, or if a Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Official Body for the account of any Lender pursuant to Section 15.3 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 15.4(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then, such Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 16.2), all of its interests, rights (other than its existing rights to payments pursuant to Section 15.2 or Section 15.3) and obligations under this Agreement and the related Loan Documents to an

Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that: (i) Borrowers shall have paid to Administrative Agent the assignment fee specified in Section 14.1(b); (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Obligations (excluding, for the avoidance of doubt, LC Obligations of the type described in clause (a) of the definition of "LC Obligations"), accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 15.1) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrowers (in the case of all other amounts); (iii) in the case of any such assignment resulting from a claim for compensation under Section 15.2 or payments required to be made pursuant to Section 15.3, such assignment will result in a reduction in such compensation or payments thereafter; (iv) such assignment does not conflict with applicable Law; and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply. Except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 16. MISCELLANEOUS

16.1. **Notices.**

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Administrative Agent, the Borrowers, the Borrower Agent or any other Loan Party, to the address, telecopier number, electronic mail address or telephone number specified in **Appendix B**:

(ii) if to any Lender, the LC Issuer or Swingline Lender, to the address, telecopier number, electronic mail address or telephone number in its Administrative Questionnaire on file with the Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) **Electronic Communications.** Notices and other communications to the Lenders and the LC Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent from time to time, provided that the foregoing shall not apply to notices to any Lender or the LC Issuer pursuant to

Section 2 if such Lender or such LC Issuer, as applicable, has notified the Administrative Agent and the Borrower Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided that, with respect to clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by written notice to the other parties hereto.

(d) Platform.

(i) Each Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the LC Issuer and the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its officers, directors, employees, managers, Affiliates, agents, trustees, and representatives, including Administrative Agent Professionals (collectively, the "Agent Parties"), have any liability to the Borrowers or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any other Loan Party's or the Administrative Agent's transmission of Communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the LC Issuer by means of electronic communications pursuant to this Section, including through the Platform.

16.2. Amendments.

(a) Consent; Amendment; Waiver. None of this Agreement, any other Loan Document nor any term hereof or thereof may be amended orally, but only by an instrument in writing signed by the Required Lenders, or in the case of Loan Documents executed by Administrative Agent (and not the other Lenders), signed by Administrative Agent and approved by the Required Lenders and, in the case of an amendment, also by the Loan Parties party to the applicable Loan Document (or Borrower Agent acting on their behalf); provided, however, that:

(i) without the prior written consent of Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties, or discretion of Administrative Agent and without the prior written consent of Swingline Lender and Administrative Agent, no amendment or waiver with respect to the provisions of Section 2.3 shall be effective;

(ii) without the prior written consent of LC Issuer and Administrative Agent, no modification shall be effective with respect to any LC Obligations, the definitions of "LC Conditions" or "Defaulting Lender" (except to be more inclusive of the facts and circumstances which cause a Lender to become a Defaulting Lender) or the terms of Sections 2.4 or which constitutes a waiver of any LC Condition;

(iii) without the prior written consent of each Lender directly affected thereby including a Defaulting Lender, no modification shall be effective that would (A) increase the Commitment of such Lender (or reinstate any commitment terminated pursuant to Section 2.1(c)); (B) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in Section 4.2); provided that only the consent of the Required Lenders shall be necessary to waive any obligation of Borrowers to pay interest at the Default Rate during the existence of an Event of Default; (C) extend the Stated Commitment Termination Date applicable to such Lender's Obligations; or (D) amend this clause (iii); and

(iv) without the prior written consent of all Lenders (except a Defaulting Lender), no modification shall be effective that would (A) amend, waive, or alter the application of payments or obligations of Administrative Agent, LC Issuer or any Lender under Sections 5.5 or 5.6 (except to the extent provided in Section 4.2); (B) amend this Section 16.2 or the definitions of "Pro Rata," "Pro Rata Share" or "Required Lenders" (and the defined terms used in each such definition) or any other provision of this Agreement or the other Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; (C) release all or substantially all of the Collateral; (D) release any Loan Party from liability for any Obligations, except to the extent expressly permitted by the terms hereof; (E) contractually subordinate any of Administrative Agent's Liens in and to the Collateral, except to the extent expressly permitted by the terms hereof or subordinate the payment of any Obligations; or (F) increase the advance rates or amend the definition of "Borrowing Base" (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability.

The foregoing notwithstanding (1) this Agreement may be amended to increase the interest rate or any fees hereunder with the consent of Administrative Agent and Borrowers (or Borrower Agent, acting on their behalf) only; (2) this Agreement and the other Loan Documents may be amended to reflect definitional, technical, and conforming modifications to the extent necessary to effectuate any increase in the Commitments pursuant to Section 2.1(f) with the prior written consent of Administrative Agent, Borrowers (or Borrower Agent, acting on their behalf) and each Lender or Eligible Assignee participating

in such increase pursuant to documentation reasonably satisfactory to Administrative Agent and Borrowers (or Borrower Agent, acting on their behalf) without the consent of any other Lender or LC Issuer; (3) modifications to the Loan Documents may be made to the extent necessary to grant a security interest in additional Collateral to Administrative Agent or add a Guarantor for the benefit of the Secured Parties with the prior written consent of Administrative Agent and affected Loan Parties (or Borrower Agent, acting on their behalf) only pursuant to documentation reasonably satisfactory to Administrative Agent and such Loan Parties (or Borrower Agent, acting on their behalf) without the consent of any Lender or LC Issuer; (4) only the consent of Administrative Agent shall be required to amend **Appendix A** to reflect assignments of the Commitment and Loans in accordance with this Agreement; (5) modifications of a Loan Document to cure or correct errors or omissions, any ambiguity, omission, defect

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or inconsistency or to effect administrative changes may be made by Administrative Agent and Loan Parties (or Borrower Agent, acting on their behalf) without the consent of any other party to the Loan Documents so long as (A) such modification does not adversely affect the rights of any Lender in any material respect and (B) all Lenders shall have received at least five (5) Business Days' prior written notice thereof and Administrative Agent shall not have received within five (5) Business Days after the date of receipt of such notice to the Lenders a written notice from the Required Lenders stating that the Required Lenders object to such modification; (6) if this Agreement or any Loan Document contains any blank spaces, such as for dates or amounts, Borrowers (on behalf of themselves and each other Loan Party) and Lenders hereby authorize and direct Administrative Agent, with the consent of the Borrower Agent, to complete such blank spaces according to the terms upon which the transactions contemplated hereby or thereby were contemplated; and (7) only the consent of the parties to the Fee Letter or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender which is party to any agreement relating to a Bank Product shall have no right to participate in any manner in modification of any other Loan Document.

(b) **Amendment and Restatement.** Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of Borrowers (or Borrower Agent, acting on their behalf) and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall be entitled to the benefit of **Sections 15, 16.3, and 16.4**), such Lender shall have no other Commitment or other obligation hereunder and shall have been paid in full all Obligations owing to it or accrued for its account under this Agreement. Any waiver or consent granted by Administrative Agent, LC Issuer or Lender shall not constitute a modification of this Agreement, except to the extent expressly provided in such waiver or consent, or constitute a course of dealing by such Persons at variance with the terms of the Agreement such as to require further notice by such Persons of such their intent to require strict adherence to the terms of the Agreement in the future. Administrative Agent, LC Issuer; and the Lenders expressly reserve the right to require strict compliance with the terms of this Agreement. No waiver or course of dealing shall be established by (i) the failure or delay of Administrative Agent, LC Issuer or any Lender to require strict performance of any Loan Party to this Agreement or any other Loan Document or to exercise any rights or remedies with respect to Collateral or otherwise; (ii) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (iii) acceptance by Administrative Agent, LC Issuer or any Lender of performance by any Loan Party under this Agreement or any other Loan Document in a manner other than that specified herein or therein.

(c) **Payment for Consents.** No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee, or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

(d) **Non-Consenting Lender.**

(i) Each Borrower, LC Issuer and each Lender grants to Administrative Agent the option (without any obligation, however), to purchase all (but not less than all) of a Non-Consenting Lender's portion of the Commitments, the Loans, and LC Obligations owing to it and any Notes held by it and all of its rights and obligations hereunder and under the other Loan Documents at a price equal to the outstanding principal amount of the Loans and LC Obligations for unreimbursed draws payable to such Non-Consenting Lender plus any accrued but unpaid interest on such Loans and any accrued but unpaid commitment fee arising under **Section 3.2(b)** and Letter of Credit fees arising under **Section 3.2(c)**

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owing to such Non-Consenting Lender plus the amount necessary to Cash Collateralize any Letters of Credit issued by such Non-Consenting Lender (if any). If Administrative Agent exercises its option under this Section, the Non-Consenting Lender shall promptly execute and deliver to Administrative Agent any Assignment Agreement and other agreements and documentation which Administrative Agent shall reasonably determine are necessary to effect such assignment and which are provided to such Non-Consenting Lender. If the Non-Consenting Lender fails for whatever reason to execute and delivery such Assignment Agreement and other documentation within three (3) Business Days after the date of its receipt thereof, then Administrative Agent shall have the power to do so as power of attorney for such Non-Consenting Lender and any execution and delivery of such Assignment Agreement and such other documentation by Administrative Agent under such power of attorney shall binding upon such Non-Consenting Lender. Administrative Agent may assign its purchase option and powers under this Section to any Eligible Assignee if such assignment otherwise complies with the requirements of **Section 14.1(b)**.

(ii) Borrowers may, at their sole expense and effort, replace such Non-Consenting Lender in accordance with **Section 15.4(b)**.

16.3. Indemnity; Expenses. EACH LOAN PARTY SHALL INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY "CLAIMS" AND "EXTRAORDINARY EXPENSES" (AS SUCH TERMS ARE DEFINED IN **SECTION 1.1**) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS AND EXPENSES ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to this Agreement or any other Loan Document have any obligation thereunder to indemnify, defend or hold harmless an Indemnatee with respect to any Claim, Extraordinary Expense or other loss, cost, fees, or expenses (a) that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence, bad faith or willful misconduct of such Indemnatee, or such Indemnatee's controlled Affiliate's acting on the behalf of, or the express instructions of, such Indemnatee or controlled Affiliate, as determined by a court of competent jurisdiction by final and non-appealable judgment or (b) that are solely among Indemnitees. In addition to all other Obligations, the obligations and liabilities described in this **Section 16.3** shall (a) constitute Obligations; (b) be in addition to, and cumulative of, any other indemnification provisions set forth elsewhere in this Agreement or any other Loan Document; (c) be secured by the Collateral; and (d) survive termination of this Agreement. Notwithstanding anything to the contrary contained in this **Section 16.3**, the Loan Parties' obligation to reimburse the Indemnitees for legal

fees and expenses shall be limited to the fees and expenses of a single legal counsel (plus, (x) to the extent necessary, one local counsel in each applicable jurisdiction and any special counsel and (y) in the case of an actual or perceived conflict of interest where the Indemnitees endeavor to provide the Parent prior notice of such conflict of interest, another firm of counsel for all similarly affected Indemnitees). All amounts due under this Section shall be payable not later than five (5) Business Days after demand therefor. This Section 16.3 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim.

16.4. **Reimbursement Obligations.** Without limiting the terms of Section 16.3, Loan Parties shall reimburse Administrative Agent for all Extraordinary Expenses and for all legal, accounting, appraisal, consulting, and other fees, costs, and expenses incurred by it in connection with (a) negotiation and preparation of this Agreement and the other Loan Documents, including any amendment, forbearance, waiver, restatement, supplement, or other modification thereof; (b) administration of and actions relating to any Collateral, this Agreement, any Loan Document, and transactions contemplated hereby and thereby (including any actions taken to perfect or maintain priority of Administrative Agent's Liens in and to any Collateral, to maintain any insurance required hereunder, or to verify Collateral); and (c) subject to the limits of Section 9.5(b), each inspection, field audit, field examination, or appraisal with respect to any Loan Party, Subsidiary, or Collateral, whether prepared by Administrative Agent's personnel or a third party. Loan Parties also shall pay the expenses of Administrative Agent and each

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Lender in connection with the enforcement of, or any workout or restructuring related to, the Loan Documents. Notwithstanding anything to the contrary contained in this Section 16.4, the Loan Parties' obligation to reimburse the Administrative Agent for legal fees and expenses shall be limited to the fees and expenses of a single legal counsel (plus, (x) to the extent necessary, one local counsel in each applicable jurisdiction and any special counsel and (y) in the case of an actual or perceived conflict of interest where the Indemnitees endeavor to provide prior notice of such conflict of interest, another firm or counsel for all similarly affected Indemnitees). All amounts due under this Section shall be payable not later than five (5) Business Days after demand therefor.

16.5. **Performance of Loan Parties' Obligations.** Administrative Agent may, in its discretion at any time and from time to time, at Loan Parties' expense, pay any amount or do any act required of a Loan Party under any Loan Documents or otherwise lawfully requested by Administrative Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Administrative Agent's Liens in any Collateral, including any payment of any claim by any Third Party (including any judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim), or any discharge of a Lien. All payments, costs, and expenses (including Extraordinary Expenses) of Administrative Agent under this Section shall be reimbursed to Administrative Agent by Loan Parties, **ON DEMAND**, with interest from the date incurred to the date of payment thereof (at the Default Rate, if applicable). Any payment made or action taken by Administrative Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

16.6. **Setoff.** If an Event of Default shall have occurred and be continuing, in addition to (and not in limitation of) any rights now or hereafter granted under applicable Law to Administrative Agent, LC Issuer, any Lender, or, subject to the provisions of Section 14.1(d), any Participant, and each subsequent holder of any of the Obligations and each of their respective Affiliates (collectively, for purposes of this Section, the "**Setoff Parties**") is hereby authorized by each Loan Party to set off and to appropriate and apply any and all deposits (general or special, time or demand, including Debt evidenced by certificates of deposit, in each case whether matured or unmatured, but excluding (x) any amounts held by any Setoff Party in any escrow account and (y) without the prior consent of Administrative Agent, any Concentration Account and any other Debt at any time held or owing by any Setoff Party to or for the credit or the account of any Loan Party, against the Obligations as provided in this Agreement, irrespective of whether (a) any demand for such Obligations has been made; (b) the Obligations have been accelerated as contemplated in Section 12.2; or (c) such Obligations are contingent or unmatured. Any sums obtained by any Setoff Party shall be subject to the application of payments to the Obligations as set forth in this Agreement. Each Setoff Party agrees to endeavor to notify the Borrower Agent and Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application, nor shall such Setoff Party have any liability for failure to give such notice. The rights granted to each Setoff Party under this section may be exercised at any time or from time to time during the continuance of an Event of Default. In addition to the foregoing, and notwithstanding any provision hereof to the contrary, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.2 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, LC Issuer, Swingline Lender and the other Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

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16.7. **Independence of Covenants; Severability.** All covenants hereunder and under any other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise would be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such manner as to be valid under applicable Law. To the extent any such provision is found to be invalid or unenforceable under applicable Law in a given jurisdiction, then (a) such provision shall be ineffective only to such extent; (b) the remainder of such provision and the other provisions of this Agreement and the other Loan Documents shall remain in full force and effect in such jurisdiction; and (c) such provision shall remain in full force and effect in any other jurisdiction.

16.8. **Cumulative Effect; Conflict of Terms.** The parties acknowledge that different provisions of this Agreement and the other Loan Documents may contain requirements, limitations, restrictions, or permissions relating to the same subject matter and, in such case, all of such provisions shall be deemed to be cumulative (rather than instead of one another) and must be satisfied or performed, as applicable. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), to the extent any provision contained in this Agreement conflicts directly with any provision in another Loan Document, then the provision in this Agreement shall control.

16.9. **Counterparts.** This Agreement, the other Loan Documents and any amendments, waivers, or consents relating hereto or thereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together, shall constitute but one and the same instrument.

16.10. **Fax or Other Transmission.** Delivery by one or more parties hereto of an executed counterpart of this Agreement and any other Loan Document via facsimile, teletype or other electronic method of transmission pursuant to which the signature of such party can be seen (including Adobe Corporation's Portable Document Format or PDF) shall have the same force and effect as the delivery of an original manually executed counterpart of this Agreement and such other Loan Document or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Any party delivering an executed counterpart of this Agreement or any other Loan Document by facsimile or other electronic method of transmission shall also deliver an original executed counterpart thereof, but the failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement or such other Loan Document. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form.

16.11. **Entire Agreement.** This Agreement and the other Loan Documents, together with all other instruments, agreements, supplements, and certificates executed by the parties in connection therewith or with reference thereto, embody the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings negotiations, discussions, representations, warranties, commitments, proposals, offers, contracts and inducements, whether express or implied, oral or written. There are no unwritten oral agreements between the parties.

16.12. **Relationship with Lenders.** The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder.

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Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. Amounts payable hereunder by Administrative Agent, LC Issuer or any Lender, on the one hand, to any other of such Persons, on the other hand, shall be separate and independent debts and obligations, and claims by one of such Persons against any other of such Persons may proceed between such Persons without requiring the joinder of Administrative Agent, LC Issuer or any Lender as an additional party. Nothing in this Agreement and no action of Administrative Agent, LC Issuer or Lenders pursuant to the Loan Documents shall cause Administrative Agent, LC Issuer and the Lenders, or any of them, to be deemed a partnership, association, joint venture, or any other kind of entity with each other or with any Loan Party, or to have any control of each other or any Loan Party.

16.13. **No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Loan Parties acknowledge and agree that (a) (i) the credit facility evidenced by this Agreement and any related arranging or other services by Administrative Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Loan Parties and such Persons; (ii) Loan Parties have consulted their own legal, accounting, regulatory, and tax advisors to the extent they have deemed appropriate; and (iii) Loan Parties are capable of evaluating and understanding, and do understand and accept, the terms, risks, and conditions of the transactions contemplated by this Agreement and the other Loan Documents; (b) each of Administrative Agent, LC Issuer, Lenders, their Affiliates and any arranger is and has been acting solely as a principal in connection with this credit facility, is not the financial advisor, agent, or fiduciary of, to, or for any Loan Party or any of their Affiliates or any other Person and has no obligation with respect to the transactions contemplated by this Agreement and the other Loan Documents except as expressly set forth herein or therein; and (c) Administrative Agent, LC Issuer, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from the Loan Parties and their Affiliates and have no obligation to disclose any of such interests to any Loan Party or any such Affiliate. To the fullest extent permitted by applicable Law, each Loan Party hereby waives and releases any claims that it may have against Administrative Agent, LC Issuer, Lenders, their Affiliates and any arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Agreement or any other Loan Document.

16.14. **Confidentiality; Credit Inquiries.** Each of the Administrative Agent and Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, legal counsels, accountants, auditors, consultants, advisors and other representatives and to other Persons authorized by the Administrative Agent and Lenders to organize, present or disseminate such Information in connection with disclosures otherwise made in accordance with this Section 16.14 (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory or quasi-regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or the order of any court or administrative agency, or in any pending legal or administrative proceeding; provided that, unless specifically prohibited by applicable law or court order, the disclosing party agrees to make reasonable efforts to provide the Parent with prior notice of any such request to the extent practical (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency), (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or, Participant or in, or any prospective assignee of, or Participant in, any of its rights or obligations under this

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Agreement or (ii) any actual or prospective Bank Product Provider, (g) with the consent of the Parent, (h) to any rating agency or other data collectors when required by it (subject to customary rating agency confidentiality conditions), (i) to the extent such Information (Y) becomes publicly available other than as a result of a breach of this Section or (Z) becomes available to any Agent, Arranger, Lender, or any of their respective Affiliates on a non-confidential basis from a source other than the Borrowers or the other Loan Parties, (j) for purposes of establishing a "due diligence" defense, (k) in response to credit inquiries from third Persons concerning any Loan Party or any of its Subsidiaries (although none of Administrative Agent, any Lender or LC Issuer shall be required to so respond), and (l) to Gold Sheets and other similar bank trade publications (such information to consist of deal terms and other information customarily found in such publications). In addition, Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to rating agencies, credit insurers, CUSIP Service Bureau, Inc. (or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans), market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care

to maintain the confidentiality of such Information as such Person would accord to its own Information. Notwithstanding the foregoing, Administrative Agent, LC Issuer and the Lenders may publish or disseminate general information describing the credit facility evidenced hereby, including the names and addresses of Loan Parties and the Subsidiaries and a general description of Loan Parties' and the Subsidiaries' businesses, and may use Loan Parties' logos, trademarks, insignia, or product photographs in any "tombstone" or comparable advertising materials on its website or in other of Administrative Agent, LC Issuer, or such Lender's marketing materials.

16.15. **Governing Law.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED BY THE TERMS HEREOF OR THEREOF OR UNLESS THE LAWS OF ANOTHER JURISDICTION MAY, BY REASON OF MANDATORY PROVISIONS OF LAW, GOVERN THE PERFECTION, PRIORITY, OR ENFORCEMENT OF SECURITY INTERESTS IN ANY COLLATERAL, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES OR OTHER RULE OF LAW WHICH WOULD CAUSE THE APPLICATION OF THE LAW OF ANY JURISDICTION OTHER THAN THE LAW OF THE STATE OF NEW YORK.

16.16. **Submission to Jurisdiction.** EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, IN RESPECT OF ANY PROCEEDING, DISPUTE, OR LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO AND AGREES THAT ANY SUCH PROCEEDING, DISPUTE, OR LITIGATION SHALL BE BROUGHT BY IT SOLELY IN SUCH COURTS. WITH RESPECT TO SUCH COURTS, EACH BORROWER IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS, AND DEFENSES IT MAY HAVE REGARDING PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE, OR INCONVENIENT FORUM. EACH PARTY HERETO WAIVES PERSONAL SERVICE OF PROCESS OF ANY AND ALL PROCESS SERVED UPON IT AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 16.1, SUCH SERVICE TO BE EFFECTIVE AT THE TIME SUCH NOTICE WOULD BE DEEMED DELIVERED UNDER SECTION 16.1. Nothing in this Agreement shall be deemed to preclude enforcement by Administrative Agent of any judgment or order obtained in any forum or jurisdiction.

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16.17. **Waivers; Limitation on Damages; Limitation on Liability.**

(a) **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER, BY EXECUTION HEREOF, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT, LC ISSUER, AND THE LENDERS TO ENTER INTO AND ACCEPT THIS AGREEMENT. EACH OF THE PARTIES HERETO AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

(b) **Waiver of Certain Damages.** NO PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY SUCCESSOR OR ASSIGNEE OF SUCH PERSON, OR ANY THIRD PARTY BENEFICIARY, OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH ANY SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES AS A RESULT OF ANY TRANSACTION CONTEMPLATED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, IN THE CASE OF ADMINISTRATIVE AGENT, THE TAKING OF ANY ENFORCEMENT ACTION.

(c) **Other Waivers.** To the fullest extent permitted by applicable Law, each Loan Party waives (i) presentment, demand, protest, notice of presentment, notice of dishonor, default, non-payment, maturity, release, compromise, settlement, extension, or renewal of any commercial paper, accounts, documents, instruments, chattel paper, and guaranties at any time held by Administrative Agent or any Lender on which a Loan Party may in any way be liable; (ii) notice before taking possession or control of any Collateral; (iii) any bond or security that might be required by a court before allowing Administrative Agent, LC Issuer or any Lender to exercise any rights or remedies under this Agreement or the other Loan Documents; (iv) notice of acceptance hereof or of any other Loan Document; (v) all rights to interpose any claims, deductions, rights of setoff, discounts, charge backs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the other Loan Documents, the Obligations, the Collateral, or any matter arising therefrom or relating hereto or thereto; and (vi) any claim under any law or equitable principle requiring Administrative Agent, LC Issuer or any Lender to marshal any assets in favor of any Loan Party or against any Obligations or otherwise attempt to realize upon any Collateral or collateral of any Loan Party, or any appraisal, evaluation, stay, extension, homestead, redemption, or exemption laws now or hereafter in force to prevent or hinder the enforcement of this Agreement. Each Loan Party acknowledges that the foregoing waivers are a material inducement to Administrative Agent, LC Issuer and the Lenders' entering into this Agreement and that Administrative Agent, LC Issuer and the Lenders are relying upon the foregoing in their dealings with Loan Parties.

(d) **Acknowledgement of Waivers.** Each Loan Party has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following

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consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

16.18. **Limitation on Liability; Presumptions.** None of Administrative Agent, LC Issuer nor the Lenders shall have any liability to any Loan Party (whether in tort, contract, equity, or otherwise) for losses suffered by such Person in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission, or event occurring in connection herewith, unless it is determined by a

final and non-appealable judgment or court order by a court of competent jurisdiction binding on Administrative Agent, LC Issuer or such Lender that the losses were the result of acts or omissions constituting gross negligence, bad faith, or willful misconduct. Without limiting the generality of the foregoing, Administrative Agent shall have no responsibility to any Loan Party in any event for fire, catastrophe, computer, mechanical or electrical failures, failure of communications media, an act of God or any other circumstances beyond Administrative Agent's control. For purposes of this Section 16.18, circumstances beyond Administrative Agent's control include declared or undeclared war, revolution, bank holidays, asset freezes, currency fluctuations or revaluations, exchange controls, nationalization, confiscation, blockage, government interference, or any law, decree, moratorium or regulation of any governmental authority, domestic or foreign, de jure or de facto.

16.19. **PATRIOT Act Notice.** Administrative Agent, LC Issuer and the Lenders hereby notify Loan Parties that pursuant to the requirements of the PATRIOT Act, Administrative Agent, LC Issuer and the Lenders are required to obtain, verify, and record information that identifies each Loan Party, including its legal name, address, tax ID number, and other information that will allow Administrative Agent, LC Issuer and the Lenders to identify it in accordance with the PATRIOT Act. Administrative Agent, LC Issuer and the Lenders will also require information regarding each Loan Party, if any, and may require information regarding Loan Parties' management and owners, such as legal names, addresses, social security numbers, and dates of birth.

16.20. **Powers.** All powers of attorney granted to Administrative Agent, LC Issuer or any Lender herein or in any other Loan Document are coupled with an interest and are irrevocable.

16.21. **No Tax Advice.** Each Loan Party acknowledges and agrees that, with respect to all tax and accounting matters relating to this Agreement, the other Loan Documents, or the transactions contemplated herein and therein, it has not relied on any representations made, consultation provided by, or advice given or rendered by Administrative Agent, LC Issuer, or any Lender, or any of their representatives, agents, or employees, and, instead, such Loan Party has sought, and relied upon, the advice of its own tax and accounting professionals with respect to all such matters.

16.22. **Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which, in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding the date on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to Administrative Agent, LC Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Administrative Agent (for itself or on behalf of LC Issuer or a Lender) of any sum adjudged to be so due in the Judgment Currency, Administrative Agent may, in accordance with normal banking procedures, purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Administrative Agent, LC Issuer, or a Lender from any Loan Party in the Agreement Currency, such Borrower agrees, as a separate

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obligation and notwithstanding any such judgment, to indemnify Administrative Agent, LC Issuer, and each Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Administrative Agent, LC Issuer, or a Lender in such currency, Administrative Agent, LC Issuer, or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable Law).

16.23. **Survival of Representations and Warranties, etc.**

(a) All representations and warranties made by any Loan Party under this Agreement and the other Loan Documents shall survive, and not be waived by, the execution of this Agreement or any other Loan Document by Administrative Agent, LC Issuer or any Lender; any investigation or inquiry by Administrative Agent, LC Issuer or any Lender; or the making of any Loan or the issuance of any Letter of Credit under this Agreement.

(b) Without limiting the generality of the foregoing clause (a), all of the representations, warranties and indemnities of Section 8.18 shall survive the termination of this Agreement, Payment in Full of the Obligations, and the release of Administrative Agent's Lien on any Borrowers or Subsidiaries' properties, if any, and shall survive the transfer of any or all right, title, and interest in and to such properties by such Persons, whether or not the transferee thereof is an Affiliate of such Persons.

16.24. **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by or on behalf of any Loan Party or the transfer to Administrative Agent, LC Issuer, or any Lender of any property (including through setoff) should for any reason subsequently be declared to be void or voidable under any Debtor Relief Law, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if Administrative Agent, LC Issuer or any Lender, or any of them, is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that such Persons, or any of them, is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of such Persons related thereto, the liability of all affected Loan Parties automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

16.25. **Acknowledgement of and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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16.26. **Time is of the Essence.** Time is of the essence in this Agreement and the other Loan Documents.

16.27. **Intercreditor Agreement.** Notwithstanding anything to the contrary contained herein, Administrative Agent and each Lender hereby acknowledges that the Liens and security interests securing the obligations evidenced by the Security Documents, the exercise of any right or remedy by Administrative Agent thereunder or with respect thereto, and certain rights of the parties thereto are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of any the Intercreditor Agreement and the Security Documents, the terms of the Intercreditor Agreement shall govern and control.

16.28. **Section Headings.** Section headings herein and in the other Loan Documents are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

16.29. **Release and Subordination Authorizations.** Subject to Section 4.5, upon the written request of the Borrower Agent (accompanied by such certificates and other documentation as the Administrative Agent may reasonably request, including any certificate contemplated by Section 13.2), the Administrative Agent on behalf of the Secured Parties shall (and the Lenders hereby authorize the Administrative Agent to):

(a) (i) release any Collateral that becomes Excluded Property or any Collateral consisting of assets or equity interests sold or otherwise disposed of in a sale or other disposition or transfer permitted under this Agreement (including under Section 10.4), (ii) release any Guarantor from its obligations under any Guaranty and the Security Documents if such Guarantor becomes a Non-Loan Party Subsidiary or ceases to be a Subsidiary pursuant to any sale, transfer, lease, disposition, merger or other transaction permitted by this Agreement, including, without limitation, in the event the ownership interests in such Guarantor are sold or otherwise disposed of or transferred to persons other than Loan Parties in a transaction permitted under this Agreement (including under Section 10.4), (iii) release its Liens upon the Collateral upon Payment in Full of the Obligations, and (iv) release each Loan Party from its obligations under the Loan Documents (other than those obligations that survive Payment in Full of the Obligations or termination of the applicable Loan Document) upon Payment in Full of the Obligations; provided that (x) any such release of a Lien or Loan Party shall be without recourse or warranty, and (y) solely with respect to clauses (i) and (ii), no such release shall in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Loan Parties in respect of) all interests retained by Loan Parties (other than, if applicable, any Guarantor expressly being released), including the proceeds of any sale, all of which shall continue to constitute part of the Collateral; and

(b) (i) subordinate its Liens or enter into non-disturbance agreements with respect to any Term Loan Priority Collateral in connection with any easements, permits, licenses, rights of way, surface leases or other surface rights or interests permitted to be granted hereunder (provided that any such non-disturbance agreements shall be in a form consented to by Administrative Agent, with such consent not to be unreasonably withheld, delayed or conditioned), and (ii) subordinate its Liens in any Collateral in favor of any other Lien that is expressly permitted to be prior to Administrative Agent's Lien on the Collateral.

[SIGNATURES ON FOLLOWING PAGES.]

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IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

BORROWERS:

ARCH COAL, INC.

as "Borrower Agent" and as a "Borrower"

By: /s/ John T. Drexler

Name: John T. Drexler

Title: Senior Vice President & Chief Financial Officer

Address for Notices to Borrower Agent and any Borrower:

One CityPlace Drive, Suite 300

St. Louis, MO 63141

Attn: Robert G. Jones

Phone: 314-994 2716

Fax: 314-994-2736

[Signatures continued on following page.]

Credit Agreement (Regions/Arch Coal)

ACI TERMINAL, LLC
ALLEGHENY LAND LLC
ARCH COAL SALES COMPANY, INC.
ARCH COAL GROUP, LLC
ARCH COAL OPERATIONS LLC
ARCH COAL WEST, LLC
ARCH ENERGY RESOURCES, LLC
ARCH LAND LLC
ARCH OF WYOMING, LLC
ARCH RECLAMATION SERVICES LLC

ARCH WESTERN ACQUISITION CORPORATION
ARCH WESTERN ACQUISITION, LLC
ARCH WESTERN BITUMINOUS GROUP, LLC
ARCH WESTERN RESOURCES, LLC
ARK LAND LLC
ARK LAND KH LLC
ARK LAND LT LLC
ARK LAND WR LLC
ASHLAND TERMINAL, INC.
CATENARY COAL HOLDINGS LLC
COALQUEST DEVELOPMENT LLC
CUMBERLAND RIVER COAL LLC
HUNTER RIDGE COAL LLC
HUNTER RIDGE HOLDINGS, INC.
HUNTER RIDGE LLC
ICG BECKLEY, LLC
ICG EAST KENTUCKY, LLC
ICG EASTERN LAND, LLC
ICG EASTERN, LLC
ICG ILLINOIS, LLC
ICG NATURAL RESOURCES, LLC

as "Borrowers"

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Vice President & Treasurer

[Signatures continued on following page.]

Credit Agreement (Regions/Arch Coal)

ICG TYGART VALLEY, LLC
ICG, LLC
INTERNATIONAL ENERGY GROUP, LLC
LONE MOUNTAIN PROCESSING LLC
MARINE COAL SALES LLC
MEADOW COAL HOLDINGS, LLC
MINGO LOGAN COAL LLC
MOUNTAIN COAL COMPANY, L.L.C.
MOUNTAIN MINING LLC
MOUNTAINEER LAND LLC
OTTER CREEK COAL, LLC
PRAIRIE HOLDINGS, INC.
SHELBY RUN MINING COMPANY, LLC
SIMBA GROUP LLC
THUNDER BASIN COAL COMPANY, L.L.C.
TRITON COAL COMPANY, LLC
UPSHUR PROPERTY LLC
WESTERN ENERGY RESOURCES LLC
as "Borrowers"

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Vice President & Treasurer

BRONCO MINING COMPANY LLC
COAL-MAC LLC
JULIANA MINING COMPANY LLC
KING KNOB COAL CO. LLC
MELROSE COAL COMPANY LLC
MOUNTAIN GEM LAND LLC
PATRIOT MINING COMPANY LLC
VINDEK ENERGY LLC
WHITE WOLF ENERGY LLC
WOLF RUN MINING LLC
as "Borrowers"

By: /s/ Paul A. Lang
Name: Paul A. Lang
Title: Director/Manager

Credit Agreement (Regions/Arch Coal)

ADMINISTRATIVE AGENT, LC ISSUER, AND LENDER:

REGIONS BANK, an Alabama bank, as “Administrative Agent” “LC Issuer,” and as a “Lender”

By: /s/ Mark A. Kassis
Name: Mark A. Kassis
Title: Senior Vice President

Address for Notices:

1180 West Peachtree Street Suite 1000
Atlanta, GA 30309
Attn: Mark Kassis
Phone: 404-221-4366
Fax: 404-221-4361

Credit Agreement (Regions/Arch Coal)

FIRST AMENDMENT TO THIRD AMENDED AND RESTATED
RECEIVABLES PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT (this "Amendment"), dated as of April 27, 2017, is entered into among ARCH RECEIVABLE COMPANY, LLC (the "Seller"), ARCH COAL SALES COMPANY, INC. (the "Servicer"), the various financial institutions party to the Agreement (as defined below) as Conduit Purchasers (the "Conduit Purchasers"), as Related Committed Purchasers (the "Related Committed Purchasers"), as LC Participants (the "LC Participants"), and as Purchaser Agents (the "Purchaser Agents"), and PNC BANK, NATIONAL ASSOCIATION ("PNC"), as Administrator (the "Administrator") and as LC Bank (the "LC Bank"; together with the Conduit Purchasers, the Related Committed Purchasers and the LC Participants, the "Purchasers").

RECITALS

1. The parties hereto are parties to the Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, the "Agreement").
2. Concurrently herewith, ACI and the Originators are entering into that certain Second Amendment to the Second Amended and Restated Purchase and Sale Agreement (the "PSA Amendment"), dated as of the date hereof.
3. Concurrently herewith, the Seller, the Servicer, ACI, the Administrator, PNC Capital Markets LLC and PNC are entering into that certain Tenth Amended and Restated Purchaser Group Fee Letter (the "PNC Fee Letter"), dated as of the date hereof.
4. Concurrently herewith, the Seller, the Servicer, ACI and Regions are entering into that certain Third Amended and Restated Purchaser Group Fee Letter (the "Regions Fee Letter"; together with the PNC Fee Letter, collectively, the "Fee Letters"), dated as of the date hereof.
5. The parties hereto desire to amend the Agreement as hereinafter set forth.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. Certain Defined Terms. Capitalized terms that are used but not defined herein shall have the meanings set forth in the Agreement.

SECTION 2. Amendments to the Agreement.

- (a) The Agreement is hereby amended to incorporate the changes shown on the marked pages of the Agreement attached hereto as Exhibit A.
- (b) The Agreement is hereby amended by adding the following term in the appropriate alphabetical order in Exhibit I thereof:

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of the United States or of any political subdivision of the United States.

SECTION 3. Representations and Warranties. Each of the Seller and the Servicer hereby represents and warrants to the Administrator, the Purchaser Agents and the Purchasers as follows:

- (a) Representations and Warranties. The representations and warranties made by such Person in the Agreement and each of the other Transaction Documents are true and correct as of the date hereof (unless stated to relate solely to an earlier date, in which case such representations or warranties were true and correct as of such earlier date).
- (b) Enforceability. The execution and delivery by such Person of this Amendment, and the performance of each of its obligations under this Amendment and the Agreement, as amended hereby, are within each of its organizational powers and have been duly authorized by all necessary action on its part. This Amendment and the Agreement, as amended hereby, are such Person's valid and legally binding obligations, enforceable in accordance with their respective terms.
- (c) No Default. Both before and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Termination Event or Unmatured Termination Event exists or shall exist.

SECTION 4. Effect of Amendment; Ratification. All provisions of the Agreement, as expressly amended and modified by this Amendment, shall remain in full force and effect. After this Amendment becomes effective, all references in the Agreement (or in any other Transaction Document) to "the Receivables Purchase Agreement", "this Agreement", "hereof", "herein" or words of similar effect, in each case referring to the Agreement shall be deemed to be references to the Agreement as amended by this Amendment. This Amendment shall not be deemed, either expressly or impliedly, to waive, amend or supplement any provision of the Agreement other than as specifically set forth herein. The Agreement, as amended by this Amendment, is hereby ratified and confirmed in all respects.

SECTION 5. Effectiveness. This Amendment shall become effective as of the date hereof, upon (I) receipt by the Administrator of duly executed counterparts of each of (a) this Amendment, (b) the PNC Fee Letter, (c) the Regions Fee Letter and (d) the PSA Amendment and (II) payment by Seller of all fees payable on the date hereof under (and in accordance with) the Fee Letters.

SECTION 6. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument.

Delivery of an executed counterpart of a signature page to this Amendment by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

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SECTION 7. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York (including for such purposes Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York).

SECTION 8. Section Headings. The various headings of this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment, the Agreement or any provision hereof or thereof.

SECTION 9. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 10. Ratification. After giving effect to this Amendment and the transactions contemplated by this Amendment, all of the provisions of the Performance Guaranty shall remain in full force and effect and the Performance Guarantor hereby ratifies and affirms the Performance Guaranty and acknowledges that the Performance Guaranty has continued and shall continue in full force and effect in accordance with its terms.

SECTION 11. Transaction Document. For the avoidance of doubt, each party hereto agrees that this Amendment constitutes a Transaction Document.

SECTION 12. Severability. Each provision of this Amendment shall be severable from every other provision of this Amendment for the purpose of determining the legal enforceability of any provision hereof, and the unenforceability of one or more provisions of this Amendment in one jurisdiction shall not have the effect of rendering such provision or provisions unenforceable in any other jurisdiction.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

ARCH RECEIVABLE COMPANY, LLC,
as Seller

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

ARCH COAL SALES COMPANY, INC.,
as Servicer

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Vice President & Treasurer

ARCH COAL INC.,
as Performance Guarantor

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Senior Vice President & Chief Financial Officer

*First Amendment to Third A&R RPA
(Arch Coal)*

S-1

PNC BANK, NATIONAL ASSOCIATION,
as Administrator

By: /s/ Michael Brown
Name: Michael Brown

Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as a Purchaser Agent

By: /s/ Michael Brown
Name: Michael Brown
Title: Vice President

PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank and as an LC Participant

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as a Related Committed Purchaser

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

*First Amendment to Third A&R RPA
(Arch Coal)*

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REGIONS BANK,
as a Purchaser Agent

By: /s/ Linda M. Harris
Name: Linda M. Harris
Title: Sr. Vice President

REGIONS BANK,
as a Related Committed Purchaser

By: /s/ Linda M. Harris
Name: Linda M. Harris
Title: Sr. Vice President

REGIONS BANK,
as an LC Participant

By: /s/ Linda M. Harris
Name: Linda M. Harris
Title: Sr. Vice President

*First Amendment to Third A&R RPA
(Arch Coal)*

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EXHIBIT A

(attached)

THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT**DATED AS OF OCTOBER 5, 2016****BY AND AMONG****ARCH RECEIVABLE COMPANY, LLC,
as Seller,****ARCH COAL SALES COMPANY, INC.,
as initial Servicer,****THE VARIOUS CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS AND PURCHASER AGENTS
FROM TIME TO TIME PARTY HERETO,****AND****PNC BANK, NATIONAL ASSOCIATION,
as Administrator and as LC Bank****TABLE OF CONTENTS**

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This THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is entered into as of October 5, 2016, by and among ARCH RECEIVABLE COMPANY, LLC, a Delaware limited liability company, as seller (the "Seller"), ARCH COAL SALES COMPANY, INC., a Delaware corporation ("Arch Sales"), as initial servicer (in such capacity, together with its successors and permitted assigns in such capacity, the "Servicer"), the various CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS and PURCHASER AGENTS from time to time party hereto and PNC BANK, NATIONAL ASSOCIATION, a national banking association ("PNC"), as administrator (in such capacity, together with its successors and assigns in such capacity, the "Administrator") and as issuer of Letters of Credit (in such capacity, together with its successors and assigns in such capacity, the "LC Bank").

PRELIMINARY STATEMENTS. Certain terms that are capitalized and used throughout this Agreement are defined in Exhibit I. References in the Exhibits hereto to the "Agreement" refer to this Agreement, as amended, supplemented or otherwise modified from time to time.

This Agreement amends and restates in its entirety, as of the Closing Date, the Second Amended and Restated Receivables Purchase Agreement, dated as of January 13, 2016 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Prior Agreement"), among each of the parties hereto. Upon the effectiveness of this Agreement, the terms and provisions of the Prior Agreement shall, subject to this paragraph, be superseded hereby in their entirety. Notwithstanding the amendment and restatement of the Prior Agreement by this Agreement, (i) the Seller and Servicer shall continue to be liable to PNC, Regions and any other Indemnified Party or Affected Person (as such terms are defined in the Prior Agreement) for fees and expenses which are accrued and unpaid under the Prior Agreement on the date hereof (collectively, the "Prior Agreement Outstanding Amounts") and all agreements to

indemnify such parties in connection with events or conditions arising or existing prior to the effective date of this Agreement and (ii) the security interest created under the Prior Agreement shall remain in full force and effect as security for such Prior Agreement Outstanding Amounts until such Prior Agreement Outstanding Amounts shall have been paid in full. Upon the effectiveness of this Agreement, each reference to the Prior Agreement in any other document, instrument or agreement shall mean and be a reference to this Agreement. Nothing contained herein, unless expressly herein stated to the contrary, is intended to amend, modify or otherwise affect any other instrument, document or agreement executed and/or delivered in connection with the Prior Agreement.

The Seller (i) desires to sell, transfer and assign an undivided percentage interest in a pool of receivables, and the Purchasers desire to acquire such undivided percentage interest, as such percentage interest shall be adjusted from time to time based upon, in part, reinvestment payments that are made by such Purchasers and (ii) may, subject to the terms and conditions hereof, request that the LC Bank issue or cause the issuance of one or more Letters of Credit.

In consideration of the mutual agreements, provisions and covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. AMOUNTS AND TERMS OF THE PURCHASES

Section 1.1 Purchase Facility.

(a) On the terms and subject to the conditions hereof, the Seller may, from time to time before the Facility Termination Date, (i) ratably (based on the aggregate Commitments of the Related Committed Purchasers in their respective Purchaser Groups) request that the Conduit Purchasers, or, only if a Conduit Purchaser denies such request or is unable to fund, ratably request that the Related Committed Purchasers, make purchases of and reinvestments in undivided percentage ownership interests with regard to the Purchased Interest from the Seller pursuant to Section 1.1(b) and (ii) request that the LC Bank issue or cause the issuance of Letters of Credit, in each case subject to the terms hereof (each such purchase, reinvestment or issuance is referred to herein as a "Purchase"). Subject to Section 1.4(b) concerning reinvestments, at no time will a Conduit Purchaser have any obligation to make a Purchase. Each Related Committed Purchaser severally hereby agrees, on the terms and subject to the conditions hereof, to make purchases of and reinvestments in undivided percentage ownership interests with regard to the Purchased Interest from the Seller from time to time from the date hereof to the Facility Termination Date, based on the applicable Purchaser Group's Ratable Share of each Purchase (and, in the case of each Related Committed Purchaser, its Commitment Percentage of its Purchaser Group's Ratable Share of such Purchase) and, on the terms of and subject to the conditions of this Agreement, the LC Bank hereby agrees to issue Letters of Credit in return for (and each LC Participant hereby severally agrees to make participation advances in connection with any draws under such Letters of Credit equal to such LC Participant's Pro Rata Share of such draws), undivided percentage ownership interests with regard to the Purchased Interest from the Seller from time to time from the date hereof to the Facility Termination Date. Notwithstanding anything set forth in this paragraph (a) or otherwise herein to the contrary, under no circumstances shall any Purchaser make any purchase or reinvestment (including, without limitation, any mandatory deemed Purchases pursuant to Section 1.1(b)) or issue any Letters of Credit hereunder, as applicable, if, after giving effect to such Purchase, the (i) aggregate outstanding amount of the Capital funded by such Purchaser, when added to all other Capital funded by all other Purchasers in such Purchaser's Purchaser Group would exceed (A) its Purchaser Group's Group Commitment (as the same may be reduced from time to time pursuant to Section 1.1(c)) minus (B) the related LC Participant's Pro Rata Share of the LC Participation Amount, (ii) the Aggregate Capital plus the LC Participation Amount would exceed the Purchase Limit or (iii) the LC Participation Amount would exceed the aggregate of the Commitments of the LC Participants.

The Seller may, subject to this paragraph (a) and the other requirements and conditions herein, use the proceeds of any purchase by the Purchasers hereunder to satisfy its Reimbursement Obligation to the LC Bank and the LC Participants (ratably, based on the outstanding amounts funded by the LC Bank and each such LC Participant) pursuant to Section 1.14 below.

Each of the parties hereto hereby acknowledges and agrees that from and after the Closing Date, the Purchaser Groups that includes PNC and Regions, as a Purchaser Agent and as

a Purchaser, shall not include a Conduit Purchaser, and each request by the Seller for ratable Purchases by the Conduit Purchasers pursuant to Section 1.1(a) (i) shall be deemed to be a request that the Related Committed Purchasers in PNC's and Regions' Purchaser Group make their ratable share of such Purchases.

(b) In the event the Seller fails to reimburse the LC Bank for the full amount of any drawing under any Letter of Credit on the applicable Drawing Date (out of its own funds available therefor) pursuant to Section 1.14, then the Seller shall, automatically (and without the requirement of any further action on the part of any Person hereunder), be deemed to have requested a new purchase from the Conduit Purchasers or Related Committed Purchasers, as applicable, on such date, on the terms and subject to the conditions hereof, in an amount equal to the amount of such Reimbursement Obligation at such time. Subject to the limitations on funding set forth in paragraph (a) above (and the other requirements and conditions herein), the Conduit Purchasers or Related Committed Purchasers, as applicable, shall fund such deemed purchase request and deliver the proceeds thereof directly to the Administrator to be immediately distributed (ratably) to the LC Bank and the applicable LC Participants in satisfaction of the Seller's Reimbursement Obligation pursuant to Section 1.14, below, to the extent of the amounts permitted to be funded by the Conduit Purchasers or Related Committed Purchasers, as applicable, at such time, hereunder.

(c) The Seller may, upon at least 15 days' written notice to the Administrator, terminate the Purchase Facility in whole or, upon at least 15 days' written notice to the Administrator, from time to time, irrevocably reduce in part the unused portion of the Purchase Limit (but not below the amount that would cause the Aggregate Capital plus the LC Participation Amount to exceed the Purchase Limit or would cause the Group Capital of any Purchaser Group to exceed its Group Commitment, in each case after giving effect to such reduction); provided, that each partial reduction shall be in the amount of at least \$5,000,000, or an integral multiple of \$1,000,000 in excess thereof, and that, unless terminated in whole, the Purchase Limit shall in no event be reduced below \$50,000,000. Each reduction in the Commitments hereunder shall be made ratably among the Purchasers in accordance with their respective Commitment Percentages and their respective Commitments. The Administrator shall promptly advise the Purchaser Agents of any notice received by it pursuant to this Section 1.1(c); it being understood that (in addition to and without limiting any other requirements for termination, prepayment and/or the funding of the LC Collateral Account hereunder) no such termination or reduction shall be effective unless and until (i) in the case of a termination, the

amount on deposit in the LC Collateral Account is at least equal to the then outstanding LC Participation Amount and (ii) in the case of a partial reduction, the amount on deposit in the LC Collateral Account is at least equal to the positive difference between the then outstanding LC Participation Amount and the Purchase Limit as so reduced by such partial reduction.

Section 1.2 Making Purchases; Assignment and Assumption.

(a) Each Funded Purchase (but not reinvestment) of undivided percentage ownership interests with regard to the Purchased Interest hereunder may be made on any day upon the Seller's irrevocable written notice in the form of Annex B-1 (each, a "Purchase Notice") delivered to the Administrator and each Purchaser Agent in accordance with Section 5.2 (which

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notice must be received by the Administrator and each Purchaser Agent before 11:00 a.m., New York City time) at least two Business Days before the requested Purchase Date, which notice shall specify: (A) solely in the case of a Funded Purchase maintained by Capital (other than one made pursuant to Section 1.14(b)), the amount requested to be paid to the Seller (such amount, which shall not be less than \$300,000 (or such lesser amount as agreed to by the Administrator and each Purchaser Agent) and shall be in integral multiples of \$100,000 in excess thereof, being the Capital relating to the undivided percentage ownership interest then being purchased with respect to each Purchaser Group), (B) the date of such Funded Purchase (which shall be a Business Day), and (C) the pro forma calculation of the Purchased Interest after giving effect to the increase in the Aggregate Capital.

(b) Subject to the following paragraphs of this Section 1.2(b), on the date of each Funded Purchase (but not reinvestment, issuance of a Letter of Credit or a Funded Purchase pursuant to Section 1.2(e)) of undivided percentage ownership interests with regard to the Purchased Interest hereunder, each applicable Conduit Purchaser or Related Committed Purchaser, as the case may be, shall, upon satisfaction of the applicable conditions set forth in Exhibit II, make available to the Seller in same day funds, at such account as may from time to time be designated in writing by the Seller to the Administrator and each Purchaser Agent), an amount equal to the portion of Capital relating to the undivided percentage ownership interest then being purchased by such Purchaser.

(c) Effective on the date of each Funded Purchase or other Purchase pursuant to this Section 1.2 and each reinvestment pursuant to Section 1.4, other than as provided under Section 5.17(a), the Seller hereby sells and assigns to the Administrator for the benefit of the Purchasers (ratably, based on the sum of the Capital plus the LC Participation Amount outstanding at such time for each such Purchaser's Capital) an undivided percentage ownership interest in: (i) each Pool Receivable then existing, (ii) all Related Security with respect to such Pool Receivables, and (iii) all Collections with respect to, and other proceeds of, such Pool Receivables and Related Security.

(d) To secure all of the Seller's obligations (monetary or otherwise) under this Agreement and the other Transaction Documents to which it is a party, whether now or hereafter existing or arising, due or to become due, direct or indirect, absolute or contingent, the Seller hereby grants to the Administrator (for the benefit of the Secured Parties) a security interest in all of the Seller's right, title and interest (including any undivided interest of the Seller) in, to and under all of the following, whether now or hereafter owned, existing or arising: (i) all Pool Receivables, (ii) all Related Security with respect to such Pool Receivables, (iii) all Collections with respect to such Pool Receivables, (iv) the Lock-Box Accounts and all amounts on deposit therein, and all certificates and instruments, if any, from time to time evidencing such Lock-Box Accounts and amounts on deposit therein, (v) the LC Collateral Account and all amounts on deposit therein, and all certificates and instruments, if any, from time to time evidencing such LC Collateral Account and amounts on deposit therein, (vi) all rights (but none of the obligations) of the Seller under the Sale Agreements, (vii) all proceeds of, and all amounts received or receivable under any or all of, the foregoing (other than Seller's Permitted Payments) and (viii) all of its other property (collectively, the "Pool Assets"). For the avoidance of doubt, Seller's Permitted Payments when made shall be automatically excluded and released from the Pool

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Assets. The Seller hereby authorizes the Administrator to file financing statements describing the collateral covered thereby as "all of the debtor's personal property or assets" or words to that effect, notwithstanding that such wording may be broader in scope than the collateral described in this Agreement. The Administrator (on behalf of the Secured Parties) shall have, with respect to the Pool Assets, and in addition to all the other rights and remedies available to the Administrator and the Purchasers, all the rights and remedies of a secured party under any applicable UCC. The Seller hereby acknowledges and agrees that pursuant to the Prior Agreement, the Seller granted to the Administrator a security interest in all of the Seller's right, title and interest in, to and under the Pool Assets (as defined in the Prior Agreement). The Seller hereby confirms such security interest and acknowledges and agrees that such security interest is continuing and is supplemented and restated by the security interest granted by the Seller pursuant to this Section 1.2(d).

(e) Whenever the LC Bank issues a Letter of Credit pursuant to Section 1.12 hereof, each LC Participant shall, automatically and without further action of any kind upon the effective date of issuance of such Letter of Credit, have irrevocably been deemed to make a Funded Purchase hereunder in the event that such Letter of Credit is subsequently drawn and such drawn amount shall not have been reimbursed pursuant to Section 1.14 upon such draw in an amount equal to its Pro Rata Share of such unreimbursed draw. All such Funded Purchases shall be made ratably by the LC Participants according to their Pro Rata Shares and shall accrue Discount from the date of such draw. In the event that any Letter of Credit expires or is surrendered without being drawn (in whole or in part) then, in such event, the foregoing commitment to make Funded Purchases shall expire with respect to such Letter of Credit and the LC Participation Amount shall automatically reduce by the amount of the Letter of Credit which is no longer outstanding.

(f) The Seller may, with the prior written consent of the Administrator and each Purchaser Agent (and, in the case of a new related LC Participant, the LC Bank), which consent may be granted or withheld in their sole and absolute discretion, add additional Persons as Purchasers (either to an existing Purchaser Group or by creating new Purchaser Groups) or cause an existing Related Committed Purchaser or related LC Participant to increase its Commitment; provided, that the Commitment of any Related Committed Purchaser or related LC Participant may only be increased with the prior written consent of such Purchaser; provided, further, that neither the Commitment of any new Purchaser Group nor the aggregate increase in the Commitment of existing Related Committed Purchasers shall exceed \$50,000,000 and in connection with any such increase or addition shall be a corresponding increase in the Purchase Limit. Each new Conduit Purchaser, Related Committed Purchaser or related LC Participant (or Purchaser Group) shall become a party hereto, by executing and delivering to the Administrator, each Purchaser Agent and the Seller, an Assumption Agreement in the form of Annex F hereto (which Assumption Agreement shall, in the case of any new Conduit Purchaser, Related Committed Purchaser or related LC Participant, be executed by each Person in such new Purchaser's Purchaser Group).

(g) Each Related Committed Purchaser's and related LC Participant's obligations hereunder shall be several, such that the failure of any Related Committed Purchaser or related LC Participant to make a payment in connection with any purchase hereunder, or drawing under

a Letter of Credit hereunder, as the case may be, shall not relieve any other Related Committed Purchaser or related LC Participant of its obligation hereunder to make payment for any Funded Purchase or such drawing. Further, in the event any Related Committed Purchaser or related LC Participant fails to satisfy its obligation to make a purchase or payment with respect to such drawing as required hereunder, upon receipt of notice of such failure from the Administrator (or any relevant Purchaser Agent), subject to the limitations set forth herein, the non-defaulting Related Committed Purchasers or related LC Participants in such defaulting Related Committed Purchaser's or related LC Participant's Purchaser Group shall fund the defaulting Related Committed Purchaser's or related LC Participant's Commitment Percentage of the related Purchase or drawing pro rata in proportion to their relative Commitment Percentages (determined without regard to the Commitment Percentage of the defaulting Related Committed Purchaser or related LC Participant; it being understood that a defaulting Related Committed Purchaser's or related LC Participant's Commitment Percentage of any Purchase or drawing shall be first funded by the Related Committed Purchasers or related LC Participants in such defaulting Related Committed Purchaser's or related LC Participant's Purchaser Group and thereafter if there are no other Related Committed Purchasers or related LC Participants in such Purchaser Group or if such other Related Committed Purchasers or related LC Participants are also defaulting Related Committed Purchasers or related LC Participants, then such defaulting Related Committed Purchaser's or related LC Participant's Commitment Percentage of such Purchase or drawing shall be funded by each other Purchaser Group ratably and applied in accordance with this paragraph (g)). Notwithstanding anything in this paragraph (g) to the contrary and for the avoidance of doubt, each Related Committed Purchaser's and LC Participant's obligation to make a Purchase or payment with respect to any drawing shall be subject in all respects to the limitations set forth in the last sentence of the first paragraph of Section 1.1(a).

Section 1.3 Purchased Interest Computation. The Purchased Interest shall be initially computed on the Closing Date. Thereafter, until the Facility Termination Date, such Purchased Interest shall be automatically recomputed (or deemed to be recomputed) on each Business Day other than a Termination Day. From and after the occurrence of any Termination Day, the Purchased Interest shall (until the event(s) giving rise to such Termination Day are satisfied or are waived by the Administrator in accordance with Section 5.1) be deemed to be 100%. The Purchased Interest shall become zero when (a) the Aggregate Capital thereof and Aggregate Discount thereon shall have been paid in full, (b) an amount equal to 100% of the LC Participation Amount and the LC Fee Expectation shall have been deposited in the LC Collateral Account, or all Letters of Credit shall have expired or otherwise been terminated and (c) all the amounts owed by the Seller and the Servicer hereunder to each Purchaser, the Administrator and any other Indemnified Party or Affected Person are paid in full (other than indemnification and other contingent obligations not yet due and owing), and the Servicer shall have received the accrued Servicing Fee thereon.

Section 1.4 Settlement Procedures.

(a) The collection of the Pool Receivables shall be administered by the Servicer in accordance with this Agreement. The Seller shall provide to the Servicer on a timely basis all

information needed for such administration, including notice of the occurrence of any Termination Day and current computations of the Purchased Interest.

(b) The Servicer shall, on each day on which Collections of Pool Receivables are received (or deemed received) by the Seller or the Servicer in accordance with this Agreement, including Section 1.4(g):

(i) set aside and hold in trust (and shall, at the request of the Administrator, segregate in a separate account approved by the Administrator) for the benefit of the Secured Parties, out of such Collections, first, an amount equal to the Aggregate Discount accrued through such day for each Portion of Capital and not previously set aside, second, an amount equal to the fees set forth in each Fee Letter accrued and unpaid through such day, and third, to the extent funds are available therefor, an amount equal to the aggregate of the Purchasers' Share of the Servicing Fee accrued through such day and not previously set aside;

(ii) subject to Section 1.4(f), if such day is not a Termination Day, remit to the Seller, ratably, on behalf of the Purchasers, the remainder of such Collections. Such remainder shall, to the extent representing a return on the Aggregate Capital, be automatically reinvested, ratably, according to each Purchaser's Capital, in Pool Receivables and in the Related Security, Collections and other proceeds with respect thereto; provided, that if the Purchased Interest would exceed 100%, then the Servicer shall not remit such remainder to the Seller or reinvest, but shall set aside and hold in trust for the Administrator (for the benefit of the Secured Parties) (and shall, at the request of the Administrator, segregate in a separate account approved by the Administrator) a portion of such Collections that, together with the other Collections set aside pursuant to this paragraph, shall equal the amount necessary to reduce the Purchased Interest to 100% (determined as if such Collections set aside had been applied to reduce the Aggregate Capital or LC Participation Amount, as applicable, at such time), which amount shall either (x) be deposited ratably to each Purchaser Agent's account (for the benefit of its related Purchasers) or (y) be deposited in the LC Collateral Account, in each case, as applicable, on the next Settlement Date in accordance with Section 1.4(c); provided, further, that (x) in the case of any Purchaser that is a Conduit Purchaser, if such Purchaser has provided notice (a "Declining Notice") to its Purchaser Agent and the Administrator that such Purchaser (a "Declining Conduit Purchaser") no longer wishes Collections with respect to any Portion of Capital funded or maintained by such Purchaser to be reinvested pursuant to this clause (ii) or (y) in the case of any Purchaser that has provided notice (an "Exiting Notice") to its Purchaser Agent and the Administrator of its refusal, following any request by the Seller to extend the then Facility Termination Date, to extend its Commitment hereunder (an "Exiting Purchaser"), then in either case set forth in clause (x) or (y) above, such Purchaser's ratable share (determined according to outstanding Capital) of Collections shall not be reinvested or remitted to the Seller and shall instead be held in trust for the benefit of such Purchaser and applied in accordance with clause (iii) below;

(iii) if such day is a Termination Day (or any day following the provision of a Declining Notice or an Exiting Notice), set aside, segregate and hold in trust for the benefit of the Purchasers (and shall, at the request of the Administrator, segregate in a separate account approved by the Administrator), the entire remainder of such Collections (or in the case of a Declining Conduit Purchaser or an Exiting Purchaser, an amount equal to such Purchaser's ratable share of such Collections based on its Capital; provided, that solely for purposes of determining such Purchaser's ratable share of such Collections, such Purchaser's Capital shall be deemed to remain constant from the date of the provision of a Declining Notice or an Exiting Notice, as the case may be, until the date such Purchaser's Capital has been paid in full; it being understood that if such day is also a Termination Day, such Declining Conduit Purchaser's or Exiting Purchaser's Capital shall be recalculated taking into account amounts received by such Purchasers in respect of this parenthetical and thereafter Collections shall be set aside for such Purchaser ratably in respect of its Capital (as recalculated)); provided, further, that if amounts are set aside and held in trust on any Termination Day of the type described in clause (a) of the definition of "Termination Day" (or any day following the provision of a Declining Notice or an Exiting Notice) and, thereafter, the conditions set forth in Section 2 of Exhibit II are satisfied or waived by the Administrator and the Majority Purchaser Agents (or, in the case of a Declining Notice or an Exiting Notice, such Declining Notice or Exiting Notice, as the case may be, has been revoked by the related Declining Conduit Purchaser or Exiting Purchaser, respectively, and written notice thereof has been provided to the Administrator, the related Purchaser Agent and the Servicer), such previously set-aside amounts shall, to the extent representing a return on the Aggregate Capital (or the Capital of the Declining Conduit Purchaser or Exiting Purchaser, as the case may be) and ratably in accordance with each Purchaser's Capital, be reinvested in accordance with clause (ii) on the day of such subsequent satisfaction or waiver of conditions or revocation of Declining Notice or Exiting Notice, as the case may be; and

(iv) release to the Seller (subject to Section 1.4(f)) for its own account any Collections in excess of: (w) amounts required to be reinvested in accordance with clause (ii) or the proviso to clause (iii) plus (x) the amounts that are required to be set aside pursuant to clause (i), the provisos to clause (ii) and clause (iii) plus (y) the Seller's Share of the Servicing Fee accrued and unpaid through such day and all reasonable and appropriate out-of-pocket costs and expenses of the Servicer for servicing, collecting and administering the Pool Receivables plus (z) all other amounts then due and payable by the Seller under this Agreement to the Purchasers, the Purchaser Agents, the Administrator, and any other Indemnified Party or Affected Person.

(c) The Servicer shall, in accordance with the priorities set forth in Section 1.4(d), deposit into each Purchaser Agent's account, on each Settlement Date, Collections held for such Purchaser Agent (for the benefit of its related Purchasers) pursuant to clause (b)(i) or (f) plus the amount of Collections then held for such Purchaser Agent (for the benefit of its related Purchasers) pursuant to clauses (b)(ii) and (iii) of Section 1.4; provided, that if Arch Sales or an Affiliate thereof is the Servicer, such day is not a Termination Day and the Administrator has not notified Arch Sales (or such Affiliate) that such right is revoked, Arch Sales (or such Affiliate)

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may retain the portion of the Collections set aside pursuant to clause (b)(i) that represents the aggregate of each Purchasers' Share of the Servicing Fee. On or prior to the last day of each Settlement Period, each Purchaser Agent will notify the Servicer by facsimile of the amount of Discount accrued with respect to each Portion of Capital during such Settlement Period or portion thereof.

(d) The Servicer shall distribute the amounts described (and at the times set forth) in clause (c) above as follows:

(i) if such distribution occurs on a day that is not a Termination Day and the Purchased Interest does not exceed 100%, first to each Purchaser Agent ratably according to the Discount accrued during such Yield Period (for the benefit of the relevant Purchasers within such Purchaser Agent's Purchaser Group) in payment in full of all accrued Discount with respect to each Portion of Capital maintained by such Purchasers and all accrued Fees; it being understood that each Purchaser Agent shall distribute such amounts to the Purchasers within such Purchaser Agent's Purchaser Group ratably according to Discount and Fees, respectively, and second, if the Servicer has set aside amounts in respect of the Servicing Fee pursuant to clause (b)(i) and has not retained such amounts pursuant to clause (c), to the Servicer (payable in arrears on each Settlement Date) in payment in full of the aggregate of the Purchasers' Share of accrued Servicing Fees so set aside, and

(ii) if such distribution occurs on a Termination Day or on a day when the Purchased Interest exceeds 100%, first, if Arch Sales or an Affiliate thereof is not the Servicer, to the Servicer in payment in full of the Purchasers' Share of all accrued Servicing Fees, second, to each Purchaser Agent ratably (based on the aggregate accrued and unpaid Discount and Fees payable to all Purchasers at such time) (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group) in payment in full of all accrued Discount with respect to each Portion of Capital funded or maintained by the Purchasers within such Purchaser Agent's Purchaser Group and all accrued Fees, third, to each Purchaser Agent ratably according to the aggregate of the Capital of each Purchaser in each such Purchaser Agent's Purchaser Group (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group) in payment in full of each Purchaser's Capital (or, if such day is not a Termination Day, the amount necessary to reduce the Purchased Interest to 100%) (determined as if such Collections had been applied to reduce the Aggregate Capital); it being understood that each Purchaser Agent shall distribute the amounts described in the first, second and third clauses of this Section 1.4(d)(ii) to the Purchasers within such Purchaser Agent's Purchaser Group ratably according to Discount, Fees and Capital, respectively, fourth, to the LC Collateral Account for the benefit of the LC Bank and the LC Participants (x) the amount necessary to cash collateralize the LC Participation Amount until the amount of cash collateral held in such LC Collateral Account (other than amount representing LC Fee Expectation) equals 100% of the LC Participation Amount (or, if such day is not a Termination Day, the amount necessary to reduce the Purchased Interest to 100%) (determined as if such Collections had been applied to reduce the aggregate outstanding amount of the LC Participation Amount) and (y) if such day is a Termination Day of the type described in

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clause (b) of the definition thereof or a Termination Event is continuing, an amount equal to the LC Fee Expectation at such time (or such portion thereof not currently on deposit in the LC Collateral Account), fifth, if the Aggregate Capital and accrued Aggregate Discount with respect to each Portion of Capital for all Purchaser Groups have been reduced to zero, and the aggregate of the Purchasers' Share of all accrued Servicing Fees payable to the Servicer (if other than Arch Sales or an Affiliate thereof) have been paid in full, to each Purchaser Agent ratably, based on the amounts payable to each Purchaser in such Purchaser Agent's Purchaser Group (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group), the Administrator and any other Secured Party in payment in full of any other amounts owed thereto by the Seller or the Servicer

hereunder, and sixth, to the Servicer (if the Servicer is Arch Sales or an Affiliate thereof) in payment in full of the aggregate of the Purchasers' Share of all accrued Servicing Fees.

After the Aggregate Capital, Aggregate Discount, fees payable pursuant to the Fee Letters and Servicing Fees with respect to the Purchased Interest, and any other amounts payable by the Seller and the Servicer to each Purchaser Group, the Administrator or any other Indemnified Party or Affected Person hereunder, have been paid in full, and (on and after a Termination Day) after an amount equal to 100% of the LC Participation Amount and the LC Fee Expectation has been deposited in the LC Collateral Account, all additional Collections with respect to the Purchased Interest shall be paid to the Seller for its own account.

(e) For the purposes of this Section 1.4:

(i) if on any day the Outstanding Balance of any Pool Receivable is reduced or adjusted as a result of any defective, rejected, returned, repossessed or foreclosed goods or services, or any revision, cancellation, allowance, rebate, discount or other adjustment made by the Seller, any Affiliate of the Seller, any Originator, the Transferor, the Servicer or any Affiliate of the Servicer, or any setoff, netting of obligations or dispute between the Seller, any Affiliate of the Seller, any Originator, the Transferor, the Servicer or any Affiliate of the Servicer and an Obligor, the Seller shall be deemed to have received on such day a Collection of such Pool Receivable in the amount of such reduction or adjustment and shall immediately pay any and all such amounts in respect thereof to a Lock-Box Account for the benefit of the Secured Parties pursuant to Section 1.4;

(ii) if on any day any of the representations or warranties in Sections 1(j) or 3(a) of Exhibit III is not true with respect to any Pool Receivable, the Seller shall be deemed to have received on such day a Collection of such Pool Receivable in full and shall immediately pay any and all such amounts in respect thereof to a Lock-Box Account (or as otherwise directed by the Administrator at such time) for the benefit of the Secured Parties and for application pursuant to Section 1.4;

(iii) except as provided in clause (i) or (ii), or as otherwise required by Applicable Law or the relevant Contract, all Collections received from an Obligor of any Receivable shall be applied to the Receivables of such Obligor in the order of the age of

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such Receivables, starting with the oldest such Receivable, unless such Obligor designates in writing its payment for application to specific Receivables; and

(iv) if and to the extent the Administrator, any Purchaser Agent or any Purchaser shall be required for any reason to pay over to an Obligor (or any trustee, receiver, custodian or similar official in any Insolvency Proceeding) any amount received by it hereunder, such amount shall be deemed not to have been so received by such Person but rather to have been retained by the Seller and, accordingly, such Person shall have a claim against the Seller for such amount, payable when and to the extent that any distribution from or on behalf of such Obligor is made in respect thereof.

(f) If at any time the Seller shall wish to cause the reduction of Aggregate Capital (but not to commence the liquidation, or reduction to zero, of the entire Aggregate Capital), the Seller may do so as follows:

(i) the Seller shall give the Administrator, each Purchaser Agent and the Servicer written notice in substantially the form of Annex C (each, a "Paydown Notice") (A) at least two Business Days prior to the date of such reduction for any reduction of the Aggregate Capital less than or equal to \$20,000,000 and (B) at least five Business Days prior to the date of such reduction for any reduction of the Aggregate Capital greater than \$20,000,000, in each case such Paydown Notice shall include, among other things, the amount of such proposed reduction and the proposed date on which such reduction will commence;

(ii) (A) on the proposed date of the commencement of such reduction and on each day thereafter, the Servicer shall cause Collections not to be reinvested until the amount thereof not so reinvested shall equal the desired amount of reduction or (B) the Seller shall remit to each Purchaser Agent's account (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group), in immediately available funds, an amount equal to the desired amount of such reduction together with accrued and unpaid Aggregate Discount, and Aggregate Discount to accrue through the next Settlement Date, with respect to such Aggregate Capital, ratably (based on such Purchaser Agent's Purchasers' portion of the Aggregate Capital reduced thereby and portion of the related Aggregate Discount); and

(iii) the Servicer shall hold such Collections in trust for the benefit of the Purchasers ratably (based on their respective Portions of Capital funded thereby) for payment to each such Purchaser Agent (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group) on the next Settlement Date immediately following the current Settlement Period or such other date approved by the Administrator and each such Purchaser Agent, and the Aggregate Capital (together with the Capital of any related Purchaser) shall be deemed reduced in the amount to be paid to each such Purchaser Agent (on behalf of its related Purchasers) only when in fact finally so paid;

provided, that the amount of any such reduction shall be not less than \$300,000 and shall be an integral multiple of \$100,000 in excess thereof.

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(g) The Servicer may, in its sole discretion, and shall at the direction of the Administrator or any Purchaser Agent (which direction may be given no more than once per week unless a Termination Event has occurred and is continuing), deliver an Interim Report to the Administrator on any Business Day during a Minimum Liquidity Period. Upon receipt of such Interim Report, the Administrator shall promptly review such Interim Report to determine if such Interim Report constitutes a Qualifying Interim Report. In the event that the Administrator reasonably determines that such Interim Report constitutes a Qualifying Interim Report, so long as no Termination Event or Unmatured Termination Event has occurred and is continuing and the Administrator is then exercising exclusive dominion and control over the Lock-Box Accounts, the Administrator shall promptly remit to the Servicer from the Lock-Box Accounts (or the LC Collateral Account, if applicable) the lesser of (i) the amount identified on such Qualifying Interim Report as Collections on deposit in the Lock-Box Accounts and/or LC Collateral Account in excess of the amount necessary to ensure that the Purchased Interest does not exceed 100% and (ii) the aggregate amount of available Collections then on deposit in the Lock-Box Accounts and the LC Collateral Account. For purposes of this

clause (g), “Qualifying Interim Report” shall mean any Interim Report that satisfies each of the following conditions: (A) the Purchased Interest as set forth in such Interim Report shall not exceed 100%; (B) such Interim Report is calculated as of the immediately prior Business Day and (C) the Administrator does not in good faith reasonably believe that any of the information or calculations set forth in such Interim Report are false or incorrect in any material respect (and notice of any such determination shall be provided promptly to the Servicer).

Section 1.5 Fees.

The Seller shall pay to the Administrator, the Purchaser Agents and the Purchasers certain fees in the amounts and on the dates set forth in one or more fee letter agreements for each Purchaser Group, in each case entered into from time to time by and among the Servicer, the Seller and the applicable Purchaser Agent and/or the Administrator (as any such fee letter agreement may be amended, restated, supplemented or otherwise modified from time to time, each, a “Fee Letter”).

Section 1.6 Payments and Computations, Etc.

(a) All amounts to be paid or deposited by the Seller or the Servicer hereunder or under any other Transaction Document shall be made without reduction for offset or counterclaim and shall be paid or deposited no later than 2:00 p.m. (New York City time) on the day when due in same day funds to each account designated by the Purchaser Agents (for the benefit of the Purchasers in such Purchaser Agent’s Purchaser Group) and/or the Administration Account, as applicable. All amounts received after 2:00 p.m.(New York City time) will be deemed to have been received on the next Business Day. Amounts payable hereunder to or for the benefit of the Administrator, the Purchasers or the Purchaser Agents (or their related Affected Persons or Indemnified Parties) shall be distributed as follows:

(i) Any amounts to be distributed by or on behalf of the Administrator hereunder to any Purchaser Agent, Purchaser or Purchaser Group shall be distributed to the account specified in writing from time to time by the applicable Purchaser Agent to

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the Administrator, and the Administrator shall have no obligation to distribute any such amounts unless and until it actually receives payment of such amounts by the Seller or the Servicer, as applicable, in the Administration Account. Except as expressly set forth herein (including, without limitation, as set forth in Section 1.4(b)(iii) with respect to Collections held in trust for Declining Conduit Purchasers and Exiting Purchasers), the Administrator shall distribute (or cause to be distributed) such amounts to the Purchaser Agents for the Purchasers within their respective Purchaser Groups ratably (x) in the case of such amounts paid in respect of Discount and Fees, according to the Discount and Fees payable to the Purchasers and (y) in the case of such amounts paid in respect of Capital (or in respect of any other obligations other than Discount and Fees), according to the outstanding Capital funded by the Purchasers.

(ii) Except as expressly set forth herein (including, without limitation, as set forth in Section 1.4(b)(iii) with respect to Collections held in trust for Declining Conduit Purchasers and Exiting Purchasers), each Purchaser Agent shall distribute the amounts paid to it hereunder for the benefit of the Purchasers in its Purchaser Group to the Purchasers within its Purchaser Group ratably (x) in the case of such amounts paid in respect of Discount and Fees, according to the Discount and Fees payable to such Purchasers and (y) in the case of such amounts paid in respect of Capital (or in respect of any other obligations other than Discount and Fees), according to the outstanding Capital funded by such Purchasers.

(b) The Seller or the Servicer, as the case may be, shall, to the extent permitted by law, pay interest on any amount not paid or deposited by the Seller or the Servicer, as the case may be, when due hereunder, at an interest rate equal to 2.0% per annum above the Base Rate, payable on demand.

(c) All computations of interest under clause (b) and all computations of Discount, fees and other amounts hereunder shall be made on the basis of a year of 360 (or 365 or 366, as applicable, with respect to Discount or other amounts calculated by reference to the Base Rate) days for the actual number of days elapsed. Whenever any payment or deposit to be made hereunder shall be due on a day other than a Business Day, such payment or deposit shall be made on the next Business Day and such extension of time shall be included in the computation of such payment or deposit.

Section 1.7 Increased Costs.

(a) If the Administrator, any Purchaser Agent, any Purchaser, any Liquidity Provider or any other Program Support Provider or any of their respective Affiliates (each an “Affected Person”) reasonably determines that the existence of or compliance with: (i) any law, rule, regulation or generally accepted accounting principle or any change therein or in the interpretation or application thereof, or (ii) any request, guideline or directive from Financial Accounting Standards Board (“FASB”) (including, without limitation, FAS 166/167), or any central bank or other Governmental Authority (whether or not having the force of law), affects or would affect the amount of capital required or expected to be maintained by such Affected Person, and such Affected Person determines that the amount of such capital is increased by or

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based upon the existence of any commitment to make purchases of (or otherwise to maintain the investment in) Pool Receivables or issue any Letter of Credit related to this Agreement or any related liquidity facility, credit enhancement facility and other commitments of the same type, then, upon demand by such Affected Person (with a copy to the Administrator), the Seller shall promptly pay to the Administrator, for the account of such Affected Person, from time to time as specified by such Affected Person, additional amounts sufficient to compensate such Affected Person for increased costs in the light of such circumstances, to the extent that such Affected Person reasonably determines such increase in capital to be allocable to the existence of any of such commitments. A certificate as to such amounts submitted to the Seller and the Administrator by such Affected Person shall be conclusive and binding for all purposes, absent manifest error.

(b) If, due to either: (i) the introduction of or any change in or in the interpretation of any law, rule, regulation or generally accepted accounting principle or (ii) compliance with any request, guideline or directive from FASB (including, without limitation, FAS 166/167) or any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to any Affected Person of agreeing to purchase or purchasing, or maintaining the ownership of, the Purchased Interest (or its portion thereof) in respect of which Discount is computed by reference to the Euro-

Rate or LMIR, then, upon demand by such Affected Person, the Seller shall promptly pay to such Affected Person, from time to time as specified by such Affected Person, additional amounts sufficient to compensate such Affected Person for increased costs. A certificate as to such amounts submitted to the Seller and the Administrator by such Affected Person shall be conclusive and binding for all purposes, absent manifest error.

(c) For the avoidance of doubt, and not in limitation of the foregoing, any increase in cost and/or reduction in yield caused by regulatory capital allocation adjustments due to Statements of Financial Accounting Standards Nos. 166 and 167 (or any future statements or interpretations issued by FASB or any successor thereto) (collectively, "FAS 166/167") shall be covered by this Section 1.7.

(d) Notwithstanding anything to the contrary, for purposes of this Section 1.7, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any Governmental Authority, any central bank of any jurisdiction, comparable agency or other Person, in each case pursuant to, or implementing, the accord known as Basel III, are, in the case of each of clause (i) and clause (ii) above, deemed to have been introduced or adopted after the date hereof, regardless of the date enacted, adopted, issued, promulgated or implemented.

Section 1.8 Requirements of Law; Funding Losses.

(I) If any Affected Person reasonably determines that the existence of or compliance with: (a) any law, rule or regulation or any change therein or in the interpretation or application thereof, or (b) any guideline, request or directive from any central bank or other Governmental

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Authority (whether or not having the force of law), in either case, adopted, issued or occurring after the date hereof:

(i) does or shall subject such Affected Person to any tax of any kind whatsoever with respect to this Agreement, any increase in the Purchased Interest (or its portion thereof) or in the amount of Capital relating thereto, or does or shall change the basis of taxation of payments to such Affected Person on account of Collections, Discount or any other amounts payable hereunder (excluding taxes imposed on the overall income of such Affected Person, and franchise taxes imposed on such Affected Person, by the jurisdiction under the laws of which such Affected Person is organized or a political subdivision thereof), or

(ii) does or shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, purchases, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Affected Person that are not otherwise included in the determination of the Euro-Rate or LMIR or the Base Rate hereunder, or

(iii) does or shall impose on such Affected Person any other condition,

and the result of any of the foregoing is: (A) to increase the cost to such Affected Person of acting as Administrator, or of agreeing to purchase or purchasing or maintaining the ownership of undivided percentage ownership interests with regard to, or issuing any Letter of Credit in respect of, the Purchased Interest (or interests therein) or any Portion of Capital, or (B) to reduce any amount receivable hereunder (whether directly or indirectly), then, in any such case, upon demand by such Affected Person, the Seller shall promptly pay to such Affected Person additional amounts necessary to compensate such Affected Person for such additional cost or reduced amount receivable. All such amounts shall be payable as incurred. A certificate as to such amounts from such Affected Person to the Seller and the Administrator shall be conclusive and binding for all purposes, absent manifest error; provided, however, that notwithstanding anything to the contrary, for purposes of this Section 1.8, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any Governmental Authority, any central bank of any jurisdiction, comparable agency or other Person, in each case pursuant to, or implementing, the accord known as Basel III, are, in the case of each of clause (i) and clause (ii) above, deemed to have been introduced or adopted after the date hereof, regardless of the date enacted, adopted, issued, promulgated or implemented.

(II) The Seller shall compensate each Affected Person, upon written request by such Person for all losses, expenses and liabilities (including any interest paid by such Affected Person to lenders of funds borrowed by it to fund or maintain any Portion of Capital hereunder at an interest rate determined by reference to the Euro-Rate or LMIR and any loss sustained by such Person in connection with the re-employment of such funds), which such Affected Person

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may sustain with respect to funding or maintaining such Portion of Capital at the Euro-Rate or LMIR if, for any reason, funding or maintaining such Portion of Capital at an interest rate determined by reference to the Euro-Rate or LMIR does not occur on a date specified therefor.

Section 1.9 Inability to Determine Euro-Rate.

(a) If the Administrator (or any Purchaser Agent) determines before the first day of any Settlement Period (or solely with respect to LMIR, on any day) (which determination shall be final and conclusive) that, by reason of circumstances affecting the interbank eurodollar market generally, (i) deposits in dollars (in the relevant amounts for such Settlement Period) are not being offered to banks in the interbank eurodollar market for such Settlement Period, (ii) adequate means do not exist for ascertaining the Euro-Rate or LMIR for such Settlement Period (or portion thereof) or (iii) the Euro-Rate or LMIR does not accurately reflect the cost to any Purchaser (as determined by such Purchaser or such Purchaser's Purchaser Agent) of maintaining any Portion of Capital during such Settlement Period (or portion thereof), then the Administrator shall give notice thereof to the Seller. Thereafter, until the Administrator or such Purchaser Agent notifies the Seller that the circumstances giving rise to such suspension no longer exist, (a) no Portion of Capital shall be funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR and (b) the Discount for any outstanding Portions of Capital then funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR shall, on the last day of the then current Settlement Period (or solely with respect to LMIR, immediately), be converted to the Alternate Rate determined by reference to the Base Rate.

(b) If, on or before the first day of any Settlement Period (or solely with respect to LMIR, on any day), the Administrator shall have been notified by any Affected Person that such Affected Person has determined (which determination shall be final and conclusive) that, any enactment, promulgation or adoption of or any change in any Applicable Law, or any change in the interpretation or administration thereof by a governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Affected Person with any guideline, request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for such Affected Person to fund or maintain any Portion of Capital at the Alternate Rate and based upon the Euro-Rate or LMIR, the Administrator shall notify the Seller thereof. Upon receipt of such notice, until the Administrator notifies the Seller that the circumstances giving rise to such determination no longer apply, (a) no Portion of Capital shall be funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR and (b) the Discount for any outstanding Portions of Capital then funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR shall be converted to the Alternate Rate determined by reference to the Base Rate either (i) on the last day of the then current Settlement Period (or solely with respect to LMIR, immediately) if such Affected Person may lawfully continue to maintain such Portion of Capital at the Alternate Rate determined by reference to the Euro-Rate or LMIR to such day, or (ii) immediately, if such Affected Person may not lawfully continue to maintain such Portion of Capital at the Alternate Rate determined by reference to the Euro-Rate or LMIR to such day.

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Section 1.10 Taxes.

The Seller agrees that any and all payments by the Seller under this Agreement shall be made free and clear of and without deduction for any and all current or future taxes, stamp or other taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding overall income or franchise taxes, in either case, imposed on the Person receiving such payment by the Seller hereunder by the jurisdiction under whose laws such Person is organized, operates or where its principal executive office is located or any political subdivision thereof (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Seller shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Purchaser, Purchaser Agent, Liquidity Provider, Program Support Provider or the Administrator, then the sum payable shall be increased by the amount necessary to yield to such Person (after payment of all Taxes) an amount equal to the sum it would have received had no such deductions been made. Whenever any Taxes are payable by the Seller, the Seller agrees that, as promptly as possible thereafter, the Seller shall send to the Administrator for its own account or for the account of any Purchaser, Purchaser Agent, Liquidity Provider or other Program Support Provider, as the case may be, a certified copy of an original official receipt showing payment thereof or such other evidence of such payment as may be available to the Seller and acceptable to the taxing authorities having jurisdiction over such Person. If the Seller fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrator the required receipts or other required documentary evidence, the Seller shall indemnify the Administrator and/or any other Affected Person, as applicable, for any incremental taxes, interest or penalties that may become payable by such party as a result of any such failure.

Section 1.11 Letters of Credit.

Subject to the terms and conditions hereof and the satisfaction of the applicable conditions set forth in Exhibit II, the LC Bank shall issue or cause the issuance of Letters of Credit ("Letters of Credit") on behalf of Seller (and, if applicable, on behalf of, or for the account of, the Transferor or any Subsidiary thereof) in favor of such beneficiaries as the Seller or the Transferor, as applicable may elect. All amounts drawn upon Letters of Credit shall accrue Discount. Letters of Credit that have not been drawn upon shall not accrue Discount.

Section 1.12 Issuance of Letters of Credit.

(a) The Seller may request the LC Bank, upon two (2) Business Days' prior written notice submitted on or before 11:00 a.m., New York time, to issue a Letter of Credit by delivering to the Administrator, the LC Bank's form of Letter of Credit Application (the "Letter of Credit Application"), substantially in the form of Annex E attached hereto and an Issuance Notice, substantially in the form of Annex B-2 (each, an "Issuance Notice"), in each case completed to the satisfaction of the Administrator and the LC Bank; and, such other certificates, documents and other papers and information as the Administrator may reasonably request. The Seller also has the right to give instructions and make agreements with respect to any Letter of Credit Application and the disposition of documents, and to agree with the Administrator upon any amendment, extension or renewal of any Letter of Credit.

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(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts or other written demands for payment when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date not later than twelve (12) months after such Letter of Credit's date of issuance, extension or renewal, as the case may be, and in no event later than twelve (12) months after the Facility Termination Date. For the avoidance of doubt, no Letter of Credit may be extended or renewed to a date that is later than twelve (12) months after the Facility Termination Date. Each Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and any amendments or revisions thereof adhered to by the LC Bank or the International Standby Practices (ISP98-International Chamber of Commerce Publication Number 590), and any amendments or revisions thereof adhered to by the LC Bank, as determined by the LC Bank.

(c) The Administrator shall promptly notify the LC Bank and each LC Participant, at such Person's address for notices hereunder, of the request by the Seller for a Letter of Credit hereunder, and shall provide the LC Bank and LC Participants with the Letter of Credit Application and Issuance Notice delivered to the Administrator by the Seller pursuant to paragraph (a) above, by the close of business on the day received or if received on a day that is not a Business Day or on any Business Day after 11:00 a.m., New York time, on such day, on the next Business Day.

Section 1.13 Requirements For Issuance of Letters of Credit.

The Seller shall authorize and direct the LC Bank to name the Seller or the Transferor as the "Applicant" or "Account Party" of each Letter of Credit.

Section 1.14 Disbursements, Reimbursement.

(a) Immediately upon the issuance of each Letter of Credit, each LC Participant shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the LC Bank a participation in such Letter of Credit and each drawing thereunder in an amount equal to such LC Participant's Pro Rata Share of the face amount of such Letter of Credit and the amount of such drawing, respectively.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the LC Bank will promptly notify the Administrator and the Seller of such request. Provided that it shall have received such notice prior to 10:00 a.m., New York time, the Seller shall reimburse (such obligation to reimburse the LC Bank shall sometimes be referred to as a "Reimbursement Obligation") and the required date of reimbursement, the "Reimbursement Date") the LC Bank prior to 12:00 p.m., New York time, on each Business Day that an amount is paid by the LC Bank under any Letter of Credit (each such date, a "Drawing Date") (or, otherwise, by 12:00 p.m., New York time, on the Business Day immediately following such notice) in an amount equal to the amount so paid by the LC Bank. Such Reimbursement Obligation shall be satisfied by the Seller (i) first, by the remittance by the Administrator to the LC Bank of any available amounts then on deposit in the LC Collateral Account and (ii) second, by the remittance by or on behalf of the Seller to the LC Bank of any

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other funds of the Seller then available for disbursement. In the event the Seller fails to reimburse the LC Bank for the full amount of any drawing under any Letter of Credit by the applicable time on the Reimbursement Date, the LC Bank will promptly notify each LC Participant thereof, and the Seller shall be deemed to have requested that a Funded Purchase be made by the Purchasers in the Purchaser Groups for the LC Bank and the LC Participants to be disbursed on the Drawing Date under such Letter of Credit, subject to the amount of the unutilized portion of the Purchase Limit. Any notice given by the LC Bank pursuant to this Section may be oral if immediately confirmed in writing; provided that the lack of such an immediate written confirmation shall not affect the conclusiveness or binding effect of such oral notice.

(c) Each LC Participant shall upon any notice pursuant to subclause (b) above make available to the LC Bank an amount in immediately available funds equal to its Pro Rata Share of the amount of the drawing, whereupon the LC Participants shall each be deemed to have made a Funded Purchase in that amount. If any LC Participant so notified fails to make available to the LC Bank the amount of such LC Participant's Pro Rata Share of such amount by no later than 2:00 p.m., New York time on the Drawing Date, then interest shall accrue on such LC Participant's obligation to make such payment, from the Drawing Date to the date on which such LC Participant makes such payment (i) at a rate per annum equal to the Federal Funds Rate during the first three days following the Drawing Date and (ii) at a rate per annum equal to the rate applicable to Capital on and after the fourth day following the Drawing Date. The LC Bank will promptly give notice of the occurrence of the Drawing Date, but failure of the LC Bank to give any such notice on the Drawing Date or in sufficient time to enable any LC Participant to effect such payment on such date shall not relieve such LC Participant from its obligation under this subclause (c), provided that such LC Participant shall not be obligated to pay interest as provided in subclauses (i) and (ii) above until and commencing from the date of receipt of notice from the LC Bank or the Administrator of a drawing. Each LC Participant's Commitment shall continue until the last to occur of any of the following events: (A) the LC Bank ceases to be obligated to issue or cause to be issued Letters of Credit hereunder; (B) no Letter of Credit issued hereunder remains outstanding and uncanceled or (C) all Persons (other than the Seller) have been fully reimbursed for all payments made under or relating to Letters of Credit.

Section 1.15 Repayment of Participation Advances.

(a) Upon (and only upon) receipt by the LC Bank for its account of immediately available funds from or for the account of the Seller (i) in reimbursement of any payment made by the LC Bank under a Letter of Credit with respect to which any LC Participant has made a participation advance to the LC Bank, or (ii) in payment of Discount on the Funded Purchases made or deemed to have been made in connection with any such draw, the LC Bank will pay to each LC Participant, ratably (based on the outstanding drawn amounts funded by each such LC Participant in respect of such Letter of Credit), in the same funds as those received by the LC Bank; it being understood, that the LC Bank shall retain a ratable amount of such funds that were not the subject of any payment in respect of such Letter of Credit by any LC Participant.

(b) If the LC Bank is required at any time to return to the Seller, or to a trustee, receiver, liquidator, custodian, or any official in any insolvency proceeding, any portion of the

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payments made by the Seller to the LC Bank pursuant to this Agreement in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each LC Participant shall, on demand of the LC Bank, forthwith return to the LC Bank the amount of its Pro Rata Share of any amounts so returned by the LC Bank plus interest at the Federal Funds Rate, from the date the payment was first made to such LC Participant through, but not including, the date the payment is returned by such LC Participant.

(c) If any Letters of Credit are outstanding and undrawn on the Facility Termination Date, the LC Collateral Account shall be funded from Collections (or, in the Seller's sole discretion, by other cash available to the Seller) in an amount equal to the aggregate undrawn face amount of such Letters of Credit plus all applicable fees to accrue through the stated expiration dates thereof (such fees to accrue, as reasonably estimated by the LC Bank, the "LC Fee Expectation").

Section 1.16 Documentation.

The Seller agrees to be bound by the terms of the Letter of Credit Application and by the LC Bank's interpretations of any Letter of Credit issued for the Seller and by the LC Bank's written regulations and customary practices relating to letters of credit, though the LC Bank's interpretation of such regulations and practices may be different from the Seller's own. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct by the LC Bank, the LC Bank shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following the Seller's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

Section 1.17 Determination to Honor Drawing Request.

In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the LC Bank shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

Section 1.18 Nature of Participation and Reimbursement Obligations.

Each LC Participant's obligation in accordance with this Agreement to make participation advances as a result of a drawing under a Letter of Credit, and the obligations of the Seller to reimburse the LC Bank upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Article I under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such LC Participant may have against the LC Bank, the Administrator, the

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Purchaser Agents, the Purchasers, the Seller or any other Person for any reason whatsoever;

(ii) the failure of the Seller or any other Person to comply with the conditions set forth in this Agreement for the making of a purchase, reinvestments, requests for Letters of Credit or otherwise, it being acknowledged that such conditions are not required for the making of participation advances hereunder;

(iii) any lack of validity or enforceability of any Letter of Credit or any set-off, counterclaim, recoupment, defense or other right which Seller, an Originator, the Transferor or any Affiliate thereof on behalf of which a Letter of Credit has been issued may have against the LC Bank, the Administrator, any Purchaser, any Purchaser Agent or any other Person for any reason whatsoever;

(iv) any claim of breach of warranty that might be made by the Seller, the Transferor, an Originator or an Affiliate thereof, the LC Bank or any LC Participant against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, defense or other right which the Seller, the LC Bank or any LC Participant may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), the LC Bank, any LC Participant, the Administrator, any Purchaser or any Purchaser Agent or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Seller or any Subsidiaries of the Seller or any Affiliates of the Seller and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of, or lack of validity, sufficiency, accuracy, enforceability or genuineness of, any draft, demand, instrument, certificate or other document presented under any Letter of Credit, or any such draft, demand, instrument, certificate or other document proving to be forged, fraudulent, invalid, defective or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, even if the Administrator or the LC Bank has been notified thereof;

(vi) payment by the LC Bank under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit other than as a result of the gross negligence or willful misconduct of the LC Bank;

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by the LC Bank or any of the LC Bank's Affiliates to issue any Letter of Credit in the form requested by the Seller, unless the LC Bank has

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received written notice from the Seller of such failure within three Business Days after the LC Bank shall have furnished the Seller a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(ix) any Material Adverse Effect on the Seller, the Transferor, any Originator or any Affiliates thereof;

(x) any breach of this Agreement or any Transaction Document by any party thereto;

(xi) the occurrence or continuance of an Insolvency Proceeding with respect to the Seller, the Transferor, any Originator or any Affiliate thereof;

(xii) the fact that a Termination Event or an Unmatured Termination Event shall have occurred and be continuing;

(xiii) the fact that this Agreement or the obligations of Seller or Servicer hereunder shall have been terminated; and

(xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Section 1.19 Indemnity.

In addition to other amounts payable hereunder, the Seller hereby agrees to protect, indemnify, pay and save harmless the Administrator, the LC Bank, each LC Participant and any of the LC Bank's Affiliates that have issued a Letter of Credit from and against any and all claims, demands, liabilities,

damages, taxes, penalties, interest, judgments, losses, costs, charges and expenses (including Attorney Costs) which the Administrator, the LC Bank, any LC Participant or any of their respective Affiliates may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit, except to the extent resulting from (a) the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction or (b) the wrongful dishonor by the LC Bank of a proper demand for payment made under any Letter of Credit, except if such dishonor resulted from any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority (all such acts or omissions herein called "Governmental Acts").

Section 1.20 Liability for Acts and Omissions.

As between the Seller, on the one hand, and the Administrator, the LC Bank, the LC Participants, the Purchaser Agents and the Purchasers, on the other, the Seller assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, the respective beneficiaries of such Letter of Credit. In furtherance and not in limitation of the respective foregoing, none of the Administrator, the LC Bank, the LC Participants, the Purchaser Agents or the Purchasers shall be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an

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issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if the LC Bank or any LC Participant shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of the Seller against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among the Seller and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, electronic mail, cable, telegraph, telex, facsimile or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Administrator, the LC Bank, the LC Participants, the Purchaser Agents and the Purchasers, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of the LC Bank's rights or powers hereunder. Nothing in the preceding sentence shall relieve the LC Bank from liability for its gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction, in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall the Administrator, the LC Bank, the LC Participants, the Purchaser Agents or the Purchasers or their respective Affiliates, be liable to the Seller or any other Person for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

Without limiting the generality of the foregoing, the Administrator, the LC Bank, the LC Participants, the Purchaser Agents and the Purchasers and each of its Affiliates (i) may rely on any written communication believed in good faith by such Person to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by the LC Bank or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on the Administrator, the LC Bank, the LC Participants, the Purchaser Agents or the Purchasers or their respective Affiliates, in any way related to any order issued at the applicant's request to an air

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carrier, a letter of guarantee or of indemnity issued to a carrier or any similar document (each an "Order") and may honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by the LC Bank under or in connection with any Letter of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction, shall not put the LC Bank under any resulting liability to the Seller, any LC Participant or any other Person.

**ARTICLE II.
REPRESENTATIONS AND WARRANTIES; COVENANTS;
TERMINATION EVENTS**

Section 2.1 Representations and Warranties; Covenants.

Each of the Seller and the Servicer hereby makes the representations and warranties, and hereby agrees to perform and observe the covenants, applicable to it as set forth in Exhibits III and IV, respectively.

Section 2.2 Termination Events.

If any of the Termination Events set forth in Exhibit V shall occur, the Administrator may (with the consent of the Majority Purchaser Agents) and shall (at the direction of the Majority Purchaser Agents), by notice to the Seller, declare the Facility Termination Date to have occurred (in which case the Facility Termination Date shall be deemed to have occurred); provided, that automatically upon the occurrence of any event (without any

requirement for the passage of time or the giving of notice) described in paragraph (f) of Exhibit V, the Facility Termination Date shall occur. Upon any such declaration, occurrence or deemed occurrence of the Facility Termination Date, the Purchasers, the Purchaser Agents and the Administrator shall have, in addition to the rights and remedies that they may have under this Agreement, all other rights and remedies provided after default under the UCC and under other Applicable Law, which rights and remedies shall be cumulative.

ARTICLE III. INDEMNIFICATION

Section 3.1 Indemnities by the Seller.

Without limiting any other rights that the Administrator, the Purchasers, the Purchaser Agents, the Liquidity Providers, any Program Support Provider or any of their respective Affiliates, employees, officers, directors, agents, counsel, successors, transferees or permitted assigns (each, an "Indemnified Party") may have hereunder or under Applicable Law, the Seller hereby agrees to indemnify each Indemnified Party from and against any and all claims, damages, expenses, costs, losses, liabilities, penalties and taxes (including Attorney

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Costs) (all of the foregoing being collectively referred to as "Indemnified Amounts") at any time imposed on or incurred by any Indemnified Party arising out of or otherwise relating to any Transaction Document, the transactions contemplated thereby or the acquisition of any portion of the Purchased Interest, or any action taken or omitted by any of the Indemnified Parties (including any action taken by the Administrator as attorney-in-fact for the Seller, the Transferor or any Originator hereunder or under any other Transaction Document) whether arising by reason of the acts to be performed by the Seller hereunder or otherwise, excluding only Indemnified Amounts to the extent: (a) a final judgment of a court of competent jurisdiction holds that such Indemnified Amounts resulted from gross negligence or willful misconduct of the Indemnified Party seeking indemnification, (b) due to the credit risk of the Obligor and for which reimbursement would constitute recourse to the Transferor, any Originator or the Servicer for uncollectible Receivables or (c) other than in the case of clause (xiii) below, such Indemnified Amounts include taxes imposed or based on, or measured by, the gross or net income or receipts of such Indemnified Party by the jurisdiction under the laws of which such Indemnified Party is organized, operates or where its principal executive office is located (or any political subdivision thereof); provided, however, that nothing contained in this sentence shall limit the liability of the Seller or the Servicer or limit the recourse of any Indemnified Party to the Seller or the Servicer for any amounts otherwise specifically provided to be paid by the Seller or the Servicer hereunder. Without limiting the foregoing indemnification, and subject to the exclusions in the preceding sentence, the Seller shall indemnify each Indemnified Party for Indemnified Amounts (including losses in respect of uncollectible Receivables regardless for purposes of these specific matters whether reimbursement therefor would constitute recourse to the Seller or the Servicer, except as set forth in subclause (viii) below) relating to or resulting from any of the following:

- (i) the failure of any Receivable included in the calculation of the Net Receivables Pool Balance as an Eligible Receivable to be an Eligible Receivable, the failure of any information contained in any Information Package or any Interim Report to be true and correct, or the failure of any other information provided in writing to any Purchaser or the Administrator with respect to the Receivables or this Agreement to be true and correct;
- (ii) the failure of any representation, warranty or statement made or deemed made by the Seller (or any employee, officer or agent of the Seller) under or in connection with this Agreement, any other Transaction Document, any Information Package, any Interim Report or any other information or report delivered by or on behalf of the Seller pursuant hereto to have been true and correct as of the date made or deemed made when made;
- (iii) the failure by the Seller to comply with any Applicable Law related to any Receivable or the related Contract or the non-conformity of any Receivable or the related Contract with any such Applicable Law;
- (iv) the failure of the Seller to vest and maintain vested in the Administrator (on behalf of the Secured Parties) a first priority perfected ownership

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interest or security interest in the Purchased Interest and the property conveyed hereunder, free and clear of any Lien;

- (v) any commingling of funds to which the Administrator, any Purchaser Agent or any Purchaser is entitled hereunder with any other funds;
- (vi) the failure to have filed, in accordance with the requirements of this Agreement or any other Transaction Document, financing statements (including as-extracted collateral filings) or other similar instruments or documents under the UCC of each applicable jurisdiction or other Applicable Laws with respect to any Receivables in, or purporting to be in, the Receivables Pool and the other Pool Assets, whether at the time of any Purchase or at any subsequent time;
- (vii) any failure of a Lock-Box Bank to comply with the terms of the applicable Lock-Box Agreement;
- (viii) any dispute, claim, offset or defense (other than discharge in bankruptcy of the Obligor) of the Obligor to the payment of any Receivable (including without limitation a defense based on such Receivable or the related Contract not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the sale or lease of goods or the rendering of services related to such Receivable or the furnishing or failure to furnish any such goods or services or other similar claim or defense not arising from the financial inability of any Obligor to pay undisputed indebtedness;
- (ix) any failure of the Seller to perform its duties or obligations in accordance with the provisions of this Agreement or any other Transaction Document to which it is a party;

(x) any action taken by the Administrator as attorney-in-fact for the Seller, the Transferor or any Originator pursuant to this Agreement or any other Transaction Document;

(xi) any environmental liability claim or products liability claim or other claim, investigation, litigation or proceeding, arising out of or in connection with merchandise, insurance or services that are the subject of any Contract;

(xii) the failure by the Seller to pay when due any taxes, including, without limitation, sales, excise or personal property taxes;

(xiii) any taxes arising because a Purchase or the Purchased Interest is not treated for U.S. federal, state and local income and franchise tax purposes as intended under Section 5.17(a);

(xiv) the use of proceeds of purchases or reinvestments or the issuance of any Letter of Credit; or

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(xv) any reduction in Capital as a result of the distribution of Collections pursuant to Section 1.4(d), if all or a portion of such distributions shall thereafter be rescinded or otherwise must be returned for any reason.

Section 3.2 Indemnities by the Servicer.

Without limiting any other rights that any Indemnified Party may have hereunder or under Applicable Law, the Servicer hereby agrees to indemnify each Indemnified Party from and against any and all Indemnified Amounts arising out of or resulting from (whether directly or indirectly): (a) the failure of any information contained in an Information Package or any Interim Report to be true and correct, or the failure of any other information provided to any such Indemnified Party by, or on behalf of, the Servicer to be true and correct, (b) the failure of any representation, warranty or statement made or deemed made by the Servicer (or any of its officers) under or in connection with this Agreement or any other Transaction Document to which it is a party to have been true and correct as of the date made or deemed made when made, (c) the failure by the Servicer to comply with any Applicable Law with respect to any Pool Receivable or the related Contract, (d) any dispute, claim, offset or defense of the Obligor (other than as a result of discharge in bankruptcy with respect to such Obligor) to the payment of any Receivable in, or purporting to be in, the Receivables Pool resulting from or related to the collection activities with respect to such Receivable, (e) any commingling (other than as a result of actions taken by the Administrator, any Purchaser Agent or any Purchaser) of funds to which the Administrator, any Purchaser Agent or any Purchaser is entitled hereunder with any other funds or (f) any failure of the Servicer to perform its duties or obligations in accordance with the provisions hereof or any other Transaction Document to which it is a party.

**ARTICLE IV.
ADMINISTRATION AND COLLECTIONS**

Section 4.1 Appointment of the Servicer.

(a) The servicing, administering and collection of the Pool Receivables shall be conducted by the Person so designated from time to time as the Servicer in accordance with this Section. Until the Administrator gives notice to Arch Sales (in accordance with this Section) of the designation of a new Servicer, Arch Sales is hereby designated as, and hereby agrees to perform the duties and obligations of, the Servicer pursuant to the terms hereof. Upon the occurrence of a Termination Event, the Administrator may (with the consent of the Majority Purchaser Agents) and shall (at the direction of the Majority Purchaser Agents) designate as Servicer any Person (including itself) to succeed Arch Sales or any successor Servicer, on the condition in each case that any such Person so designated shall agree to perform the duties and obligations of the Servicer pursuant to the terms hereof.

(b) Upon the designation of a successor Servicer as set forth in clause (a), Arch Sales agrees that it will terminate its activities as Servicer hereunder in a manner that the Administrator determines will facilitate the transition of the performance of such activities to the new Servicer, and Arch Sales shall cooperate with and assist such new Servicer. Such cooperation shall include access to and transfer of related records (including all Contracts) and use by the new

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Servicer of all licenses, hardware or software necessary or desirable to collect the Pool Receivables and the Related Security.

(c) Arch Sales acknowledges that, in making their decision to execute and deliver this Agreement, the Administrator, the Purchaser Agents and the Purchasers have relied on Arch Sales' agreement to act as Servicer hereunder. Accordingly, Arch Sales agrees that it will not voluntarily resign as Servicer without the prior written consent of the Administrator and the Purchasers.

(d) The Servicer may delegate its duties and obligations hereunder to any subservicer (each a "Sub-Servicer"); provided, that, in each such delegation: (i) each such Sub-Servicer shall agree in writing to perform the delegated duties and obligations of the Servicer pursuant to the terms hereof, (ii) the Servicer shall remain liable for the performance of the duties and obligations so delegated, (iii) the Seller, the Administrator, the Purchaser Agents and the Purchasers shall have the right to look solely to the Servicer for performance, and (iv) the terms of any agreement with any Sub-Servicer shall provide that the Administrator may terminate such agreement upon the termination of the Servicer hereunder by giving notice of its desire to terminate such agreement to the Servicer (and the Servicer shall provide appropriate notice to each such Sub-Servicer); provided, however, that if any such delegation is to any Person other than an Originator or the Transferor, the Administrator and the Majority Purchaser Agents shall have consented in writing in advance to such delegation.

Section 4.2 Duties of the Servicer.

(a) The Servicer shall take or cause to be taken all such action as may be necessary or advisable to service, administer and collect each Pool Receivable from time to time, all in accordance with this Agreement and all Applicable Law, with reasonable care and diligence, and in accordance with the Credit and Collection Policies. The Servicer shall set aside, for the accounts of the Seller and the Purchasers, the amount of the Collections to which each is entitled in accordance with Article I. The Servicer may, in accordance with the applicable Credit and Collection Policy, take such action, including modifications, waivers or restructurings of Pool Receivables and the related Contracts as the Servicer may determine to be appropriate to maximize

Collections thereof or reflect adjustments permitted under the Credit and Collection Policy or required under Applicable Laws or the applicable Contract; provided, however, that for the purposes of this Agreement (i) such action shall not change the number of days such Pool Receivable has remained unpaid from the date of the original due date related to such Pool Receivable, (ii) such action shall not alter the status of such Pool Receivable as a Delinquent Receivable or a Defaulted Receivable under this Agreement or limit the rights of any of the Purchasers, Purchaser Agents or the Administrator under this Agreement or any other Transaction Document and (iii) if a Termination Event has occurred and is continuing and Arch Sales or an Affiliate thereof is serving as the Servicer, Arch Sales or such Affiliate may take such action only upon the prior written approval of the Administrator. The Seller shall deliver to the Servicer and the Servicer shall hold for the benefit of the Seller and the Administrator (individually and for the benefit of the Purchasers), in accordance with their respective interests, all records and documents (including computer tapes or disks) with respect to each Pool Receivable. Notwithstanding anything to the contrary contained herein, if a Termination Event

has occurred and is continuing, the Administrator may direct the Servicer (whether the Servicer is Arch Sales or any other Person) to commence or settle any legal action to enforce collection of any Pool Receivable or to foreclose upon or repossess any Related Security.

(b) The Servicer shall, as soon as practicable following actual receipt of collected funds, turn over to the Seller the collections of any indebtedness that is not a Pool Receivable, less, if Arch Sales or an Affiliate thereof is not the Servicer, all reasonable and appropriate out-of-pocket costs and expenses of such Servicer of servicing, collecting and administering such collections. The Servicer, if other than Arch Sales or an Affiliate thereof, shall, as soon as practicable upon demand, deliver to the Seller all records in its possession that evidence or relate to any indebtedness that is not a Pool Receivable, and copies of records in its possession that evidence or relate to any indebtedness that is a Pool Receivable.

(c) The Servicer's obligations hereunder shall terminate on the Final Payout Date. After such termination, if Arch Sales or an Affiliate thereof was not the Servicer on the date of such termination, the Servicer shall promptly deliver to the Seller all books, records and related materials that the Seller previously provided to the Servicer, or that have been obtained by the Servicer, in connection with this Agreement.

Section 4.3 Lock-Box Account and LC Collateral Account Arrangements.

Prior to the Closing Date, the Seller shall have entered into Lock-Box Agreements with all of the Lock-Box Banks and delivered original counterparts thereof to the Administrator. During the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, the Administrator may (and shall, at the direction of the Majority Purchaser Agents), at any time give notice to each Lock-Box Bank that the Administrator is exercising its rights under the Lock-Box Agreements to do any or all of the following: (a) to exercise exclusive dominion and control (for the benefit of the Secured Parties) over each of the Lock-Box Accounts and all funds on deposit therein and (b) to take any or all other actions permitted under the applicable Lock-Box Agreement. The Seller and the Servicer each hereby agree that if the Administrator at any time takes any action set forth in the preceding sentence, the Administrator shall have exclusive control (for the benefit of the Secured Parties) of each Lock-Box Account and of the proceeds (including Collections) of all Pool Receivables in such Lock-Box Accounts and the Seller and the Servicer hereby further agree to take any other action that the Administrator may reasonably request to transfer such control or to ensure that the Administrator maintains such control. Any proceeds of Pool Receivables received by the Seller or the Servicer thereafter shall be sent immediately to, or as otherwise instructed by, the Administrator. The Seller and the Servicer hereby irrevocably instruct the Administrator on each Business Day during the Minimum Liquidity Period, so long as the Administrator has taken exclusive dominion and control over each of the Lock-Box Accounts and no Termination Event or Unmatured Termination Event exists, to transfer all available amounts on deposit in the Lock-Box Accounts as of the end of each Business Day and after giving effect to any distributions to the Servicer on such day pursuant to Section 1.4(g), to the LC Collateral Account. The parties hereto hereby acknowledge that if it at any time takes control of any Lock-Box Accounts, the Administrator shall not have any rights to the funds therein in excess of the unpaid amounts due to the Administrator, the Purchaser Agents, the Purchasers, any Indemnified Party, any Affected

Person or any other Person hereunder or under any other Transaction Document, and the Administrator shall distribute or cause to be distributed such funds in accordance with Section 4.2(b) and Article I (in each case as if such funds were held by the Servicer thereunder).

The Administrator shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Seller hereby grants the Administrator a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrator and at the Seller's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrator to reimburse the LC Bank for each drawing under a Letter of Credit and for repayment of amounts owing by the Seller hereunder and under each of the other Transaction Documents to each of the other Secured Parties, it being understood and agreed that certain amounts on deposit in the LC Collateral Account may, from time to time, be remitted to the Servicer pursuant to Section 1.4(g). Amounts, if any, on deposit in the LC Collateral Account on the Final Payout Date shall be remitted by the Administrator to the Seller.

The Administrator shall, on each Settlement Date (if such date occurs on a Termination Day), remove any available amounts then on deposit in the LC Collateral Account and deposit such amounts into each Purchaser Agent's account in accordance with the priorities set forth in Section 1.4(d), to the extent that any amounts are then due and owing under clauses first through third of Section 1.4(d)(ii) after giving effect to the distribution, if any, by the Servicer on such date in accordance with Section 1.4(d).

Section 4.4 Enforcement Rights.

(a) At any time following the occurrence and during the continuation of a Termination Event:

(i) the Administrator (at the Seller's expense) may direct the Obligors that payment of all amounts payable under any Pool Receivable is to be made directly to the Administrator or its designee;

(ii) the Administrator may instruct the Seller or the Servicer to give notice of the Purchasers' interest in Pool Receivables to each Obligor, which notice shall direct that payments be made directly to the Administrator or its designee (on behalf of the Secured Parties), and the Seller or the Servicer, as the case may be, shall give such notice at the expense of the Seller or the Servicer, as the case may be; provided, that if the Seller or the Servicer, as the case may be, fails to so notify each Obligor within two (2) Business Days following instruction by the Administrator, the Administrator (at the Seller's or the Servicer's, as the case may be, expense) may so notify the Obligors;

(iii) the Administrator may request the Servicer to, and upon such request the Servicer shall: (A) assemble all of the records necessary or desirable to

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collect the Pool Receivables and the Related Security, and transfer or license to a successor Servicer the use of all software necessary or desirable to collect the Pool Receivables and the Related Security, and make the same available to the Administrator or its designee (for the benefit of the Purchasers) at a place selected by the Administrator, and (B) segregate all cash, checks and other instruments received by it from time to time constituting Collections in a manner acceptable to the Administrator and, promptly upon receipt, remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to the Administrator or its designee; and

(iv) the Administrator may replace the Person then acting as Servicer.

(b) The Seller hereby authorizes the Administrator (on behalf of each Purchaser Group), and irrevocably appoints the Administrator as its attorney-in-fact with full power of substitution and with full authority in the place and stead of the Seller, which appointment is coupled with an interest, to take any and all steps in the name of the Seller and on behalf of the Seller necessary or desirable, in the determination of the Administrator, following the occurrence and during the continuation of a Termination Event, to collect any and all amounts or portions thereof due under any and all Pool Assets, including endorsing the name of the Seller on checks and other instruments representing Collections and enforcing such Pool Assets. Notwithstanding anything to the contrary contained in this subsection, none of the powers conferred upon such attorney-in-fact pursuant to the preceding sentence shall subject such attorney-in-fact to any liability if any action taken by it shall prove to be inadequate or invalid, nor shall they confer any obligations upon such attorney-in-fact in any manner whatsoever.

Section 4.5 Responsibilities of the Seller.

(a) Anything herein to the contrary notwithstanding, the Seller shall: (i) perform all of its obligations, if any, under the Contracts related to the Pool Receivables to the same extent as if interests in such Pool Receivables had not been transferred hereunder, and the exercise by the Administrator, any Purchaser Agent or any Purchaser of their respective rights hereunder shall not relieve the Seller from such obligations, and (ii) pay when due any taxes, including any sales taxes payable in connection with the Pool Receivables and their creation and satisfaction. None of the Administrator, the Purchaser Agents and the Purchasers shall have any obligation or liability with respect to any Pool Asset, nor shall any of them be obligated to perform any of the obligations of the Seller, the Transferor, ACI or any Originator thereunder.

(b) Arch Sales hereby irrevocably agrees that if at any time it shall cease to be the Servicer hereunder, it shall act (if the then-current Servicer so requests) as the data-processing agent of the Servicer and, in such capacity, Arch Sales shall conduct the data-processing functions of the administration of the Receivables and the Collections thereon in substantially the same way that Arch Sales conducted such data-processing functions while it acted as the Servicer.

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Section 4.6 Servicing Fee.

(a) Subject to clause (b), the Servicer shall be paid a fee (the "Servicing Fee") equal to 1.00% per annum (the "Servicing Fee Rate") of the daily average aggregate Outstanding Balance of the Pool Receivables. The Purchasers' Share of such fee shall be paid through the distributions contemplated by Section 1.4(d), and the Seller's Share of such fee shall be paid by the Seller on each Settlement Date.

(b) If the Servicer ceases to be Arch Sales or an Affiliate thereof, the servicing fee shall be the greater of: (i) the amount calculated pursuant to clause (a), and (ii) an alternative amount specified by the successor Servicer not to exceed 110% of the aggregate reasonable costs and expenses incurred by such successor Servicer in connection with the performance of its obligations as Servicer hereunder.

Section 4.7 Authorization and Action of the Administrator and Purchaser Agents.

(a) Each Purchaser and Purchaser Agent hereby accepts the appointment of and irrevocably authorizes the Administrator to take such actions as agent on its behalf and to exercise such powers as are delegated to the Administrator hereby and to exercise such other powers as are reasonably incidental thereto (including, without limitation, the Administrator's entry into and execution of the No Proceedings Agreements). The Administrator shall hold, in its name, for the benefit of each Purchaser, ratably, the Purchased Interest. The Administrator shall not have any duties other than those expressly set forth herein or any fiduciary relationship with any Purchaser or Purchaser Agent, and no implied obligations or liabilities shall be read into this Agreement, or otherwise exist, against the Administrator. The Administrator does not assume, nor shall it be deemed to have assumed, any obligation to, or relationship of trust or agency with, the Seller or Servicer. Notwithstanding any provision of this Agreement or any other Transaction Document to the contrary, in no event shall the Administrator ever be required to take any action which exposes the Administrator to personal liability or which is contrary to the provisions of this Agreement, any other Transaction Document or Applicable Law. The appointment and authority of the Administrator hereunder shall terminate on the Final Payout Date.

(b) Each Purchaser hereby accepts the appointment of the respective institution identified as the Purchaser Agent for such Purchaser's Purchaser Group on Schedule IV hereto or in the Assumption Agreement or Transfer Supplement pursuant to which such Purchaser becomes a party hereto, and irrevocably authorizes such Purchaser Agent to take such action on its behalf under the provisions of this Agreement and to exercise such powers and perform such duties as are expressly delegated to such Purchaser Agent by the terms of this Agreement, if any, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Purchaser Agent shall have any duties or

responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Purchaser or other Purchaser Agent or the Administrator, and no implied obligations or liabilities shall be read into this Agreement, or otherwise exist, against any Purchaser Agent.

(c) Except as otherwise specifically provided in this Agreement, the provisions of this Section 4.7 are solely for the benefit of the Administrator, the Purchaser Agents and the

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Purchasers, and none of the Seller or the Servicer shall have any rights as a third party beneficiary or otherwise under any of the provisions of this Section 4.7, except that this Section 4.7 shall not affect any obligations which the Administrator, any Purchaser Agent or any Purchaser may have to the Seller or the Servicer under the other provisions of this Agreement. Furthermore, no Purchaser shall have any rights as a third-party beneficiary or otherwise under any of the provisions hereof in respect of a Purchaser Agent that is not the Purchaser Agent for such Purchaser.

(d) In performing its functions and duties hereunder, the Administrator shall act solely as the agent of the Purchasers and the Purchaser Agents and does not assume nor shall be deemed to have assumed any obligation or relationship of trust or agency with or for the Seller or Servicer or any of their successors and assigns. In performing its functions and duties hereunder, each Purchaser Agent shall act solely as the agent of its respective Purchasers and does not assume nor shall be deemed to have assumed any obligation or relationship of trust or agency with or for the Seller, the Servicer, any Purchaser not in such Purchaser Agent's Purchaser Group, any other Purchaser Agent or the Administrator, or any of their respective successors and assigns.

Section 4.8 Nature of Administrator's Duties; Delegation of Administrator's Duties; Exculpatory Duties.

(a) The Administrator shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Transaction Documents. The duties of the Administrator shall be mechanical and administrative in nature. The Administrator shall not have, by reason of this Agreement, a fiduciary relationship in respect of any Purchaser. Nothing in this Agreement or any of the Transaction Documents, express or implied, is intended to or shall be construed to impose upon the Administrator any obligations in respect of this Agreement or any of the Transaction Documents except as expressly set forth herein or therein. The Administrator shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Purchaser or Purchaser Agent with any credit or other information with respect to the Seller, any Originator, the Transferor, any Sub-Servicer or the Servicer, whether coming into its possession before the date hereof or at any time or times thereafter. If the Administrator seeks the consent or approval of the Purchasers or the Purchaser Agents to the taking or refraining from taking any action hereunder, the Administrator shall send notice thereof to each Purchaser (or such Purchaser's Purchaser Agent, on its behalf) or each Purchaser Agent, as applicable. The Administrator shall promptly notify each Purchaser Agent any time that the Purchasers and/or Purchaser Agents, as the case may be, have instructed the Administrator to act or refrain from acting pursuant hereto.

(b) The Administrator may execute any of its duties through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrator shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) None of the Administrator and the Purchaser Agent, nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted (i) with the

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consent or at the direction of the Majority Purchaser Agents (or, in the case of any Purchaser Agent, the Purchasers within such Purchaser Agent's Purchaser Group that have a majority of the aggregate Commitments of such Purchaser Group) or (ii) in the absence of such Person's gross negligence or willful misconduct. The Administrator shall not be responsible to any Purchaser, Purchaser Agent or other Person for (i) any recitals, representations, warranties or other statements made by the Seller, any Sub-Servicer, the Servicer, the Transferor, any Originator or any of their Affiliates, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Transaction Document, (iii) any failure of the Seller, any Sub-Servicer, the Servicer, the Transferor, any Originator or any of their Affiliates to perform any obligation hereunder or under the other Transaction Documents to which it is a party (or under any Contract), or (iv) the satisfaction of any condition specified in Exhibit II. The Administrator shall not have any obligation to any Purchaser Agent or Purchaser to ascertain or inquire about the observance or performance of any agreement contained in any Transaction Document or to inspect the properties, books or records of the Seller, the Servicer, the Transferor, any Originator or any of their respective Affiliates.

Section 4.9 UCC Filings.

Each of the Seller and the Purchasers expressly recognizes and agrees that the Administrator may be listed as the assignee or secured party of record on the various UCC filings required to be made hereunder in order to perfect the transfer of the Purchased Interest from the Seller to the Purchasers, that such listing shall be for administrative convenience only in creating a record or nominee owner to take certain actions hereunder on behalf of the Purchasers and that such listing will not affect in any way the status of the Purchasers as the beneficial owners of the Purchased Interest. In addition, such listing shall impose no duties on the Administrator other than those expressly and specifically undertaken in accordance with this Section 4.9.

Section 4.10 Agent's Reliance, Etc.

None of the Administrator and the Purchaser Agents, nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it as Administrator or as Purchaser Agent, as the case may be, under or in connection with this Agreement except for such Person's own gross negligence or willful misconduct. Each of the Administrator and each Purchaser Agent: (i) may consult with legal counsel (including counsel for the Seller), independent public accountants and other experts selected by the Administrator and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Purchaser or Purchaser Agent and shall not be responsible to any Purchaser or Purchaser Agent for any statements, warranties or representations made in or in connection with this Agreement; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Seller, the Servicer, any Sub-Servicer, the Transferor or any Originator or to inspect the property (including the books and records) of the Seller, the Servicer, any Sub-Servicer, the Transferor or any Originator; (iv) shall not be responsible to any Purchaser or Purchaser Agent for the due execution, legality, validity, enforceability, genuineness, sufficiency, or value of this Agreement, or any other instrument or document furnished pursuant hereto; and (v) shall incur no liability

under or in respect of this Agreement or any other Transaction Document by acting upon any notice (including notice by telephone), consent, certificate or other instrument or writing (which may be by telex) believed by it to be genuine and signed or sent by the proper party or parties. The Administrator may at any time request instructions from the Purchasers and/or Purchaser Agents, and the Purchaser Agents may at any time request instructions from the Purchasers in their Purchaser Groups, with respect to any actions or approvals which by the terms of this Agreement or of any of the other Transaction Documents the Administrator or such Purchaser Agent is permitted or required to take or to grant, and if such instructions are promptly requested, the Administrator and/or such Purchaser Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Transaction Documents until it shall have received such instructions from the Majority Purchaser Agents, in the case of the Administrator or Purchasers holding the majority of the aggregate of the Commitments in such Purchaser Agent's Purchaser Group, in the case of any Purchaser Agent (or, in either case, where expressly required hereunder, from the Majority LC Participants, the LC Bank, all of the Purchasers and/or all of the LC Participants). Without limiting the foregoing, (x) none of the Purchasers and the Purchaser Agents shall have any right of action whatsoever against the Administrator as a result of the Administrator acting or refraining from acting under this Agreement or any of the other Transaction Documents in accordance with the instructions of the Majority Purchaser Agents and (y) none of the Purchasers in a Purchaser Agent's Purchaser Group shall have any right of action whatsoever against such Purchaser Agent as a result of such Purchaser Agent acting or refraining from acting under this Agreement or any of the other Transaction Documents in accordance with the instructions of the Purchasers within such Purchaser Agent's Purchaser Group with a majority of the Commitments of such Purchaser Group. The Administrator shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the required Purchasers or required Purchaser Agents, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Purchasers, all Purchaser Agents and the Administrator. Each Purchaser Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Purchasers in such Purchaser Agent's Purchaser Group with a majority of the Commitments of such Purchaser Group, and any such request and any action taken or failure to act pursuant thereto shall be binding upon all the Purchasers in such Purchaser Agent's Purchaser Group and such Purchaser Agent.

Section 4.11 Administrator and Affiliates.

To the extent that the Administrator or any of its Affiliates is or shall become an LC Participant hereunder, the Administrator or such Affiliate, in such capacity, shall have the same rights and powers under this Agreement as would any other LC Participant hereunder and may exercise the same as though it were not the Administrator. The Administrator and its Affiliates may generally engage in any kind of business with the Seller, the Transferor, any Originator, ACI, any Sub-Servicer or the Servicer, any of their respective Affiliates and any Person who may do business with or own securities of the Seller, the Transferor, any Originator, ACI, any Sub-Servicer or the Servicer or any of their respective Affiliates, all as if it were not the Administrator hereunder and without any duty to account therefor to any Purchaser Agent, or Purchaser.

Section 4.12 Notice of Termination Events.

Neither the Administrator nor any Purchaser Agent shall be deemed to have knowledge or notice of the occurrence of any Termination Event or Unmatured Termination Event unless it has received notice from, in the case of the Administrator, any Purchaser Agent, any Purchaser, the Servicer or the Seller and, in the case of any Purchaser Agent, the Administrator, any other Purchaser Agent, any Purchaser, the Servicer or the Seller, in each case stating that a Termination Event or an Unmatured Termination Event has occurred hereunder and describing such Termination Event or Unmatured Termination Event. In the event that the Administrator receives such a notice, it shall promptly give notice thereof to each Purchaser Agent. In the event that a Purchaser Agent receives such a notice, it shall promptly give notice thereof to the Administrator (unless such Purchaser Agent first received notice of such Termination Event or Unmatured Termination Event from the Administrator) and to each of its related Purchasers. The Administrator shall take such action concerning a Termination Event or an Unmatured Termination Event as may be directed by the Majority Purchaser Agents (unless such action otherwise requires the consent of the required Purchasers, all Purchaser Agents or the LC Bank), but until the Administrator receives such directions, the Administrator may (but shall not be obligated to) take such action, or refrain from taking such action, as the Administrator deems advisable and in the best interests of the Purchasers and Purchaser Agents.

Section 4.13 Non-Reliance on Administrator, Purchaser Agents and other Purchasers; Administrators and Affiliates.

(a) Each Purchaser and Purchaser Agent expressly acknowledges that none of the Administrator and the Purchaser Agents, in the case of such Purchaser, and none of the Administrator or any other Purchaser Agent, in the case of such Purchaser Agent, nor in either case any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrator or any Purchaser Agent hereafter taken, including any review of the affairs of the Seller, the Transferor, ACI, the Servicer or any Originator, shall be deemed to constitute any representation or warranty by the Administrator or such Purchaser Agent. Each Purchaser and Purchaser Agent represents and warrants to the Administrator and such Purchaser's Purchaser Agent, in the case of such Purchaser, and Administrator, in the case of such Purchaser Agent, that it has, independently and without reliance upon the Administrator, the LC Bank, any Purchaser Agent or any Purchaser and based on such documents and information as it has deemed appropriate, made and will continue to make its own appraisal of any investigation into the business, operations, property, prospects, financial and other conditions and creditworthiness of the Seller, the Transferor, ACI, the Servicer or the Originators, and made its own evaluation and decision to enter into this Agreement. Except for terms specifically required to be delivered hereunder, the Administrator shall not have any duty or responsibility to provide any Purchaser or Purchaser Agent, and no Purchaser Agent have any duty or responsibility to provide any Purchaser, with any information concerning the Seller, the Transferor, ACI, the Servicer or the Originators or any of their Affiliates that comes into the possession of the Administrator or such Purchaser Agent, respectively, or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

(b) Each of the Purchasers, the Purchaser Agents and the Administrator and any of their respective Affiliates may extend credit to, accept deposits from and generally engage in any kind of banking, trust, debt, entity or other business with the Seller, the Transferor, ACI, the Servicer or any Originator or any of their Affiliates. With respect to the acquisition of the Eligible Receivables pursuant to this Agreement, each of the Purchaser Agents and the Administrator shall have the same rights and powers under this Agreement as any Purchaser and may exercise the same as though it were not such an agent, and the terms “Purchaser” and “Purchasers” shall include, to the extent applicable, each of the Purchaser Agents and the Administrator in their individual capacities.

Section 4.14 Indemnification.

Each LC Participant and Related Committed Purchaser agrees to indemnify and hold harmless the Administrator and its officers, directors, employees, representatives and agents and the LC Bank (to the extent not reimbursed by the Seller, the Transferor, the Servicer or any Originator and without limiting the obligation of the Seller, the Transferor, the Servicer, or any Originator to do so), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, settlements, costs, expenses and, or disbursements of any kind or nature whatsoever (including, in connection with any investigative or threatened proceeding, whether or not the Administrator, the LC Bank or such Person shall be designated a party thereto) that may at any time be imposed on, incurred by, or asserted against the Administrator, LC Bank or such Person as a result of, or related to, any of the transactions contemplated by the Transaction Documents or the execution, delivery or performance of the Transaction Documents or any other document furnished in connection therewith; provided, however, that no LC Participant or Related Committed Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements resulting from the Administrator’s or the LC Bank’s gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, each LC Participant agrees to reimburse the Administrator and the LC Bank, ratably according to their Pro Rata Shares, promptly upon demand, for any out-of-pocket expenses (including reasonable counsel fees) incurred by the Administrator or the LC Bank in connection with the administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement.

Section 4.15 Successor Administrator.

The Administrator may, upon at least thirty (30) days’ notice to the Seller, the Purchaser Agents and the Servicer, resign as Administrator. Such resignation shall not become effective until a successor Administrator is appointed by the Majority Purchaser Agents and the LC Bank (subject to the consent of the Seller, so long as no Termination Event exists, such consent not to be unreasonably withheld, conditioned or delayed) and has accepted such appointment. If no successor Administrator shall have been so appointed by the Majority Purchaser Agents and the LC Bank within sixty (60) days after the resigning Administrator’s giving of notice of resignation, the resigning Administrator may, on behalf of the Secured

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Parties, petition a court of competent jurisdiction to appoint a successor Administrator. Upon such acceptance of its appointment as Administrator hereunder by a successor Administrator, such successor Administrator shall succeed to and become vested with all the rights and duties of the resigning Administrator, and the resigning Administrator shall be discharged from its duties and obligations under the Transaction Documents. After any resigning Administrator’s resignation hereunder, the provisions of Sections 3.1 and 3.2 and this Article IV shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrator.

**ARTICLE V.
MISCELLANEOUS**

Section 5.1 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Transaction Document, or consent to any departure by the Seller or the Servicer therefrom, shall be effective unless in a writing signed by the Administrator, the Majority Purchaser Agents and the LC Bank and, in the case of an amendment, by the other parties thereto (other than the Secured Parties); provided, however, that no such amendment shall, (a) without the consent of each affected Purchaser, (i) extend the date of any payment or deposit of Collections by the Seller or the Servicer or decrease the outstanding amount or rate of Discount or extend the repayment of or any scheduled payment date for the payment of any Discount in respect of any Portion of Capital or any fees owed to a Purchaser; (ii) reduce any fees payable pursuant to the applicable Fee Letter, (iii) forgive or waive or otherwise excuse any repayment of Capital or change either the amount of Capital of any Purchaser or any Purchaser’s pro rata share of the Purchased Interest; (iii) increase the Commitment of any Purchaser; (iv) amend or modify the Pro Rata Share of any LC Participant; (v) amend or modify the provisions of this Section 5.1 or of Section 4.3, Exhibit V or the definition of “Eligible Receivables”, “Net Receivables Pool Balance”, “Majority LC Participants”, “Majority Purchaser Agents”, “Minimum Liquidity”, “Minimum Liquidity Period”, “Purchased Interest”, “Scheduled Commitment Termination Date”, “Termination Day”, “Termination Event” or “Total Reserves” or (vi) amend or modify any defined term (or any term used directly or indirectly in such defined term) used in clauses (i) through (v) above in a manner that would circumvent the intention of the restrictions set forth in such clauses and (b) without the consent of the Majority Purchaser Agents and/or Majority LC Participants, as applicable, amend, waive or modify any provision expressly requiring the consent of such Majority Purchaser Agents and/or Majority LC Participant. Each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. The Administrator hereby agrees to provide executed copies of any material amendment or waiver of any provision of this Agreement or any other Transaction Document to the Rating Agencies if requested by any party hereto. No failure on the part of any Purchaser Agent, any Purchaser or the Administrator to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

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Section 5.2 Notices, Etc.

All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including facsimile or electronic mail communication) and shall be personally delivered or sent by facsimile, electronic mail or by overnight mail, to the intended party at the mailing address or electronic mail address or facsimile number of such party set forth under its name on the signature pages hereof (or in any other document or agreement pursuant to which it is or became a party hereto), or at such other address or facsimile number as shall be designated by such party in a written

notice to the other parties hereto. All such notices and communications shall be effective (i) if delivered by overnight mail, when received, and (ii) if transmitted by facsimile or electronic mail, when sent, receipt confirmed by telephone or electronic means.

Section 5.3 Successors and Assigns; Assignability; Participations.

(a) Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; all covenants, promises and agreements by or on behalf of any parties hereto that are contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise provided in Section 4.1(d) or Section 4.4(a)(iv), neither the Seller nor the Servicer may assign or transfer any of its rights or delegate any of its duties hereunder or under any Transaction Document without the prior written consent of the Administrator, each Purchaser Agent and the LC Bank.

(b) Participations. (i) Except as otherwise specifically provided herein, any Purchaser may sell to one or more Persons (each a “Participant”) participating interests in the interests of such Purchaser hereunder; provided, that no Purchaser shall grant any participation under which the Participant shall have rights to approve any amendment to or waiver of this Agreement or any other Transaction Document. Such Purchaser shall remain solely responsible for performing its obligations hereunder, and the Seller, the Servicer, each Purchaser Agent and the Administrator shall continue to deal solely and directly with such Purchaser in connection with such Purchaser’s rights and obligations hereunder. A Purchaser shall not agree with a Participant to restrict such Purchaser’s right to agree to any amendment, waiver or modification hereto, except amendments, waivers or modifications that require the consent of all Purchasers. (ii) Notwithstanding anything contained in paragraph (a) or clause (i) of paragraph (b) of this Section 5.3, each of the LC Bank and each LC Participant may sell participations in all or any part of any Funded Purchase made by such LC Participant to another bank or other entity so long as (x) no such grant of a participation shall, without the consent of the Seller, require the Seller to file a registration statement with the SEC and (y) no holder of any such participation shall be entitled to require such LC Participant to take or omit to take any action hereunder except that such LC Participant may agree with such participant that, without such Participant’s consent, such LC Participant will not consent to an amendment, modification or waiver that requires the consent of all LC Participants. Any such Participant shall not have any rights hereunder or under the Transaction Documents. (iii) Each Purchaser that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Seller, maintain a register on which it enters the name and address of each Participant and the interest in a Purchased Interest (and Discount, fees and other similar amounts under this Agreement) of each Participant’s interest in a Purchased Interest or other obligations under the Transaction Documents (the “Participant Register”); provided that

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no Purchaser shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in a Purchased Interest) to any Person except to the extent that such disclosure is necessary to establish that a Purchased Interest is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Purchaser shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrator (in its capacity as Administrator) shall have no responsibility for maintaining a Participant Register.

(c) Assignments by Related Committed Purchasers. Any Related Committed Purchaser may assign to one or more Persons (each a “Purchasing Related Committed Purchaser”), reasonably acceptable to each of the Administrator, the LC Bank and the related Purchaser Agent in each such Person’s sole and absolute discretion, its rights and obligations herein (including its Commitment (which shall be inclusive of its Commitment as an LC Participant)) in whole or in part, pursuant to a supplement hereto, substantially in the form of Annex G with any changes as have been approved by the parties thereto (each, a “Transfer Supplement”), executed by each such Purchasing Related Committed Purchaser, such selling Related Committed Purchaser, such related Purchaser Agent and the Administrator and with the consent of the Seller (provided, that the consent of the Seller shall not be unreasonably withheld, conditioned or delayed and that no such consent shall be required if (i) a Termination Event or Unmatured Termination Event has occurred and is continuing or (ii) such assignment is made by any Related Committed Purchaser to (A) the Administrator, (B) any other Related Committed Purchaser, (C) any Affiliate of the Administrator or any Related Committed Purchaser, (D) any commercial paper conduit or similar financing vehicle sponsored or administered by such Purchaser and for whom such Purchaser acts as a program support provider or through which (directly or indirectly) such Purchaser does or may fund Purchases hereunder (each, a “Conduit”), (E) any Liquidity Provider, (F) any Program Support Provider or (G) any Person that (1) is in the business of issuing commercial paper notes and (2) is associated with or administered by the Administrator or such Related Committed Purchaser or any Affiliate of the Administrator or such Related Committed Purchaser). Upon (i) the execution of the Transfer Supplement, (ii) delivery of an executed copy thereof to the Seller, the Servicer, such related Purchaser Agent and the Administrator and (iii) payment by the Purchasing Related Committed Purchaser to the selling Related Committed Purchaser of the agreed purchase price, if any, such selling Related Committed Purchaser shall be released from its obligations hereunder to the extent of such assignment and such Purchasing Related Committed Purchaser shall for all purposes be a Related Committed Purchaser party hereto and shall have all the rights and obligations of a Related Committed Purchaser hereunder to the same extent as if it were an original party hereto. The amount of the Commitment of the selling Related Committed Purchaser allocable to such Purchasing Related Committed Purchaser shall be equal to the amount of the Commitment of the selling Related Committed Purchaser transferred regardless of the purchase price, if any, paid therefor. The Transfer Supplement shall be an amendment hereof only to the extent necessary to reflect the addition of such Purchasing Related Committed Purchaser as a “Related Committed Purchaser” and a related “LC Participant” and any resulting adjustment of the selling Related Committed Purchaser’s Commitment and, if applicable, selling related LC Participant’s Pro Rata Share of the LC Participation Amount.

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(d) Assignments to Liquidity Providers and other Program Support Providers. Any Conduit Purchaser may at any time grant to one or more of its Liquidity Providers or other Program Support Providers participating interests in its portion of the Purchased Interest. In the event of any such grant by such Conduit Purchaser of a participating interest to a Liquidity Provider or other Program Support Provider, such Conduit Purchaser shall remain responsible for the performance of its obligations hereunder. The Seller agrees that each Liquidity Provider and Program Support Provider shall be entitled to the benefits of Sections 1.7 and 1.8.

(e) Other Assignment by Conduit Purchasers. Each party hereto agrees and consents (i) to any Conduit Purchaser’s assignment, participation, grant of security interests in or other transfers of any portion of, or any of its beneficial interest in, the Purchased Interest (or portion thereof), including without limitation to any collateral agent in connection with its commercial paper program and (ii) to the complete assignment by any Conduit Purchaser of all of its rights and obligations hereunder to any other Person, and upon such assignment such Conduit Purchaser shall be released from all obligations and duties, if any, hereunder; provided, that such Conduit Purchaser may not, without the prior consent of its Related Committed Purchasers, make any such

transfer of its rights hereunder unless the assignee (x) is a Conduit or (y) (i) is principally engaged in the purchase of assets similar to the assets being purchased hereunder, (ii) has as its Purchaser Agent the Purchaser Agent of the assigning Conduit Purchaser and (iii) issues commercial paper or other Notes with credit ratings substantially comparable to the ratings of the assigning Conduit Purchaser. Any assigning Conduit Purchaser shall deliver to any assignee a Transfer Supplement with any changes as have been approved by the parties thereto, duly executed by such Conduit Purchaser, assigning any portion of its interest in the Purchased Interest to its assignee. Such Conduit Purchaser shall promptly (i) notify each of the other parties hereto of such assignment and (ii) take all further action that the assignee reasonably requests in order to evidence the assignee's right, title and interest in such interest in the Purchased Interest and to enable the assignee to exercise or enforce any rights of such Conduit Purchaser hereunder. Upon the assignment of any portion of its interest in the Purchased Interest, the assignee shall have all of the rights hereunder with respect to such interest (except that the Discount therefor shall thereafter accrue at the rate, determined with respect to the assigning Conduit Purchaser unless the Seller, the related Purchaser Agent and the assignee shall have agreed upon a different Discount).

(f) Certain Pledges. Without limiting the right of any Purchaser to sell or grant interests, security interests or participations to any Person as otherwise described in this Article V, above, any Purchaser may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure its obligations as a Purchaser hereunder, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Purchaser from any of its obligations hereunder or substitute any such pledge or assignee for such Purchaser as a party hereto.

(g) Assignment by Administrator. Subject to Section 4.15 (if applicable), this Agreement and the rights and obligations of the Administrator hereunder shall be assignable, in whole or in part, by the Administrator and its successors and assigns; provided, that unless: (i) such assignment is to an Affiliate of PNC, (ii) it becomes unlawful for PNC to serve as the

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Administrator or (iii) a Termination Event exists, the Seller has consented to such assignment, which consent shall not be unreasonably withheld, conditioned or delayed.

(h) Agents. Without limiting any other rights that may be available under Applicable Law, the rights of the Purchasers and each Liquidity Provider may be enforced through it or by its agents.

(i) Disclosure; Notice. Each assignor may, in connection with an assignment permitted hereunder, disclose to the applicable assignee (that shall have agreed to be bound by Section 5.6) any information relating to the Servicer, the Seller or the Pool Receivables furnished to such assignor by or on behalf of the Servicer, the Seller, any Purchaser, any Purchaser Agent or the Administrator. Such assignor shall give prior written notice to Seller of any assignment of such assignor's rights and obligations (including ownership of the Purchased Interest) to any Person other than a Program Support Provider.

(j) Opinions of Counsel. If required by the Administrator or the applicable Purchaser Agent or to maintain the ratings of the Notes of any Conduit Purchaser, each Transfer Supplement or other assignment and acceptance agreement must be accompanied by an opinion of counsel of the assignee as to matters as the Administrator or such Purchaser Agent may reasonably request.

Section 5.4 Costs, Expenses and Taxes.

(a) By way of clarification, and not of limitation, of Sections 1.7, 1.19 or 3.1, the Seller shall pay to the Administrator, any Purchaser Agent and/or any Purchaser on demand all costs and expenses in connection with (i) the preparation, execution, delivery and administration (including amendments or waivers of any provision) of this Agreement and the other Transaction Documents along with all related documents and agreements (including the Confirmation Order and any other court filings in connection therewith), (ii) the sale of the Purchased Interest (or any portion thereof), (iii) the perfection (and continuation) of the Administrator's rights (on behalf of the Secured Parties) in the Receivables, Collections and other Pool Assets, (iv) the enforcement by the Administrator, the Purchaser Agents or the Purchasers of the obligations of the Seller, the Transferor, the Servicer or the Originators under the Transaction Documents or of any Obligor under a Receivable and (v) the maintenance by the Administrator of the Lock-Box Accounts (and any related lock-box or post office box), including Attorney Costs relating to any of the foregoing or to advising the Administrator, any Purchaser Agent, any Purchaser, any Liquidity Provider or any other Program Support Provider about its rights and remedies under any Transaction Document and all costs and expenses (including Attorney Costs) of the Administrator, the Purchaser Agents, the Purchasers, any Liquidity Provider or Program Support Provider in connection with the enforcement of the Transaction Documents and in connection with the administration of the Transaction Documents. Subject to Section 1(e) of Exhibit IV of this Agreement, the Seller shall reimburse the Administrator, each Purchaser Agent and each Purchaser for the cost of such Person's auditors (which may be employees of such Person) auditing the books, records and procedures of the Seller or the Servicer. The Seller shall reimburse each Conduit Purchaser for any amounts such Conduit Purchaser must pay to any Liquidity Provider or other Program Support Provider on account of any Tax. The Seller shall

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reimburse each Conduit Purchaser on demand for all reasonable costs and expenses incurred by such Conduit Purchaser or any holder of membership interests of such Conduit Purchaser in connection with the Transaction Documents or the transactions contemplated thereby, including costs related to the auditing of the Conduit Purchaser's books by certified public accountants, Rating Agency fees and fees and out of pocket expenses of counsel of the Administrator, any Purchaser Agent and any Purchaser, or any membership interest holder, or administrator, of such for advice relating to such Conduit Purchaser's operation.

(b) All payments made by the Seller to the Administrator, any Purchaser Agent, any Purchaser, Liquidity Provider or other Program Support Provider hereunder shall be made without withholding for or on account of any present or future taxes (other than those imposed or based on the gross or net income or receipts of the recipient by the jurisdiction under the laws of which such Person is organized, operates or where its principal executive office is located or any political subdivision thereof). If any such withholding is so required, the Seller shall make the withholding, pay the amount withheld to the appropriate authority before penalties attach thereto or interest accrues thereon and pay such additional amount as may be necessary to ensure that the net amount actually received by such Person free and clear of such taxes (including such taxes on such additional amount) is equal to the amount that such Person would have received had such withholding not been made. If any such Person pays any such taxes, penalties or interest the Seller shall reimburse such Person

for that payment on demand. If the Seller pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to such Person on whose account such withholding was made on or before the thirtieth day after payment.

(c) In addition, the Seller shall pay on demand any and all stamp and other taxes and fees payable in connection with the execution, delivery, filing and recording of this Agreement, the other Transaction Documents or the other documents or agreements to be delivered hereunder or thereunder, and agrees to save each Indemnified Party and Affected Person harmless from and against any liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 5.5 No Proceedings; Limitation on Payments.

(a) Each of the Seller, ACI, the Servicer, the Administrator, the LC Bank, the Purchaser Agents and the Purchasers and each assignee of the Purchased Interest or any interest therein, and each Person that enters into a commitment to purchase the Purchased Interest or interests therein, hereby covenants and agrees that it will not institute against, or join any other Person in instituting against, any Conduit Purchaser any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding under any federal or state bankruptcy or similar law, for one year and one day after the latest maturing Note issued by such Conduit Purchaser is paid in full. The provisions of this paragraph shall survive any termination of this Agreement.

(b) Each of the Seller, ACI, the Servicer, the Administrator, the LC Bank, the Purchaser Agents and the Purchasers and each assignee of the Purchased Interest or any interest therein, and each Person that enters into a commitment to purchase the Purchased Interest or

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interests therein, hereby covenants and agrees that it will not institute against, or join any other Person in instituting against, the Seller any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding under any federal or state bankruptcy or similar law, for one year and one day after the Final Payout Date; provided, that the Administrator may take any such action with the prior written consent of the Majority Purchaser Agents and the LC Bank. The provisions of this paragraph shall survive any termination of this Agreement.

(c) Notwithstanding any provisions contained in this Agreement to the contrary, no Conduit Purchaser shall, or shall be obligated to, pay any amount, if any, payable by it pursuant to this Agreement or any other Transaction Document unless (i) such Conduit Purchaser has received funds which may be used to make such payment and which funds are not required to repay such Conduit Purchaser's Notes when due and (ii) after giving effect to such payment, either (x) such Conduit Purchaser could issue Notes to refinance all of its outstanding Notes (assuming such outstanding Notes matured at such time) in accordance with the program documents governing such Conduit Purchaser's securitization program or (y) all such Conduit Purchaser's Notes are paid in full. Any amount which a Conduit Purchaser does not pay pursuant to the operation of the preceding sentence shall not constitute a claim (as defined in §101 of the Bankruptcy Code) against or company obligation of such Conduit Purchaser for any such insufficiency unless and until such Conduit Purchaser satisfies the provisions of clauses (i) and (ii) above. The provisions of this paragraph shall survive any termination of this Agreement.

Section 5.6 Confidentiality.

Unless otherwise required by Applicable Law, each of the Seller and the Servicer agrees to maintain the confidentiality of this Agreement and the other Transaction Documents (and all drafts thereof) in communications with third parties and otherwise; provided, that this Agreement may be disclosed: (a) to third parties to the extent such disclosure is made pursuant to a written agreement of confidentiality in form and substance reasonably satisfactory to the Administrator and each Purchaser Agent, (b) to the Seller's legal counsel and auditors if they agree to hold it confidential, subject to Applicable Law, (c) in connection with any legal proceeding arising out of or in connection with this Agreement or any other Transaction Document or the preservation or maintenance of that party's rights hereunder or thereunder, (d) if required to do so by a court of competent jurisdiction whether in pursuance of any procedure for discovering documents or otherwise, (e) pursuant to any law in accordance with which that party is required or accustomed to act (including applicable SEC requirements), (f) to any Governmental Authority, and (g) to any Person in connection with any credit agreement or other financing transaction. The restrictions in the preceding sentence shall not apply to disclosures to any party to this Agreement by any other party hereto, information already known to a recipient otherwise than in breach of this Section, information also received from another source on terms not requiring it to be kept confidential, or information that is or becomes publicly available otherwise than in breach of this Section. Unless otherwise required by Applicable Law, each of the Administrator, the Purchaser Agents and the Purchasers agrees to maintain the confidentiality of non-public financial information regarding ACI, the Seller, the Transferor, the Servicer and the Originators; provided, that such information may be disclosed to: (i) third parties to the extent such disclosure is made pursuant to a written agreement of confidentiality in form and substance reasonably satisfactory to ACI, (ii) legal counsel and auditors of the Purchasers, the

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Purchaser Agents or the Administrator if they agree to hold it confidential, (iii) any nationally recognized statistical rating organization or if applicable, the Rating Agencies rating the Notes of any Conduit Purchaser, (iv) any Program Support Provider or potential Program Support Provider (if they agree to hold it confidential), (v) any placement agency placing the Notes and (vi) any regulatory authorities or Governmental Authority having jurisdiction over the Administrator, any Purchaser Agent, any Purchaser, any Program Support Provider or any Liquidity Provider.

Section 5.7 GOVERNING LAW AND JURISDICTION.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK; AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE MAXIMUM

EXTENT PERMITTED BY LAW, ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. EACH OF THE PARTIES HERETO WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH SERVICE MAY BE MADE BY ANY OTHER MEANS PERMITTED BY NEW YORK LAW.

Section 5.8 Execution in Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same agreement. Delivery of an executed counterpart hereof by facsimile or other electronic means shall be equally effective as delivery of an originally executed counterpart.

Section 5.9 Survival of Termination; Non-Waiver.

The provisions of Sections 1.7, 1.8, 1.18, 1.19, 3.1, 3.2, 5.4, 5.5, 5.6, 5.7, 5.10 and 5.14 shall survive any termination of this Agreement.

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Section 5.10 WAIVER OF JURY TRIAL.

EACH OF THE PARTIES HERETO WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. EACH OF THE PARTIES HERETO AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES HERETO FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

Section 5.11 Entire Agreement.

This Agreement and the other Transaction Documents embody the entire agreement and understanding between the parties hereto, and supersede all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

Section 5.12 Headings.

The captions and headings of this Agreement and any Exhibit, Schedule or Annex hereto are for convenience of reference only and shall not affect the interpretation hereof or thereof.

Section 5.13 Right of Setoff.

Each Secured Party is hereby authorized (in addition to any other rights it may have) to setoff, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any deposits and any other indebtedness held or owing by such Secured Party (including by any branches or agencies of such Secured Party) to, or for the account of, (i) the Seller against amounts owing by the Seller hereunder (even if contingent or unmatured) and (ii) the Servicer against amounts owing by the Servicer hereunder (even if contingent or unmatured); provided that such Secured Party shall notify the Seller or the Servicer, as applicable, promptly following such setoff; provided further, that no Secured Party shall exercise any setoff against the Servicer pursuant to this Agreement with respect to any deposits of the Servicer held by such Secured Party, if such exercise is in contravention of any deposit account control agreement or other similar agreement with the Servicer that is then in effect and to which such Secured Party or an Affiliate of such Secured Party is a party in the capacity of the bank maintaining the Servicer's relevant account.

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Section 5.14 Purchaser Groups' Liabilities.

The obligations of each Purchaser Agent and each Purchaser under the Transaction Documents are solely the corporate obligations of such Person. No recourse shall be had for any obligation or claim arising out of or based upon any Transaction Document against any member, employee, officer, director or incorporator of any such Person; provided, however, that this Section shall not relieve any such Person of any liability it might otherwise have for its own gross negligence or willful misconduct.

Section 5.15 Sharing of Recoveries.

Each Purchaser agrees that if it receives any recovery, through set-off, judicial action or otherwise, on any amount payable or recoverable hereunder in a greater proportion than should have been received hereunder or otherwise inconsistent with the provisions hereof, then the recipient of such recovery shall purchase for cash an interest in amounts owing to the other Purchasers (as return of Capital or otherwise), without representation or warranty except for the representation and warranty that such interest is being sold by each such other Purchaser free and clear of any Adverse Claim created or granted by such other Purchaser, in the amount necessary to create proportional participation by the Purchaser in such recovery. If all or any portion of such amount is thereafter recovered from the recipient, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

Section 5.16 USA Patriot Act.

Each of the Administrator and each of the other Secured Parties hereby notifies the Seller and the Servicer that pursuant to the requirements of the USA Patriot Act, the Administrator and the other Secured Parties may be required to obtain, verify and record information that identifies the Seller, the Originators, the Transferor, the Servicer and the Performance Guarantor, which information includes the name, address, tax identification number and other information regarding the Seller, the Originators, the Transferor, the Servicer and the Performance Guarantor that will allow the Administrator and the other Secured Parties to identify the Seller, the Originators, the Transferor, the Servicer and the Performance Guarantor in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act. Each of the Seller and the Servicer agrees to provide the Administrator and each other Secured Parties, from time to time, with all documentation and other information required by bank regulatory authorities under "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA Patriot Act.

Section 5.17 Tax Matters.

(a) It is the intention of the parties hereto that for U.S. federal, state and local income and franchise tax purposes, each Purchase is not treated as a sale of the Purchased Interest or otherwise.

(b) The Administrator, on Seller's behalf, shall maintain a register for the recordation of the names and addresses of the Purchasers, and the Purchases (and Discount, fees and other similar amounts under this Agreement) pursuant to the terms hereof from time to time (the "Register"), including any assignee. The entries in the Register shall be conclusive absent

manifest error, and to the extent applicable, the parties hereto shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a lender solely for U.S. federal income tax purposes. The Register shall be available for inspection by each Purchaser, at any reasonable time and from time to time upon reasonable prior notice.

Section 5.18 Severability.

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

Section 5.19 Mutual Negotiations.

This Agreement and the other Transaction Documents are the product of mutual negotiations by the parties thereto and their counsel, and no party shall be deemed the draftsman of this Agreement or any other Transaction Document or any provision hereof or thereof or to have provided the same. Accordingly, in the event of any inconsistency or ambiguity of any provision of this Agreement or any other Transaction Document, such inconsistency or ambiguity shall not be interpreted against any party because of such party's involvement in the drafting thereof.

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

ARCH RECEIVABLE COMPANY, LLC,
as Seller

By: _____
Name: _____
Title: _____

Address: One CityPlace Drive, Suite 300
St. Louis, MO 63141

Attention: Robert G. Jones
Telephone: 314-994-2716
Facsimile: 314-994-2736
Email: bjones@archcoal.com

ARCH COAL SALES COMPANY, INC.,
as initial Servicer

By: _____
Name: _____
Title: _____

Address: One CityPlace Drive, Suite 300

Attention: Robert G. Jones
Telephone: 314-994-2716
Facsimile: 314-994-2736
Email: bjones@archcoal.com

*Third A&R RPA
(Arch)*

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PNC BANK, NATIONAL ASSOCIATION,
as Administrator

By: _____
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

*Third A&R RPA
(Arch)*

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PNC BANK, NATIONAL ASSOCIATION,
as a Related Committed Purchaser

By: _____
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

*Third A&R RPA
(Arch)*

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PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank and as an LC Participant

By: _____
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

*Third A&R RPA
(Arch)*

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PNC BANK, NATIONAL ASSOCIATION,
as a Purchaser Agent

By: _____
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

*Third A&R RPA
(Arch)*

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REGIONS BANK,
as a Purchaser Agent

By: _____
Name: _____
Title: _____

Address: Regions Bank
1180 West Peachtree Street NW
Suite 1000
Atlanta, GA 30309

Attention: Mark Kassis or Linda Harris
Telephone: 404-221-4366 or 404-221-4354
Facsimile: 404-805-0841

REGIONS BANK,
as a Related Committed Purchaser

By: _____
Name: _____
Title: _____

Address: Regions Bank
1180 West Peachtree Street NW
Suite 1000
Atlanta, GA 30309

Attention: Mark Kassis or Linda Harris
Telephone: 404-221-4366 or 404-221-4354
Facsimile: 404-805-0841

*Third A&R RPA
(Arch)*

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REGIONS BANK,
as an LC Participant

By: _____
Name: _____
Title: _____

Address: Regions Bank
1180 West Peachtree Street NW
Suite 1000
Atlanta, GA 30309

Attention: Mark Kassis or Linda Harris
Telephone: 404-221-4366 or 404-221-4354
Facsimile: 404-805-0841

*Third A&R RPA
(Arch)*

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EXHIBIT I DEFINITIONS

As used in the Agreement (including its Exhibits, Schedules and Annexes), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined). Unless otherwise indicated, all Section, Annex, Exhibit and Schedule references in this Exhibit are to Sections of and Annexes, Exhibits and Schedules to the Agreement.

“ABL Agent” has the meaning set forth in the definition of Credit Agreement.

“ACI” means Arch Coal, Inc., a Delaware corporation.

“Adjusted LC Participation Amount” means, at any time, the greater of (i) LC Participation Amount less the amount of cash collateral held in the LC Collateral Account at such time and (ii) zero (\$0).

“Administration Account” means the account number 1002422076 of the Administrator maintained at the office of PNC at 300 Fifth Avenue, Pittsburgh, Pennsylvania 15222, or such other account as may be so designated in writing by the Administrator to the Servicer.

“Administrator” has the meaning set forth in the preamble to the Agreement.

“Adverse Claim” means any Lien other than a Permitted Lien; it being understood that any Lien in favor of, or assigned to, the Administrator (for the benefit of the Secured Parties) shall not constitute an Adverse Claim.

“Affected Person” has the meaning set forth in Section 1.7 of the Agreement.

“Affiliate” means, as to any Person: (a) any Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person, or (b) who is a director or officer: (i) of such Person or (ii) of any Person described in clause (a), except that, in the case of each Conduit Purchaser, Affiliate shall mean the holder(s) of its capital stock or membership interests, as the case may be. For purposes of this definition, control of a Person shall mean the power, direct or indirect: (x) to vote 25% or more of the securities having ordinary voting power for the election of directors or managers of such Person, or (y) to direct or cause the direction of the management and policies of such Person, in either case whether by ownership of securities, contract, proxy or otherwise.

“Agents” has the meaning set forth in the definition of Credit Agreement.

“Aggregate Capital” means at any time the aggregate outstanding Capital of all Purchasers at such time.

“Aggregate Discount” means, at any time, the sum of the aggregate for each Purchaser of the accrued and unpaid Discount with respect to each such Purchaser’s Capital at such time.

“Agreement” has the meaning set forth in the preamble to the Agreement.

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“Alternate Rate” for any Settlement Period for any Capital (or portion thereof) funded by any Purchaser other than through the issuance of Notes means an interest rate per annum equal to: (a) solely with respect to PNC and Regions, as Purchasers, (i) the daily average LMIR for such Settlement Period, or (ii) if LMIR is unavailable pursuant to Section 1.9, the Base Rate for such Settlement Period or (b) with respect to any Purchaser other than PNC or Regions, the Euro-Rate for such Settlement Period, or, in the sole and absolute discretion of the applicable Purchaser Agent, the Base Rate for such

Settlement Period; provided, however, that the “Alternate Rate” for any day while a Termination Event exists shall be an interest rate equal to the greater of (i) 3.0% per annum above the Base Rate as in effect on such day and (ii) the “Alternate Rate” as calculated in clause (a) or (b) above, as applicable.

“Anti-Terrorism Laws” means any applicable laws or regulation relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such applicable laws or regulations, all as amended, supplemented or replaced from time to time.

“Applicable Law” means, with respect to any Person, (x) all provisions of law, statute, treaty, constitution, ordinance, rule, regulation, ordinance, requirement, restriction, permit, executive order, certificate, decision, directive or order of any Governmental Authority applicable to such Person or any of its property and (y) all judgments, injunctions, orders, writs, decrees and awards of all courts and arbitrators in proceedings or actions in which such Person is a party or by which any of its property is bound.

“Arch Group” has the meaning set forth in paragraph 3(c) of Exhibit IV to the Agreement.

“Arch Sales” has the meaning set forth in the preamble to the Agreement.

“Assumption Agreement” means an agreement substantially in the form set forth in Annex F to this Agreement.

“Attorney Costs” means and includes all reasonable fees, costs, expenses and disbursements of (i) prior to the occurrence of a Termination Event, one law firm for the Administrator, the Indemnified Parties and the Secured Parties (and one local law firm in each applicable jurisdiction), taken as a whole, and, in the case of any actual conflict of interest, one additional law firm to the affected parties similarly situated (and one local law firm in each applicable jurisdiction), taken as a whole and (ii) on and after the occurrence of any Termination Event, any law firm or other external counsel and all reasonable disbursements of internal counsel.

“Bankruptcy Code” means the United States Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.), as amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Missouri or such other court as shall have jurisdiction over the Chapter 11 Cases.

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“Base Rate” means, with respect to any Purchaser, for any day, a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall be at all times equal to the higher of:

(a) the rate of interest in effect for such day as publicly announced from time to time by the applicable Purchaser Agent (or applicable Related Committed Purchaser or, in the case of determining the Base Rate for purposes of calculating the Yield Reserve, the Administrator) as its “reference rate” or “prime rate”, as applicable. Such “reference rate” or “prime rate” is set by the applicable Purchaser Agent (or the applicable Related Committed Purchaser or the Administrator) based upon various factors, including such Person’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate), and

(b) 0.50% per annum above the latest Federal Funds Rate.

“Benefit Plan” means any employee benefit pension plan as defined in Section 3(2) of ERISA in respect of which the Seller, the Transferor, any Originator, ACI or any ERISA Affiliate is, or at any time during the immediately preceding six years was, an “employer” as defined in Section 3(5) of ERISA.

“Business Day” means any day (other than a Saturday or Sunday) on which: (a) banks are not authorized or required to close in New York City, New York, or Pittsburgh, Pennsylvania; and (b) if this definition of “Business Day” is utilized in connection with the Euro-Rate or LMIR, dealings are carried out in the London interbank market.

“Capital” means, with respect to any Purchaser, the aggregate amounts paid to the Seller in connection with Funded Purchases in respect of the Purchased Interest by such Purchaser pursuant to Section 1.2 of the Agreement (including such Purchaser’s Pro Rata Share of the aggregate amount of all unreimbursed draws deemed to be Funded Purchases pursuant to Section 1.2(e)), as reduced from time to time by Collections distributed and applied on account of such Capital pursuant to Section 1.4(d) of the Agreement; provided, that if such Capital shall have been reduced by any distribution and thereafter all or a portion of such distribution is rescinded or must otherwise be returned for any reason, such Capital shall be increased by the amount of such rescinded or returned distribution as though it had not been made.

“Cash Flow Forecast” has the meaning set forth in Section 1(a)(iii) of Exhibit IV.

“Change in Control” means (a) ACI ceases to own, directly or indirectly, (1) 100% of the issued and outstanding capital stock of Arch Sales free and clear of all Adverse Claims (other than any Adverse Claim in favor of either Agent), (2) 100% of the issued and outstanding capital stock or other equity interests of each Originator (it being understood that the foregoing clause (2) shall not prohibit the disposition of equity interests in any Originator to the extent (x) after giving effect to such disposition, the Person so sold is no longer party to the Purchase and Sale Agreement and (y) such disposition is not otherwise prohibited by the Transaction Documents), (3) 100% of each Company Note free and clear of all Adverse Claims (other than any Adverse Claim in favor of either Agent (so long as such Person is then party to a No Proceedings

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Agreement) or (4) 100% of the membership interests of the Seller free and clear of all Adverse Claims (other than any Adverse Claim in favor of either Agent (so long as such Person is then party to a No Proceedings Agreement); or (b) any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC

under said Act) 35% or more of the voting capital stock of ACI; or (c) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of ACI on the first day of such period, (2) were nominated for election by the ACI, or (3) were approved for appointment by the board shall cease to constitute a majority of the board of directors of ACI; provided that the appointment of any directors of ACI pursuant to the Plan of Reorganization shall not result in a Change of Control.

“Chapter 11 Cases” means the Chapter 11 cases of ACI and all of its Subsidiaries jointly administered under Case No. 16-40120-705 in the U.S. Bankruptcy Court for the Eastern District of Missouri.

“Chapter 11 Debtors” means ACI and certain of its Subsidiaries that are debtors in any of the Chapter 11 Cases.

“Chapter 11 Obligor” means, at any time, an Obligor that either (a) is a debtor in a case commenced under Chapter 11 of the Bankruptcy Code and for which such case has not been converted to Chapter 7 of the Bankruptcy Code or (b) is a resident of Canada and is subject to an Insolvency Proceeding.

“Chapter 11 Obligor Receivable” means, at any time, any Receivable the Obligor of which is a Chapter 11 Obligor.

“Closing Date” means October 5, 2016.

“Collections” means, with respect to any Pool Receivable: (a) all funds that are received by any Originator, the Transferor, ACI, the Seller or the Servicer in payment of any amounts owed in respect of such Receivable (including purchase price, finance charges, interest and all other charges), or applied to amounts owed in respect of such Receivable (including insurance payments and net proceeds of the sale or other disposition of repossessed goods or other collateral or property of the related Obligor or any other Person directly or indirectly liable for the payment of such Pool Receivable and available to be applied thereon), (b) all amounts deemed to have been received pursuant to Section 1.4(e) of the Agreement and (c) all other proceeds of such Pool Receivable.

“Commitment” means, with respect to any Related Committed Purchaser, LC Participant or LC Bank, as applicable, the maximum aggregate amount which such Purchaser is obligated to pay hereunder on account of all Funded Purchases and all drawings under all Letters of Credit, on a combined basis, as set forth on Schedule IV or in the Assumption Agreement or other agreement pursuant to which it became a Purchaser, as such amount may be modified in connection with any subsequent assignment pursuant to Section 5.3 or in connection with a change in the Purchase Limit pursuant to Section 1.1(b) of the Agreement). For the avoidance of

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doubt, in no event shall the sum of the aggregate Commitments of all Purchasers in a Purchaser Group exceed such Purchaser Group’s Group Commitment.

“Commitment Percentage” means, for each Related Committed Purchaser or related LC Participant in a Purchaser Group, the Commitment of such Related Committed Purchaser or related LC Participant, as the case may be, divided by the total of all Commitments of all Related Committed Purchasers or related LC Participants, as the case may be, in such Purchaser Group.

“Commodity Hedge” means a price protection agreement: (i) related to crude oil, diesel fuel, heating oil, coal, SO2 allowances or other commodities used in the ordinary course of business of ACI and its Affiliates and (ii) entered into by ACI and its Affiliates for hedging purposes in the ordinary course of the operations of their business.

“Company Note” has the meaning set forth in Section 3.1 of the Sale and Contribution Agreement.

“Concentration Percentage” means: (a) for any Group A Obligor, 16%, (b) for any Group B Obligor, 16%, (c) for any Group C Obligor, 8% and (d) for any Group D Obligor, 4%.

“Concentration Reserve” means at any time, the product of (a) the Aggregate Capital plus the Adjusted LC Participation Amount, and (b)(i) the Concentration Reserve Percentage divided by (ii) 1 minus the Concentration Reserve Percentage.

“Concentration Reserve Percentage” means, at any time, the largest of the following: (i) the sum of the five (5) largest Obligor Percentages of Group D Obligors, (ii) the sum of the three (3) largest Obligor Percentages of Group C Obligors, (iii) the sum of the two (2) largest Obligor Percentages of Group B Obligors and (iv) the largest Obligor Percentage of Group A Obligors.

“Conduit” has the meaning set forth in Section 5.3(c) of the Agreement.

“Conduit Purchaser” means each commercial paper conduit that is a party to this Agreement, as a purchaser, or that becomes a party to this Agreement as a purchaser pursuant to an Assumption Agreement or otherwise.

“Confirmation Order” means the final order confirming the Plan of Reorganization entered by the Bankruptcy Court on September 13, 2016, which, among other things, approves the transactions described in this Agreement and the other Transaction Documents.

“Contract” means, with respect to any Receivable, any and all contracts, instruments, agreements, leases, invoices, notes or other writings pursuant to which such Receivable arises or that evidence such Receivable or under which an Obligor becomes or is obligated to make payment in respect of such Receivable.

“Covered Entity” means (a) the Seller, the Servicer, the Performance Guarantor, the Transferor and each Originator and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such

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Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

“CP Rate” means, for any Conduit Purchaser and for any Settlement Period for any Portion of Capital (a) the per annum rate equivalent to the weighted average cost (as determined by the applicable Purchaser Agent and which shall include commissions of placement agents and dealers, incremental carrying costs incurred with respect to Notes of such Person maturing on dates other than those on which corresponding funds are received by such Conduit Purchaser, other borrowings by such Conduit Purchaser (other than under any Program Support Agreement) and any other costs associated with the issuance of Notes) of or related to the issuance of Notes that are allocated, in whole or in part, by the applicable Conduit Purchaser to fund or maintain such Portion of Capital (and which may be also allocated in part to the funding of other assets of such Conduit Purchaser); provided, however, that if any component of such rate is a discount rate, in calculating the “CP Rate” for such Portion of Capital for such Settlement Period, the applicable Purchaser Agent shall for such component use the rate resulting from converting such discount rate to an interest bearing equivalent rate per annum; provided, further, that notwithstanding anything in this Agreement or the other Transaction Documents to the contrary, the Seller agrees that any amounts payable to Conduit Purchasers in respect of Discount for any Settlement Period with respect to any Portion of Capital funded by such Conduit Purchasers at the CP Rate shall include an amount equal to the portion of the face amount of the outstanding Notes issued to fund or maintain such Portion of Capital that corresponds to the portion of the proceeds of such Notes that was used to pay the interest component of maturing Notes issued to fund or maintain such Portion of Capital, to the extent that such Conduit Purchaser had not received payments of interest in respect of such interest component prior to the maturity date of such maturing Notes (for purposes of the foregoing, the “interest component” of Notes equals the excess of the face amount thereof over the net proceeds received by such Conduit Purchaser from the issuance of Notes, except that if such Notes are issued on an interest-bearing basis its “interest component” will equal the amount of interest accruing on such Notes through maturity) or (b) any other rate designated as the “CP Rate” for such Conduit Purchaser in an Assumption Agreement or Transfer Supplement or other document pursuant to which such Person becomes a party as a Conduit Purchaser to this Agreement, or any other writing or agreement provided by such Conduit Purchaser to the Seller, the Servicer and the applicable Purchaser Agent from time to time. The “CP Rate” for any day while a Termination Event or an Unmatured Termination Event exists shall be an interest rate equal to the greater of (a) 3.0% per annum above the Base Rate as in effect on such day and (b) the Alternate Rate as calculated in the definition thereof.

“Credit Agreement” means (i) that certain Credit Agreement, dated as of March 7, 2017 (as extended, renewed, amended, amended and restated, supplemented or otherwise modified, the “Original Term Loan Credit Agreement”), by and among ACI, the other borrowers from time to time party thereto, the lenders from to time party thereto, and Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent (in such capacities, together with its successors, the “Original Term Loan Agent” and, together with the administrative agent or collateral agent under any other agreement referred to in clause (iii) below, the “Term Loan Agent”), (ii) that certain Credit Agreement, dated as of April [·], 2017 (as extended, renewed, amended, amended and restated, supplemented or otherwise modified, the “Original ABL Credit Agreement”), by and among ACI, the lenders from to time party thereto, and Regions Bank, as

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administrative agent (in such capacity, together with its successors, the “Original ABL Agent” and, together with the administrative agent or collateral agent under any other agreement referred to in clause (iii) below, the “ABL Agent”; the ABL Agent together with the Term Loan Agent, the “Agents”), or (iii) any other loan agreement, credit agreement, indenture or other agreement from time to time entered into by ACI, any Originator and/or any Affiliate thereof in connection with the incurrence or issuance of Debt (or commitments in respect thereof) in exchange or replacement for or to refinance the Original Term Loan Credit Agreement or the Original ABL Credit Agreement, in each case, in whole or in part, whether or not with the same or different lenders, arrangers, agents or other investors and whether with a larger or smaller aggregate principal amount and/or a longer or shorter maturity, that provides for or is secured by, in whole or in part, among other things, a mortgage, security interest or other Adverse Claim on any interest in real property or as-extracted collateral (or any proceeds thereof) of any Originator related to such Originator’s mining operations or a minehead.

“Credit and Collection Policy” means, as the context may require, those receivables credit and collection policies and practices of the Originators and the Transferor in effect on the Closing Date and described in Schedule I to the Agreement, as modified in compliance with the Agreement.

“Cut-off Date” has the meaning set forth in the Sale Agreements.

“Daily Report” has the meaning set forth in Section 1(a)(ii) of Exhibit IV to this Agreement.

“Days’ Sales Outstanding” means, for any calendar month, an amount computed as of the last day of such calendar month equal to: (a) the average of the Outstanding Balance of all Pool Receivables as of the last day of each of the three most recent calendar months ended on the last day of such calendar month divided by (b) (i) the aggregate credit sales made by the Originators and the Transferor during the three calendar months ended on the last day of such calendar month, divided by (ii) 90.

“Debt” means, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (i) borrowed money, (ii) amounts raised under or liabilities in respect of any bonds, debentures, notes, note purchase, acceptance or credit facility, or other similar instruments or facilities, (iii) reimbursement obligations (contingent or otherwise) under any letter of credit, (iv) any other transaction (including production payments (excluding royalties), installment purchase agreements, forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business which are not represented by a promissory note or other evidence of indebtedness), or (v) any Guaranty of any such Debt. It is understood that obligations in respect of any Hedging Transaction shall not be deemed to be Debt.

“Declining Conduit Purchaser” has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

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“Declining Notice” has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

“Default Ratio” means the ratio (expressed as a percentage and rounded to the nearest 1/100 of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of each calendar month by dividing: (a) the aggregate Outstanding Balance of all Pool Receivables that became Defaulted Receivables during such month; provided, however, that such amount may, from time to time, exclude the aggregate Outstanding Balance of Eligible Chapter 11 Receivables if consented to in writing by the Administrator and the Majority Purchaser Agents by (b) the aggregate credit sales made by the Originators and the Transferor during the month that is seven calendar months before such month.

“Defaulted Receivable” means a Receivable:

(a) as to which any payment, or part thereof, remains unpaid for more than 150 days from the original due date for such payment, or

(b) without duplication (i) so long as such Receivable is not an Eligible Chapter 11 Receivable, as to which an Insolvency Proceeding shall have occurred with respect to the Obligor thereof or any other Person obligated thereon or owning any Related Security with respect thereto, (ii) that has been written off the applicable Originator’s, the Seller’s or the Transferor’s books as uncollectible or (iii) that, consistent with the Credit and Collection Policy, should be written off the applicable Originator’s, the Seller’s or the Transferor’s books as uncollectible;

provided, however, that for purposes of calculating the Default Ratio, no Receivable will be deemed to have become a Defaulted Receivable more than once.

“Delinquency Ratio” means the ratio (expressed as a percentage and rounded to the nearest 1/100 of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of each calendar month by dividing: (a) the aggregate Outstanding Balance of all Pool Receivables that were Delinquent Receivables on such day by (b) the aggregate Outstanding Balance of all Pool Receivables on such day.

“Delinquent Receivable” means a Receivable as to which any payment, or part thereof, remains unpaid for more than 60 days from the original due date for such payment.

“Dilution Horizon” means, for any calendar month, the ratio (expressed as a percentage and rounded to the nearest 1/100th of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of such calendar month of: (a) the aggregate credit sales made by the Originators and the Transferor during the two most recent calendar months to (b) the Net Receivables Pool Balance at the last day of the most recent calendar month.

“Dilution Ratio” means the ratio (expressed as a percentage and rounded to the nearest 1/100th of 1%, with 5/1000th of 1% rounded upward), computed as of the last day of each calendar month by dividing: (a) the aggregate amount of payments made or owed by the Seller pursuant to Section 1.4(e) (i) of the Agreement during such calendar month by (b) the aggregate

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credit sales made by the Originators and the Transferor during the calendar month that is one month prior to such calendar month.

“Dilution Reserve” means, on any day, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such day multiplied by (b) (i) the Dilution Reserve Percentage on such day, divided by (ii) 100% minus the Dilution Reserve Percentage on such day.

“Dilution Reserve Percentage” means, on any day, the product of (a) the Dilution Horizon multiplied by (b) the sum of (i) 2.5 times the average of the Dilution Ratios for the twelve most recent calendar months and (ii) the Spike Factor.

“Discount” means, with respect to any Purchaser:

(a) for any Portion of Capital for any Settlement Period with respect to any Purchaser to the extent such Portion of Capital will be funded by such Purchaser during such Settlement Period through the issuance of Notes:

$$\text{CPR} \times \text{C} \times \text{ED} / 360$$

(b) for any Portion of Capital for any Settlement Period with respect to any Purchaser to the extent such Portion of Capital will not be funded by such Purchaser during such Settlement Period through the issuance of Notes or, if the LC Bank and/or any LC Participant has made, or has deemed to have made, a Funded Purchase in connection with any drawing under a Letter of Credit which accrues Discount pursuant to Section 1.2(e) of the Agreement:

$$\text{AR} \times \text{C} \times \text{ED} / \text{Year} + \text{TF}$$

where:

AR = the Alternate Rate for such Portion of Capital for such Settlement Period with respect to such Purchaser,

C = the Portion of Capital during such Settlement Period with respect to such Purchaser,

CPR = the CP Rate for the Portion of Capital for such Settlement Period with respect to such Purchaser,

ED = the actual number of days during such Settlement Period,

Year = if such Portion of Capital is funded based upon: (i) the Euro-Rate or LMIR, 360 days, and (ii) the Base Rate, 365 or 366 days, as applicable, and

TF = the Termination Fee, if any, for the Portion of Capital for such Settlement Period with respect to such Purchaser;

provided, that no provision of the Agreement shall require the payment or permit the collection of Discount in excess of the maximum permitted by Applicable Law; and provided further, that Discount for any Portion of Capital shall not be considered paid by any distribution to the extent that at any time all or a portion of such distribution is rescinded or must otherwise be returned for any reason.

“Drawing Date” has the meaning set forth in Section 1.14 of the Agreement.

“Eligible Assignee” means any bank or financial institution acceptable to the LC Bank and the Administrator.

“Eligible Chapter 11 Receivable” means, at any time, any Chapter 11 Obligor Receivable for which both (a) either (I) a final order has been entered by the applicable United States Bankruptcy Court having jurisdiction over the related Chapter 11 Obligor (x) authorizing and approving assumption of the Contract that gave rise to such Chapter 11 Obligor Receivable, (y) authorizing the related Chapter 11 Obligor to perform (prior to assumption) post-petition under the terms of the Contract that gave rise to such Chapter 11 Obligor Receivable or (z) providing for a critical vendor order authorizing payment of such Chapter 11 Obligor Receivable to the extent such Receivable arises with respect to shipments of coal occurring pre-petition and, in each case, such order has not been subsequently stayed, reversed or vacated or (II) the related Obligor of which is a resident of Canada and (b) the Administrative Agent and the Majority Purchaser Agents have in their sole and absolute discretion provided written consent to the Seller that such Chapter 11 Obligor Receivable shall constitute an “Eligible Chapter 11 Receivable”; provided, however, that the Administrative Agent or the Majority Purchaser Agents may, upon not less than five (5) Business Days’ notice to the Seller, cancel any or all designations of Chapter 11 Obligor Receivables as Eligible Chapter 11 Receivables and thereafter such Chapter 11 Obligor Receivable(s) shall not constitute Eligible Chapter 11 Receivables for purposes of this Agreement or any other Transaction Document.

“Eligible Foreign Obligor” means an Obligor which is a resident of any country (other than the United States of America) that has a short-term foreign currency rating (or, if such country does not have such a short-term foreign currency rating, a long-term foreign currency rating) of at least “A2” (or “A”) by Standard & Poor’s and “P-1” (or “A2”) by Moody’s.

“Eligible Receivable” means, at any time, a Pool Receivable:

(a) the Obligor of which is: (i) (A) United States resident or (B) an Eligible Foreign Obligor; (ii) not (A) a United States Federal Government Authority or (B) a governmental entity within the State of Ohio; provided that TVA shall not be subject to the restriction set forth in clause (ii)(A) above; (iii) (A) not subject to any Insolvency Proceeding or (B) the Obligor of an Eligible Chapter 11 Receivable; (iv) not an Affiliate of ACI, the Transferor, the Servicer or any other Originator; and (v) not a natural person (in each case, unless consented to in writing by the Administrator and the Majority Purchaser Agents);

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(b) that is denominated and payable only in U.S. dollars in the United States, and the Obligor with respect to which has been instructed to remit Collections in respect thereof to a Lock-Box Account in the United States of America;

(c) the Obligor of which is not a Sanctioned Person;

(d) that arises under a duly authorized Contract for the sale and delivery of goods or services in the ordinary course of the applicable Originator’s or the Transferor’s business;

(e) that arises under a duly authorized Contract that is in full force and effect and that is a legal, valid and binding obligation of the related Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors’ rights generally or limiting the right of specific performance;

(f) that, together with the Contract related thereto, conforms in all material respects with all Applicable Laws;

(g) that is not the subject of any asserted dispute, offset, hold back, defense, Adverse Claim or other claim, provided that, with respect to any Pool Receivable which is subject to any such claim, the amount of such Pool Receivable which shall be treated as an Eligible Receivable shall equal the excess of the amount of such Pool Receivable over the amount of such claim asserted by or available to the related Obligor;

(h) that satisfies all applicable requirements of the applicable Credit and Collection Policy;

(i) that, together with the Contract related thereto, has not been modified, waived or restructured since its creation, except as permitted pursuant to Section 4.2 of the Agreement;

(j) in which the Seller owns good and marketable title, free and clear of any Adverse Claims, and that is freely assignable by the Seller (including without any consent of the related Obligor or any Governmental Authority);

(k) for which the Administrator (on behalf of the Secured Parties) shall have a valid and enforceable undivided percentage ownership or security interest, to the extent of the Purchased Interest, and a valid and enforceable first priority perfected security interest therein and in the Related Security and Collections with respect thereto, in each case free and clear of any Adverse Claim;

(l) that constitutes an account as defined in the UCC, and that is not evidenced by instruments or chattel paper;

(m) that is neither a Defaulted Receivable nor a Delinquent Receivable;

(n) for which neither the Originator thereof, the Transferor, the Seller nor the Servicer has established any offset or netting arrangements with the related Obligor;

(o) for which the sum of the Outstanding Balances of all Receivables of the related Obligor with respect to which any payment, or part thereof, remains unpaid for more than 90 days from the original due date for such payment do not exceed 35.00% of the Outstanding Balance of all such Obligor's Receivables;

(p) that represents amounts earned and payable by the Obligor that are not subject to the performance of additional services by the Originator thereof or the Transferor;

(q) that (i) does not arise from a sale of accounts made as part of a sale of a business or constitute an assignment for the purpose of collection only, (ii) is not a transfer of a single account made in whole or partial satisfaction of a preexisting indebtedness or an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract and (iii) is not a transfer of an interest in or an assignment of a claim under a policy of insurance;

(r) that if such Receivable has not yet been billed, the related coal has been shipped within the last 60 days;

(s) that does not have a due date which is more than 90 days after the original invoice date of such Receivable; and

(t) that if such Receivable is a Rio Tinto Receivable, a Rio Tinto Trigger Event has not occurred with respect to any Rio Tinto Receivable (it being understood that upon the occurrence of a Rio Tinto Trigger Event with respect to any Receivable, then on and after such time, no Rio Tinto Receivables, whether or not then in the Receivables Pool prior to such Rio Tinto Trigger Event, shall be an Eligible Receivable).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute of similar import, together with the rulings and regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

“ERISA Affiliate” means: (a) any corporation that is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Internal Revenue Code) as the Seller, the Transferor, any Originator or ACI, (b) a trade or business (whether or not incorporated) under common control (within the meaning of Section 414(c) of the Internal Revenue Code) with the Seller, the Transferor, any Originator or ACI, or (c) a member of the same affiliated service group (within the meaning of Section 414(m) of the Internal Revenue Code) as the Seller, the Transferor, any Originator, ACI, any corporation described in clause (a) or any trade or business described in clause (b).

“Euro-Rate” means with respect to any Settlement Period, the greater of (a) 0.00% and (b) the interest rate per annum determined by the applicable Purchaser Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (i) the

rate of interest determined by such Purchaser Agent in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the rate per annum for deposits in U.S. dollars as reported by Bloomberg Finance L.P. and shown on US0001M Screen as the composite offered rate for London interbank deposits for such period (or on any successor or substitute page of such service, or any successor or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by such Purchase Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market at or about 11:00 a.m. (London time) on the Business Day which is two (2) Business Days prior to the first day of such Settlement Period for an amount comparable to the Portion of Capital to be funded at the Alternate Rate and based upon the Euro-Rate during such Settlement Period by (ii) a number equal to 1.00 minus the Euro-Rate Reserve Percentage. The Euro-Rate may also be expressed by the following formula:

$$\text{Euro-Rate} = \frac{\text{Composite of London interbank offered rates shown on Bloomberg Finance L.P. Screen US0001M or appropriate successor}}{1.00 - \text{Euro-Rate Reserve Percentage}}$$

where “Euro-Rate Reserve Percentage” means the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including without limitation, supplemental, marginal, and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as “Eurocurrency Liabilities”). The Euro-Rate shall be adjusted with respect to any Portion of Capital funded at the Alternate Rate and based upon the Euro-Rate that is outstanding on the effective date of any change in the Euro-Rate Reserve Percentage as of such effective date. The applicable Purchaser Agent shall give prompt notice to the Seller of the Euro-Rate as determined or adjusted in accordance herewith (which determination shall be conclusive absent manifest error).

“Excess Concentration” means the sum, without duplication, of the following amounts:

(i) the amount by which the Outstanding Balance of Eligible Receivables of each Obligor then in the Receivables Pool exceeds an amount equal to the Concentration Percentage for such Obligor multiplied by the Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(ii) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool that have a stated maturity which is more than 45 days after the original invoice date of such Eligible Receivables exceeds 10% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(iii) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool the Obligor of which is an Eligible Foreign Obligor exceeds 20% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(iv) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool the coal with respect to which has been shipped but not yet billed for more than 30 days but not more than 60 days from shipment exceeds 10% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(v) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool the coal with respect to which has been shipped but not yet billed exceeds 50% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool.

“Exiting Notice” has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

“Exiting Purchaser” has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

“Facility Termination Date” means the earliest to occur of: (a) the date determined pursuant to Section 2.2 of this Agreement, (b) the date the Purchase Limit reduces to zero pursuant to Section 1.1(b) of this Agreement, (c) with respect to each Purchaser Group, the earliest to occur of (i) the date that the commitments of the related Liquidity Providers, if any, terminate under the Liquidity Agreement and (ii) the date that the Commitments of all Related Committed Purchasers in such Purchaser Group terminate hereunder, (d) the date which is 15 days after the date on which the Administrator has received written notice from the Seller of its election to terminate the Purchase Facility, (e) with respect to the LC Bank, any LC Participant or any Related Committed Purchaser, the LC Bank’s, such LC Participant’s or such Related Committed Purchaser’s Scheduled Commitment Termination Date, and (f) the date, if any, that is 364 days following the first day that Liquidity is less than \$175,000,000 for a period of 60 consecutive days.

“FAS 166/167” has the meaning set forth in Section 1.7(c) of the Agreement.

“FASB” has the meaning set forth in Section 1.7(a) of the Agreement.

“Federal Funds Rate” means, for any day, the per annum rate set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Board (including any such successor, “H.15(519)”) for such day opposite the caption “Federal Funds (Effective).” If on any relevant day such rate is not yet published in H. 15(519), the rate for such day will be the rate set forth in the daily statistical release designated as the Composite 3:30 p.m. Quotations for U.S. Government Securities, or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, the “Composite 3:30 p.m. Quotations”) for such day under the caption “Federal Funds Effective Rate.” If on any relevant day the appropriate rate is not yet published in either H.15(519) or the Composite 3:30 p.m. Quotations, the rate for such day will be the arithmetic mean as determined by the Administrator of the rates for the last transaction in overnight Federal funds arranged before 9:00 a.m. (New York time) on that day by each of three leading brokers of Federal funds transactions in New York City selected by the Administrator.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

“Fee Letters” has the meaning set forth in Section 1.5 of the Agreement.

“Fees” means the fees payable by the Seller pursuant to the applicable Fee Letter.

“Final Payout Date” means the latest of (i) the Facility Termination Date, (ii) the date on which no Capital of or Discount in respect of the Purchased Interest shall be outstanding, (iii) the LC Participation Amount has been reduced to zero (\$0) and no Letters of Credit issued hereunder remain outstanding and undrawn (unless backstopped in a manner agreed to in writing by the LC Bank and the Majority LC Participants in their sole and absolute discretion), (iv) the date all other amounts owing to the Purchaser Agents, the Purchasers, the Administrator and the other Indemnified Parties and Affected Person under this Agreement and each of the other Transaction Documents have been paid in full (other than indemnification or other contingent obligations not yet due and owing) and (v) all accrued Servicing Fees have been paid in full.

“Fresh Start Reporting” means the preparation of consolidated financial statements of ACI in accordance with the American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Plan of Reorganization on a presumed effective date of October 5, 2016.

“Funded Purchase” means a purchase or deemed purchase of undivided percentage ownership interests in the Purchased Interest under the Agreement which (i) is paid for in cash, including pursuant to Section 1.1(b) (other than through reinvestment of Collections pursuant to Section 1.4(b) of the Agreement) or (ii) is treated as a Funded Purchase pursuant to Section 1.2(e) of the Agreement and/or any of the provisions set forth in Sections 1.11 through 1.20 of the Agreement.

“Governmental Acts” has the meaning set forth in Section 1.19 of the Agreement.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any agency, authority, instrumentality, body or entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, including any court and any supra-national bodies such as the European Union or the European Central Bank.

“Group A Obligor” means any Obligor with a short-term rating of at least: (a) “A1” by Standard & Poor’s, or if such Obligor does not have a short-term rating from Standard & Poor’s, a rating of “A+” or better by Standard & Poor’s on its long-term senior unsecured and uncredit-enhanced debt securities, and (b) “P-1” by Moody’s, or if such Obligor does not have a short-term rating from Moody’s, “A1” or better by Moody’s on its long-term senior unsecured and uncredit-enhanced debt securities.

“Group B Obligor” means an Obligor, not a Group A Obligor, with a short-term rating of at least: (a) “A-2” by Standard & Poor’s, or if such Obligor does not have a short-term rating from Standard & Poor’s, a rating of “BBB+” to “A” by Standard & Poor’s on its long-term senior unsecured and uncredit-enhanced debt securities, and (b) “P-2” by Moody’s, or if such Obligor does not have a short-term rating from Moody’s, “Baa1” to “A2” by Moody’s on its long-term senior unsecured and uncredit-enhanced debt securities.

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“Group Capital” means, with respect to any Purchaser Group, an amount equal to the aggregate outstanding Capital of all Purchasers within such Purchaser Group.

“Group C Obligor” means an Obligor, not a Group A Obligor or a Group B Obligor, with a short-term rating of at least: (a) “A-3” by Standard & Poor’s, or if such Obligor does not have a short-term rating from Standard & Poor’s, a rating of “BBB-” to “BBB” by Standard & Poor’s on its long-term senior unsecured and uncredit-enhanced debt securities, and (b) “P-3” by Moody’s, or if such Obligor does not have a short-term rating from Moody’s, “Baa3” to “Baa2” by Moody’s on its long-term senior unsecured and uncredit-enhanced debt securities.

“Group Commitment” means, with respect to any Purchaser Group, the aggregate of the Commitments of each Related Committed Purchaser within such Purchaser Group, which amount is set forth on Schedule IV hereto.

“Group D Obligor” means any Obligor that is not a Group A Obligor, Group B Obligor or Group C Obligor.

“Guaranty” of any Person means any obligation of such Person guarantying or in effect guarantying any liability or obligation of any other Person in any manner, whether directly or indirectly, including any such liability arising by virtue of partnership agreements, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.

“Hedging Transaction” means any of the following transactions by ACI or any of its Subsidiaries: any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction or any combination of the foregoing transactions, including, without limitation, any Interest Rate Hedge or any Commodity Hedge.

“Indemnified Amounts” has the meaning set forth in Section 3.1 of the Agreement.

“Indemnified Party” has the meaning set forth in Section 3.1 of the Agreement.

“Independent Director” has the meaning set forth in paragraph 3(c) of Exhibit IV to the Agreement.

“Information Package” means a report, in substantially the form of Annex A to the Agreement, furnished to the Administrator pursuant to the Agreement.

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors of a Person, composition, marshaling of assets for creditors of a Person, or other similar arrangement in respect of its creditors generally or any substantial portion of its

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creditors, in each of cases (a) and (b) undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“Interest Rate Hedge” means an interest rate exchange, collar, cap, swap, adjustable strike cap, adjustable strike corridor or similar agreements entered into by ACI or any of its Affiliates in the ordinary course operations of their business.

“Interim Report” means each Daily Report and Weekly Report.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of the Internal Revenue Code also refer to any successor sections.

“Issuance Notice” has the meaning set forth in Section 1.12(a) of the Agreement.

“LC Bank” has the meaning set forth in the preamble to the Agreement.

“LC Collateral Account” means the account designated as the LC Collateral Account established and maintained by the Administrator (for the benefit of the LC Bank and the LC Participants), or such other account as may be so designated as such by the Administrator.

“LC Fee Expectation” has the meaning set forth in Section 1.15(c) of the Agreement.

“LC Participant” means each Person listed as such (and its respective Commitment) for each Purchaser Group as set forth on the signature pages of this Agreement or in any Assumption Agreement or Transfer Supplement.

“LC Participation Amount” means, at any time, the then sum of the undrawn amounts of all outstanding Letters of Credit.

“Letter of Credit” means any stand-by letter of credit issued by the LC Bank for the account of the Seller (or for the account of the Transferor or any Subsidiary thereof, as applicable) pursuant to the Agreement.

“Letter of Credit Application” has the meaning set forth in Section 1.12 of the Agreement.

“Lien” means any ownership interest or claim, mortgage, deed of trust, pledge, lien, security interest, hypothecation, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including, but not limited to, any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing) or any hypothetical lien that would give a trustee superior rights to the Administrator or any of the Secured Parties.

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“Liquidity” means the sum of (i) unrestricted cash or Permitted Investments of ACI and its Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) that are not Foreign Subsidiaries, (ii) withdrawable funds from brokerage accounts of ACI and its Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) that are not Foreign Subsidiaries and (iii) any unused commitments that are available to be drawn by ACI pursuant to the terms of this Agreement and any Working Capital Facility. For purposes of this definition, the terms “Securitization Subsidiaries,” “Bonding Subsidiaries,” “Foreign Subsidiaries” and “Working Capital Facility” have the following meanings:

“Bonding Subsidiary” means a Subsidiary of ACI the sole purpose of which is to own a leasehold interest in a coal lease where the lessor thereof is a Person who is not an Affiliate of ACI (but not to operate any mining operations thereon) and to enter into surety or similar arrangements to provide payment assurances to the lessor thereof related to the cost of acquiring such leasehold interest and any bonus bid and royalty payments thereunder, and Bonding Subsidiaries shall mean, collectively, each and every Bonding Subsidiary.

“Foreign Subsidiaries” means, for any Person, each Subsidiary (other than a Loan Party) of such Person that is (a) a “controlled foreign corporation” (a “CFC”) within the meaning of Section 957 of the Internal Revenue Code of 1986, (b) a Subsidiary of a CFC or (c) a Subsidiary substantially all of the assets of which constitute equity interests (or equity interests and indebtedness) of CFCs or of Subsidiaries described in this clause (c).

“Securitization Subsidiary” means a Subsidiary of ACI (all of the outstanding equity interests of which, other than de minimis preferred stock and director’s qualifying shares, if any, are owned, directly or indirectly, by ACI) that is established for the limited purpose of acquiring and financing accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by ACI or any Subsidiary of ACI and interests therein of ACI or any Subsidiary of ACI and engaging in activities ancillary thereto.

“Working Capital Facility” shall mean any revolving credit facility entered into by ACI for general working capital purposes, including the Original ABL Credit Agreement.

“Liquidity Agent” means any bank or other financial institution acting as agent for the various Liquidity Providers under each Liquidity Agreement.

“Liquidity Agreement” means any agreement entered into in connection with the Agreement pursuant to which a Liquidity Provider agrees to make purchases or advances to, or purchase assets from, any Conduit Purchaser in order to provide liquidity for such Conduit Purchaser’s Purchases.

“Liquidity Provider” means each bank or other financial institution that provides liquidity support to any Conduit Purchaser pursuant to the terms of a Liquidity Agreement.

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“LLC Agreement” means the limited liability company agreement of Seller.

“LMIR” means for any day during any Settlement Period, the greater of (a) 0.00% and (b) the interest rate per annum determined by dividing (i) the one-month Eurodollar rate for U.S. dollar deposits as reported by Bloomberg Finance L.P. and shown on US0001M Screen or any other service or page that may replace such page from time to time for the purpose of displaying offered rates of leading banks for London interbank deposits in United States dollars, as of 11:00 a.m. (London time) on such day, or if such day is not a Business Day, then the immediately preceding Business Day (or if not so reported, then as determined by the Administrator from another recognized source for interbank quotation), in each case, changing when and as such rate changes, by (ii) a number equal to 1.00 minus the Euro-Rate Reserve Percentage on such day. The calculation of LMIR may also be expressed by the following formula:

$$\text{LMIR} = \frac{\text{One-month Eurodollar rate for U.S. Dollars shown on Bloomberg US0001M Screen or appropriate successor}}{1.00 - \text{Euro-Rate Reserve Percentage}}$$

LMIR shall be adjusted on the effective date of any change in the Euro-Rate Reserve Percentage as of such effective date.

“Lock-Box Account” means each account listed on Schedule II to this Agreement (in each case, in the name of the Seller) and maintained at a Lock-Box Bank pursuant to a Lock-Box Agreement for the purpose of receiving Collections.

“Lock-Box Agreement” means each agreement, in form and substance reasonably satisfactory to the Administrator, among the Seller, the Servicer, the Administrator and a Lock-Box Bank, governing the terms of the related Lock-Box Accounts.

“Lock-Box Bank” means any of the banks or other financial institutions holding one or more Lock-Box Accounts; provided, however, that such bank or other financial institution shall be either PNC or an Affiliate thereof so long as PNC is the Administrator.

“Loss Reserve” means, on any date, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such date multiplied by (b) (i) the Loss Reserve Percentage on such date divided by (ii) 100% minus the Loss Reserve Percentage on such date.

“Loss Reserve Percentage” means, on any date, (i) the product of (A) 2.5 times (B) the highest average of the Default Ratios for any three consecutive calendar months during the twelve most recent calendar months times (C) the aggregate credit sales made by the Originators and the Transferor during the 5 most recent calendar months divided by (ii) the Net Receivables Pool Balance as of such date.

“Majority LC Participants” means, at any time, (i) if fewer than three (3) LC Participants are then a party to this Agreement, all LC Participants and (ii) otherwise, the LC Participants whose Commitments aggregate more than 66 2/3% of the Commitments of all LC Participants at

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such time; provided that so long as Regions’ Pro Rata Share of the Commitments are not less than its Pro Rata Share of the Commitments as of the Closing Date, the Majority LC Participants shall include Regions.

“Majority Purchaser Agents” means, at any time, (i) if fewer than three (3) Purchaser Agents are then a party to this Agreement, all Purchaser Agents and (ii) otherwise, the Purchaser Agents for the Purchaser Groups with Related Committed Purchasers whose Commitments aggregate more than 66 2/3% of the aggregate of the Commitments of all Related Committed Purchasers in all Purchaser Groups; provided that so long as Regions’ Ratable Share of the Commitments are not less than its Ratable Share of the Commitments as of the Closing Date, the Majority Purchaser Agents shall be required to include Regions.

“Material Adverse Effect” means relative to any Person with respect to any event or circumstance, a material adverse effect on:

- (a) the assets, operations, business or financial condition of such Person;
- (b) the ability of any such Person to perform its obligations under the Agreement or any other Transaction Document to which it is a party;
- (c) the validity or enforceability of the Agreement or any other Transaction Document, or the validity, enforceability, value or collectibility of any of the Pool Receivables;
- (d) the status, perfection, enforceability or priority of any Secured Party’s or the Seller’s interest in the Pool Assets; or
- (e) the rights and remedies of any Secured Party under the Transaction Documents.

“Minimum Dilution Reserve” means, on any day, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such day, multiplied by (b)(i)the Minimum Dilution Reserve Percentage divided by (ii) 100% minus the Minimum Dilution Reserve Percentage on such day.

“Minimum Dilution Reserve Percentage” means, on any day, the product of (a) the average of the Dilution Ratios for the twelve most recent calendar months multiplied by (b) the Dilution Horizon.

“Minimum Liquidity” means \$275,000,000.

“Minimum Liquidity Period” means each period, if any, commencing on the date that the Liquidity is less than the Minimum Liquidity and ending on (but not including) the date, if any, that the Liquidity is no longer less than the Minimum Liquidity.

“Monthly Settlement Date” means the 21st day of each calendar month (or if such day is not a Business Day, the next occurring Business Day); provided, however, that on and after the occurrence and continuation of any Termination Event, the Monthly Settlement Date shall be the

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date selected as such by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) from time to time (it being understood that the Administrator (with the consent or at the direction of the Majority Purchaser Agents) may select such Monthly Settlement Date to occur as frequently as daily) or, in the absence of any such selection, the date which would be the Monthly Settlement Date pursuant to this definition).

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means a mortgage or deed of trust in favor of any Person on any real property of any Originator for which all, or any portion thereof, is a location of such Originator’s mining operations or a minehead.

“Net Receivables Pool Balance” means, at any time: (a) the Outstanding Balance of Eligible Receivables then in the Receivables Pool, minus (b) the Excess Concentration.

“No Proceedings Agreement” means each of (a) that certain no proceedings letter agreement, dated as of March 7, 2017, among the Administrator, the Term Loan Agent, Seller and ACI, (b) that certain no proceedings letter agreement, dated as of April [·], 2017, among the Administrator, the ABL Agent, Seller and ACI and (c) any additional replacement or successor agreement consented to in writing by the Administrator in its reasonable discretion and entered into by the agent under any Credit Agreement and ACI.

“Notes” means short-term promissory notes issued, or to be issued, by any Conduit Purchaser to fund its investments in accounts receivable or other financial assets.

“Obligor” means, with respect to any Receivable, the Person obligated to make payments pursuant to the Contract relating to such Receivable.

“Obligor Percentage” means, at any time of determination, for each Obligor, a fraction, expressed as a percentage, (a) the numerator of which is the aggregate Outstanding Balance of the Eligible Receivables of such Obligor less the amount (if any) then included in the calculation of the Excess Concentration with respect to such Obligor and (b) the denominator of which is the aggregate Outstanding Balance of all Eligible Receivables at such time.

“Order” has the meaning set forth in Section 1.20 of the Agreement.

“Originator” and “Originators” have the meaning set forth in the Purchase and Sale Agreement, as the same may be modified from time to time by adding new Originators or removing Originators, in each case with the prior written consent of the Administrator.

“Originator Performance Guaranty” means the Amended and Restated Originator Performance Guaranty, dated as of the Closing Date, by each Originator in favor of the Administrator for the benefit of the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Outstanding Balance” of any Receivable at any time means the then outstanding principal balance thereof.

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“Participant” has the meaning set forth in Section 5.3(b) of the Agreement.

“Participant Register” has the meaning set forth in Section 5.3(b) of the Agreement.

“Paydown Notice” has the meaning set forth in Section 1.4(f)(i) of the Agreement.

“Performance Guarantor” means ACI.

“Performance Guaranty” means the Third Amended and Restated Performance Guaranty, dated as of the Closing Date, by the Performance Guarantor in favor of the Administrator for the benefit of the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Permitted Lien” means any Lien (a) as to which no enforcement collection, execution, levy or foreclosure proceeding shall have been commenced or threatened and that solely secure the payment of taxes, assessments and/or governmental charges or levies, if and to the extent the same are either (x) not yet due and payable or (y) being contested in good faith and as to which adequate reserves have been provided in accordance with GAAP, but, in any case, only to the extent that such Lien securing payment of such taxes or assessments or other governmental charges constitutes an inchoate tax lien, and (b) inchoate and unperfected workers’, mechanics’, suppliers’ or similar Liens arising in the ordinary course of business, in any case, as to which no enforcement collection, execution, levy or foreclosure proceeding shall have been commenced or threatened; provided, however, that no Lien(s) that could (individually or in the aggregate) be expected to result in a Material Adverse Effect shall constitute a Permitted Lien.

“Permitted Investments” means:

- i. securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed or insured by the United States government or any agency thereof;
- ii. certificates of deposit and time deposits with maturities of 18 months or less from the date of acquisition and overnight bank deposits of any commercial bank having capital and surplus in excess of \$500,000,000;
- iii. repurchase obligations of any commercial bank satisfying the requirements of clause (ii) of this definition with respect to securities issued or fully guaranteed or insured by the United States government;
- iv. commercial paper of a domestic issuer rated at least A-2 by Standard & Poor’s or P-2 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency if both of Standard & Poor’s and Moody’s cease publishing ratings of investments;
- v. securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the

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securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor’s or A by Moody’s;

- vi. securities with maturities of 18 months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (ii) of this definition;
- vii. corporate obligations such as notes, bonds, loan participation certificates, master notes, and variable rate demand notes rated at least A by Standard & Poor’s or A2 by Moody’s;

- viii. asset backed and mortgage backed securities and collateralized mortgage obligations rated AAA by Standard & Poor's or Aaa by Moody's;
- ix. money market auction rate preferred securities and auction rate notes with auctions scheduled no less frequently than every 49 days; and
- x. shares of money market mutual or similar funds which invest principally in assets satisfying the requirements of clauses (i) through (ix) of this definition.

“Permitted Merger” means (i) any merger of any existing Originator into any other existing Originator or (ii) any merger of any existing Originator into ACI.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

“Plan of Reorganization” shall mean the chapter 11 plan of reorganization of the Chapter 11 Debtors confirmed by the Confirmation Order.

“PNC” has the meaning set forth in the preamble to the Agreement.

“Pool Assets” has the meaning set forth in Section 1.2(d) of the Agreement.

“Pool Receivable” means a Receivable in the Receivables Pool.

“Portion of Capital” means, with respect to any Purchaser and its related Capital, the portion of such Capital being funded or maintained by such Purchaser by reference to a particular interest rate basis.

“Prior Agreement” has the meaning set forth in the preamble to the Agreement.

“Prior Agreement Outstanding Amounts” has the meaning set forth in the preamble to the Agreement.

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“Program Support Agreement” means and includes any Liquidity Agreement and any other agreement entered into by any Program Support Provider providing for: (a) the issuance of one or more letters of credit for the account of any Conduit Purchaser, (b) the issuance of one or more surety bonds for which any Conduit Purchaser is obligated to reimburse the applicable Program Support Provider for any drawings thereunder, (c) the sale by any Conduit Purchaser to any Program Support Provider of the Purchased Interest (or portions thereof) maintained by such Conduit Purchaser and/or (d) the making of loans and/or other extensions of credit to any Conduit Purchaser in connection with such Conduit Purchaser's receivables-securitization program contemplated in the Agreement, together with any letter of credit, surety bond or other instrument issued thereunder.

“Program Support Provider” means and includes, with respect to any Conduit Purchaser, any Liquidity Provider and any other Person (other than any customer of such Conduit Purchaser) now or hereafter extending credit or having a commitment to extend credit to or for the account of, or to make purchases from, such Conduit Purchaser pursuant to any Program Support Agreement.

“Pro Rata Share” means, as to any LC Participant, a fraction, the numerator of which equals the Commitment of such LC Participant at such time and the denominator of which equals the aggregate of the Commitments of all LC Participants at such time.

“Purchase” has the meaning set forth in Section 1.1(a) of this Agreement.

“Purchase and Sale Agreement” means the Second Amended and Restated Purchase and Sale Agreement, dated as of the Closing Date, between the Originators and the Transferor, as such agreement may be amended, supplemented or otherwise modified from time to time.

“Purchase and Sale Indemnified Amounts” has the meaning set forth in Section 9.1 of the Purchase and Sale Agreement.

“Purchase and Sale Indemnified Party” has the meaning set forth in Section 9.1 of the Purchase and Sale Agreement.

“Purchase and Sale Termination Date” has the meaning set forth in Section 1.4 of the Purchase and Sale Agreement.

“Purchase and Sale Termination Event” has the meaning set forth in Section 8.1 of the Purchase and Sale Agreement.

“Purchase Date” means the date on which a Funded Purchase or a reinvestment is made pursuant to this Agreement.

“Purchase Facility” has the meaning set forth in Section 1.1 of the Purchase and Sale Agreement.

“Purchase Limit” means \$160,000,000, as such amount may be reduced pursuant to Section 1.1(b) of the Agreement or otherwise in connection with any Exiting Purchaser, or increased pursuant to Section 1.1(f) of this Agreement. References to the unused portion of the

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Purchase Limit shall mean, at any time, the Purchase Limit minus the sum of the then Aggregate Capital plus the LC Participation Amount.

“Purchase Notice” has the meaning set forth in Section 1.2(a) of the Agreement.

“Purchase Price” has the meaning set forth in Section 2.1 of the Purchase and Sale Agreement.

“Purchase Report” has the meaning set forth in Section 2.1 of the Purchase and Sale Agreement.

“Purchased Interest” means, at any time, the undivided percentage ownership interest in: (a) each and every Pool Receivable now existing or hereafter arising, (b) all Related Security with respect to such Pool Receivables and (c) all Collections with respect to, and other proceeds of, such Pool Receivables and Related Security (but excluding, for the avoidance of doubt, any Seller’s Permitted Payments). Such undivided percentage interest shall be computed as:

$$\frac{\text{Aggregate Capital} + \text{Adjusted LC} + \text{Participation Amount} + \text{Total Reserves}}{\text{Net Receivables Pool Balance}}$$

The Purchased Interest shall be determined from time to time pursuant to Section 1.3 of the Agreement.

“Purchaser” means each Conduit Purchaser, Related Committed Purchaser, LC Participant and the LC Bank.

“Purchaser Agent” means each Person acting as agent on behalf of a Purchaser Group and designated as a Purchaser Agent for such Purchaser Group on the signature pages to this Agreement or any other Person who becomes a party to the Agreement as a Purchaser Agent pursuant to an Assumption Agreement or a Transfer Supplement.

“Purchaser Group” means, (i) for any Conduit Purchaser, such Conduit Purchaser, together with such Conduit Purchaser’s Related Committed Purchasers, related Purchaser Agent and related LC Participants, (ii) for Regions, Regions as a Purchaser Agent, a Related Committed Purchaser and an LC Participant and (iii) for PNC, PNC as a Purchaser Agent, a Related Committed Purchaser, the LC Bank and an LC Participant.

“Purchasers’ Share” of any amount, at any time, means such amount multiplied by the Purchased Interest at such time.

“Purchasing Related Committed Purchaser” has the meaning set forth in Section 5.3(c) of the Agreement.

“Ratable Share” means, for each Purchaser Group, such Purchaser Group’s Group Commitment divided by the aggregate Group Commitments of all Purchaser Groups.

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“Rating Agency” mean each of Standard & Poor’s and Moody’s (and/or each other rating agency then rating the Notes of any Conduit Purchaser).

“Receivable” means any indebtedness and other obligations owed to any Originator, the Transferor or the Seller by, or any right of the Seller, the Transferor or any Originator to payment from or on behalf of, an Obligor, whether constituting an account, as-extracted collateral, chattel paper, a payment intangible, an instrument or a general intangible, in each instance arising in connection with the sale of goods or the rendering of services, and includes, without limitation, the obligation to pay any finance charges, fees and other charges with respect thereto. Indebtedness and other obligations arising from any one transaction, including, without limitation, indebtedness and other obligations represented by an individual invoice or agreement, shall constitute a Receivable separate from a Receivable consisting of the indebtedness and other obligations arising from any other transaction.

“Receivables Pool” means, at any time, all of the then outstanding Receivables purchased by the Seller pursuant to the Sale and Contribution Agreement prior to the Facility Termination Date.

“Regions” means Regions Bank.

“Register” has the meaning set forth in Section 5.17 of the Agreement.

“Reimbursement Obligation” has the meaning set forth in Section 1.14 of the Agreement.

“Related Committed Purchaser” means each Person listed as such for each Conduit Purchaser as set forth on the signature pages of the Agreement or in any Assumption Agreement or Transfer Supplement.

“Related Rights” has the meaning set forth in Section 1.1 of the Purchase and Sale Agreement.

“Related Security” means, with respect to any Receivable:

- (a) all of the Seller’s, the Transferor’s and each Originator’s interest in any goods (including returned goods), and documentation of title evidencing the shipment or storage of any goods (including returned goods), the sale of which gave rise to such Receivable;
- (b) all instruments and chattel paper that may evidence such Receivable;
- (c) all other security interests or liens and property subject thereto from time to time purporting to secure payment of such Receivable, whether pursuant to the Contract related to such Receivable or otherwise, together with all UCC financing statements or similar filings relating thereto;
- (d) all of the Seller’s, the Transferor’s and each Originator’s rights, interests and claims under the Contracts and all guaranties, indemnities, insurance and other agreements (including the related Contract) or arrangements of whatever character from

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time to time supporting or securing payment of such Receivable or otherwise relating to such Receivable, whether pursuant to the Contract related to such Receivable or otherwise; and

(e) all of the Seller's rights, interests and claims under the Sale Agreements and the other Transaction Documents.

"Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

"Restricted Payments" has the meaning set forth in Section 1(n) of Exhibit IV of the Agreement.

"Rio Tinto" means Rio Tinto Energy America Inc.

"Rio Tinto Receivable" means a Receivable (a) arising under the "SRP Contract" (as such term is defined in the Coal Sales Agreement, dated October 1, 2009, by and among ACI and Kennecott Coal Sales Company (the "SRP Agreement") and acquired by ACI pursuant to the terms and conditions of such SRP Agreement or (b) arising under a "Coal Sales Agreement" (as such term is defined in the Arch Coal Supply Agreement, dated October 1, 2009, between ACI and Rio Tinto (the "Rio Tinto Agreement") and acquired by ACI pursuant to the terms and conditions of such Rio Tinto Agreement.

"Rio Tinto Trigger Event" means, with respect to all Rio Tinto Receivables, the first to occur of (a) Rio Tinto shall fail to maintain a long term debt rating of at least "BBB-" by Standard & Poor's and "Baa3" by Moody's and (b) the aggregate amount of any asserted dispute, offset, hold back, defense, or Adverse Claim outstanding against all Rio Tinto Receivables shall be greater than \$50,000.

"Sale Agreements" means, collectively the Purchase and Sale Agreement and the Sale and Contribution Agreement.

"Sale and Contribution Agreement" means the Second Amended and Restated Sale and Contribution Agreement, dated as of the Closing Date, between the Transferor and the Seller, as such agreement may be amended, supplemented or otherwise modified from time to time.

"Sale and Contribution Indemnified Amounts" has the meaning set forth in Section 9.1 of the Sale and Contribution Agreement.

"Sale and Contribution Indemnified Party" has the meaning set forth in Section 9.1 of the Sale and Contribution Agreement.

"Sale and Contribution Termination Date" has the meaning set forth in Section 1.4 of the Sale and Contribution Agreement.

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"Sale and Contribution Termination Event" has the meaning set forth in Section 8.1 of the Sale and Contribution Agreement.

"Sales Agency Agreements" means each of (i) the Customer Relations and Marketing Services Agreement, dated as of January 1, 2006, between Arch Sales and the Originators from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time and (ii) the Customer Relations and Marketing Services Agreement, dated as of June 15, 2011, between Arch Sales and the Originators from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"Sanctioned Country" means a country subject to a sanctions program maintained under any Anti-Terrorism Law.

"Sanctioned Person" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

"Scheduled Commitment Termination Date" means with respect to the LC Bank, any LC Participant or any Related Committed Purchaser, April [], 2020, as such date may be extended from time to time in the sole and absolute discretion of the LC Bank, such LC Participant or such Related Committed Purchaser, as the case may be.

"SEC" shall mean the U.S. Securities and Exchange Commission or any governmental agencies substituted therefor.

"Secured Parties" means the Administrator, each Purchaser, each Purchaser Agent, each Indemnified Party and each Affected Person.

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

"Seller's Permitted Payments" means amounts paid to the Seller for its own account by (or on behalf of) the Administrator, the Purchaser Agents and the Purchasers as proceeds of Purchases or pursuant to Section 1.4, in each case, in accordance with the terms of this Agreement and the other Transaction Documents, solely to the extent such amounts have been used by the Seller to (i) pay the "Purchase Price" due by the Seller to the Transferor under the Sale and Contribution Agreement, (ii) make payments of principal or interest due to the Transferor under the Company Note or (iii) make other Restricted Payments, in each case, solely to the extent such payments were permitted (and not prohibited) when made by the terms of this Agreement and the other Transaction Documents.

"Seller's Share" of any amount means the greater of: (a) \$0 and (b) such amount minus the Purchasers' Share.

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

"Servicing Fee" means the fee referred to in Section 4.6 of the Agreement.

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“Servicing Fee Rate” means the rate referred to in Section 4.6 of the Agreement.

“Settlement Date” means with respect to any Portion of Capital for any Settlement Period, (i) prior to the Facility Termination Date, the Monthly Settlement Date and (ii) on and after the Facility Termination Date, each day selected from time to time by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) (it being understood that the Administrator (with the consent or at the direction of the Majority Purchaser Agents) may select such Settlement Date to occur as frequently as daily), or, in the absence of such selection, the Monthly Settlement Date.

“Settlement Period” means: (a) before the Facility Termination Date: (i) initially the period commencing on the date of the initial purchase pursuant to Section 1.2 of the Agreement (or in the case of any fees payable hereunder, commencing on the Closing Date) and ending on (but not including) the next Monthly Settlement Date, and (ii) thereafter, each period commencing on such Monthly Settlement Date and ending on (but not including) the next Monthly Settlement Date, and (b) on and after the Facility Termination Date, such period (including a period of one day) as shall be selected from time to time by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) or, in the absence of any such selection, each period of 30 days from the last day of the preceding Settlement Period.

“Solvent” means, with respect to any Person at any time, a condition under which:

(i) the fair value and present fair saleable value of such Person’s total assets is, on the date of determination, greater than such Person’s total liabilities (including contingent and unliquidated liabilities) at such time;

(ii) the fair value and present fair saleable value of such Person’s assets is greater than the amount that will be required to pay such Person’s probable liability on its existing debts as they become absolute and matured (“debts,” for this purpose, includes all legal liabilities, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent);

(iii) such Person is and shall continue to be able to pay all of its liabilities as such liabilities mature; and

(iv) such Person does not have unreasonably small capital with which to engage in its current and in its anticipated business.

For purposes of this definition:

(A) the amount of a Person’s contingent or unliquidated liabilities at any time shall be that amount which, in light of all the facts and circumstances then existing, represents the amount which can reasonably be expected to become an actual or matured liability;

(B) the “fair value” of an asset shall be the amount which may be realized within a reasonable time either through collection or sale of such asset at its regular market value;

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(C) the “regular market value” of an asset shall be the amount which a capable and diligent business person could obtain for such asset from an interested buyer who is willing to purchase such asset under ordinary selling conditions; and

(D) the “present fair saleable value” of an asset means the amount which can be obtained if such asset is sold with reasonable promptness in an arm’s-length transaction in an existing and not theoretical market.

“Spike Factor” means, for any calendar month, (a) the positive difference, if any, between: (i) the highest Dilution Ratio for any one calendar month during the twelve most recent calendar months and (ii) the arithmetic average of the Dilution Ratios for such twelve months times (b) (i) the highest Dilution Ratio for any one calendar month during the twelve most recent calendar months divided by (ii) the arithmetic average of the Dilution Ratios for such twelve months.

“Standard & Poor’s” means S&P Global Ratings and any successor thereto.

“Sub-Servicer” has the meaning set forth in Section 4.1(d) of this Agreement.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock of each class or other interests having ordinary voting power (other than stock or other interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other managers of such entity are at the time owned, or management of which is otherwise controlled: (a) by such Person, (b) by one or more Subsidiaries of such Person or (c) by such Person and one or more Subsidiaries of such Person.

“Tangible Net Worth” means, with respect to any Person, the tangible net worth of such Person as determined in accordance with generally accepted accounting principles, consistently applied.

“Taxes” has the meaning set forth in Section 1.10 of the Agreement.

“Term Loan Agent” has the meaning set forth in the definition of Credit Agreement.

“Termination Day” means: (a) each day on which the conditions set forth in Section 2(b) of Exhibit II to the Agreement are not satisfied or (b) each day that occurs on or after the Facility Termination Date.

“Termination Event” has the meaning specified in Exhibit V to the Agreement.

“Termination Fee” means, for any Settlement Period during which a Termination Day occurs, the amount, if any, by which: (a) the additional Discount (calculated without taking into account any Termination Fee or any shortened duration of such Settlement Period pursuant to the definition thereof)

that would have accrued during such Settlement Period on the reductions of Capital relating to such Settlement Period had such reductions not been made, exceeds (b) the income, if any, received by the applicable Purchaser from investing the proceeds of such

reductions of Capital, as determined by the applicable Purchaser Agent, which determination shall be binding and conclusive for all purposes, absent manifest error.

“Total Reserves” means, at any time, the sum of: (a) the Yield Reserve, plus (b) the greater of (i) the Concentration Reserve plus the Minimum Dilution Reserve and (ii) the Loss Reserve plus the Dilution Reserve.

“Transaction Documents” means the Agreement, the Lock-Box Agreements, each Fee Letter, the Purchase and Sale Agreement, the Sale and Contribution Agreement, each Company Note, the Performance Guaranty, the Originator Performance Guaranty, each Sales Agency Agreement, any No Proceedings Agreement and all Information Packages, Interim Reports, other certificates, instruments, UCC financing statements, reports, notices, agreements and documents executed or delivered under or in connection with the Agreement, in each case as the same may be amended, supplemented or otherwise modified from time to time in accordance with the Agreement.

“Transfer Supplement” has the meaning set forth in Section 6.3(c) of this Agreement.

“Transferor” has the meaning set forth in the Sale and Contribution Agreement.

“TVA” means Tennessee Valley Authority, an Obligor of the Originators and the Transferor.

“UCC” means the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction.

“Unmatured Purchase and Sale Termination Event” means any event which, with the giving of notice or lapse of time, or both, would become a Purchase and Sale Termination Event.

“Unmatured Sale and Contribution Termination Event” means any event which, with the giving of notice or lapse of time, or both, would become a Sale and Contribution Termination Event.

“Unmatured Termination Event” means an event that, with the giving of notice or lapse of time, or both, would constitute a Termination Event.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Weekly Report” has the meaning set forth in Section 1(a)(ii) of Exhibit IV to the Agreement.

“Yield Reserve” means, on any date, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such date multiplied by (b) (i) the Yield Reserve Percentage on such date divided by (ii) 100% minus the Yield Reserve Percentage on such date.

“Yield Reserve Percentage” means at any time:

$$\frac{(BR+SFR) \times 1.5 \times DSO}{360}$$

where:

- BR = the Base Rate computed for the most recent Settlement Period,
- DSO = Days’ Sales Outstanding, and
- SFR = the Servicing Fee Rate

Other Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles. As the context requires, all terms used in Article 9 of the UCC in the State of New York, and not specifically defined herein, are used herein as defined in such Article 9. Unless the context otherwise requires, “or” means “and/or,” and “including” (and with correlative meaning “include” and “includes”) means including without limiting the generality of any description preceding such term.

**EXHIBIT II
CONDITIONS PRECEDENT**

1. Conditions Precedent to Effectiveness. The effectiveness of the Agreement is subject to the condition precedent that (I) the Confirmation Order shall have been entered and shall not be subject to a stay or have been reversed, modified or amended (other than as otherwise consented to in writing

by the Administrator and each Purchaser), (II) the Plan of Reorganization shall have become effective and (III) the Administrator and each Purchaser Agent shall have received, on or before the Closing Date, each of the following, each in form and substance (including the date thereof) reasonably satisfactory to the Administrator and each Purchaser Agent:

- (a) Counterparts of (i) the Agreement, (ii) each Sale Agreement, (iii) the Performance Guaranty, (iv) each Fee Letter and (v) the Originator Performance Guaranty, in each case, duly executed by the parties thereto.
- (b) Certified copies of: (i) the resolutions of the board of directors of each of the Seller, the Originators, the Transferor, and ACI authorizing the execution, delivery and performance by the Seller, the Originators, the Transferor and ACI, as the case may be, of the Agreement and the other Transaction Documents to which it is a party; (ii) all documents evidencing other necessary corporate or organizational action and governmental approvals, if any, with respect to the Agreement and the other Transaction Documents and (iii) the certificate of incorporation and by-laws or limited liability company agreement, as applicable, of the Seller, the Originators, the Transferor and ACI.
- (c) A certificate of the Secretary or Assistant Secretary of the Seller, each of the Originators, the Transferor and ACI certifying the names and true signatures of its officers who are authorized to sign this Agreement and the other Transaction Documents to which it is a party. Until the Administrator receives a subsequent incumbency certificate from the Seller, the Originators, the Transferor or ACI, as the case may be, the Administrator shall be entitled to rely on the last such certificate delivered to it by the Seller, the Originators, the Transferor or ACI, as the case may be.
- (d) Completed UCC search reports, dated the Closing Date or no earlier than 30 days prior thereto, listing the financing statements filed in all applicable jurisdictions that name any Originator, Transferor or the Seller as debtor, together with copies of such other financing statements, and similar search reports with respect to judgment liens, federal tax liens and liens of the Pension Benefit Guaranty Corporation in such jurisdictions, as the Administrator may reasonably request, showing no Adverse Claims on any Pool Assets other than any security interests that are released as of the Closing Date pursuant to the Confirmation Order or the Plan of Reorganization.
- (e) Favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for the Seller, the Originators, the Servicer and ACI, covering such matters as the Administrator may reasonably request, including, without limitation, (i) certain Delaware corporate and no conflict matters, (ii) certain organizational and New York enforceability

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matters (iii) certain bankruptcy matters, and (iv) certain UCC creation and Delaware perfection matters.

- (f) Evidence of payment by the Seller of all accrued and unpaid fees (including those contemplated by the Fee Letters), costs and expenses to the extent then due and payable on the date thereof, including any such costs, fees and expenses arising under or referenced in Section 5.4 of the Agreement (including all Attorney Costs that have been invoiced at least one (1) Business Day prior to the Closing Date and payment of reasonable costs and expenses to counsel for Regions in an amount not to exceed \$15,000) and the Fee Letters.
- (g) Each Fee Letter duly executed by the Seller and ACI.
- (h) Good standing certificates with respect to each of the Seller, the Originators, the Transferor and ACI issued by the Secretary of State (or similar official) of the state of each such Person's organization or formation and principal place of business.
- (i) All information with respect to the Receivables as the Administrator or the Purchasers may reasonably request.
- (j) A copy of the Confirmation Order.

2. Conditions Precedent to All Funded Purchases, Issuances of Letters of Credit and Reinvestments. Each Funded Purchase (including the initial Funded Purchase) and the issuance of any Letters of Credit and each reinvestment shall be subject to the further conditions precedent that:

(a) in the case of each Funded Purchase and the issuance of any Letters of Credit, the Servicer shall have delivered to the Administrator and each Purchaser Agent on or before such purchase or issuance, as the case may be, in form and substance reasonably satisfactory to the Administrator and each Purchaser Agent, a completed pro forma Information Package to reflect the level of the Aggregate Capital, the LC Participation Amount and related reserves and the calculation of the Purchased Interest after such subsequent purchase or issuance, as the case may be, and a completed Purchase Notice or Issuance Notice, as applicable, in the form of Annex B-1 or B-2, as applicable; and

(b) on the date of such Funded Purchase, issuance or reinvestment, as the case may be, the following statements shall be true (and acceptance of the proceeds of such Funded Purchase, issuance or reinvestment shall be deemed a representation and warranty by the Seller that such statements are then true):

- (i) the representations and warranties contained in Exhibit III to the Agreement are true and correct in all material respects on and as of the date of such Funded Purchase, issuance or reinvestment as though made on and as of such date except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);

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(ii) no event has occurred and is continuing, or would result from such Funded Purchase, issuance or reinvestment, that constitutes a Termination Event or an Unmatured Termination Event;

(iii) the sum of the Aggregate Capital plus the LC Participation Amount, after giving effect to any such Funded Purchase, issuance or reinvestment, as the case may be, shall not exceed the Purchase Limit, and the Purchased Interest shall not exceed 100%; and

**EXHIBIT III
REPRESENTATIONS AND WARRANTIES**

1. Representations and Warranties of the Seller. The Seller represents and warrants to the Administrator, each Purchaser Agent and each Purchaser as of the Closing Date that:

(a) Existence and Power. The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, and has all organizational power and all governmental licenses, authorizations, consents and approvals required to carry on its business in each jurisdiction in which its business is conducted except if failure to have such licenses, authorizations, consents or approvals could not reasonably be expected to have a Material Adverse Effect.

(b) Company and Governmental Authorization, Contravention. The execution, delivery and performance by the Seller of this Agreement and each other Transaction Document to which it is a party (i) are within the Seller's organizational powers, have been duly authorized by all necessary organizational action, require no action by or in respect of, or filing with (other than the filing of UCC financing statements and continuation statements), any governmental body, agency or official, (ii) except as would not reasonably be expected to have a Material Adverse Effect, do not contravene, or constitute a default under, any provision of Applicable Law or of the operating agreement of the Seller or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Seller and (iii) do not result in the creation or imposition of any lien (other than liens in favor of the Administrator) on assets of the Seller.

(c) Binding Effect of Agreement. This Agreement and each other Transaction Document to which it is a party constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

(d) Accuracy of Information. All information heretofore furnished in writing by the Seller to the Administrator, any Purchaser Agent or any Purchaser pursuant to or in connection with this Agreement or any other Transaction Document is, and all such information hereafter furnished by the Seller to the Administrator, any Purchaser Agent or any Purchaser in writing pursuant to this Agreement or any Transaction Document will be, taken as a whole, true and accurate in all material respects on the date such information is stated or certified; provided that with respect to projected financial information and information of a general economic or industry specific nature, the Seller represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made.

(e) Actions, Suits. Except as set forth in Schedule III, there are no actions, suits or proceedings pending or, to the best of the Seller's knowledge, threatened against or affecting the Seller or its properties, in or before any court, arbitrator or other body, which could reasonably be expected to have a Material Adverse Effect upon the ability of the Seller to perform its obligations under this Agreement or any other Transaction Document to which it is a party.

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(f) Accuracy of Exhibits; Lock-Box Arrangements. The names and addresses of all the Lock-Box Banks together with the account numbers of the Lock-Box Accounts at such Lock-Box Banks, are specified in Schedule II to this Agreement (or at such other Lock-Box Banks and/or with such other Lock-Box Accounts as have been notified to the Administrator), and all Lock-Box Accounts are subject to Lock-Box Agreements. All information on each Exhibit, Schedule or Annex to this Agreement or the other Transaction Documents (as updated by the Seller from time to time) is true and complete in all material respects. The Seller has delivered a copy of all Lock-Box Agreements to the Administrator. The Seller has not granted any interest in any Lock-Box Account (or any related lock-box or post office box) to any Person other than the Administrator and, upon delivery to a Lock-Box Bank of the related Lock-Box Agreement, the Administrator will have exclusive ownership and control of the Lock-Box Account at such Lock-Box Bank.

(g) No Material Adverse Effect. Since the date of formation of Seller as set forth in its certificate of formation, there has been no Material Adverse Effect with respect to the Seller.

(h) Names and Location. The Seller has not used any company names, trade names or assumed names other than its name set forth on the signature pages of this Agreement. The Seller is "located" (as such term is defined in the applicable UCC) in Delaware. The office where the Seller keeps its records concerning the Receivables is at the address set forth below its signature to this Agreement.

(i) Margin Stock. The Seller is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U and X, as issued by the Board of Governors of the Federal Reserve System), and no proceeds of any purchase or reinvestment hereunder will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(j) Eligible Receivables. Each Pool Receivable included as an Eligible Receivable in the calculation of the Net Receivables Pool Balance is an Eligible Receivable.

(k) Credit and Collection Policy. The Seller has complied in all material respects with the Credit and Collection Policy of each Originator and the Transferor with regard to each Receivable originated by such Originator or the Transferor, as applicable.

(l) Investment Company Act. The Seller is neither (i) required to register as an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended nor (ii) is a "covered fund" under Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and the applicable rules and regulations thereunder.

(m) Mortgages Covering As-Extracted Collateral. There are no mortgages that are effective as financing statements covering as-extracted collateral that constitutes Pool Assets and that name any Originator (or, if such Originator is not the “record owner” of the underlying

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property, any “record owner” with respect to such as-extracted collateral, as such term is used in the UCC) as grantor, debtor or words of similar effect filed or recorded in any jurisdiction.

(n) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

2. Representations and Warranties of the Servicer. The Servicer represents and warrants to the Administrator, each Purchaser Agent and each Purchaser as of the Closing Date that:

(a) Existence and Power. The Servicer is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware, and has all company power and all governmental licenses, authorizations, consents and approvals required to carry on its business in each jurisdiction in which its business is conducted, except if failure to have such licenses, authorizations, consents or approvals would not reasonably be expected to have a Material Adverse Effect.

(b) Company and Governmental Authorization, Contravention. The execution, delivery and performance by the Servicer of this Agreement and each other Transaction Document to which it is a party (i) are within the Servicer’s organizational powers, have been duly authorized by all necessary organizational action, require no action by or in respect of, or filing with, any governmental body, agency or official, (ii) except as would not reasonably be expected to have a Material Adverse Effect, do not contravene, or constitute a default under, any provision of Applicable Law or of the certificate of incorporation or bylaws of the Servicer or of any judgment, injunction, order or decree or agreement or other instrument binding upon the Servicer and (iii) do not result in the creation or imposition of any lien on assets of the Servicer (other than in favor of the Administrator under the Transaction Documents) or any of its Subsidiaries.

(c) Binding Effect of Agreement. This Agreement and each other Transaction Document to which it is a party constitutes the legal, valid and binding obligation of the Servicer enforceable against the Servicer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

(d) Accuracy of Information. All information heretofore furnished in writing by the Servicer to the Administrator, any Purchaser Agent or any Purchaser pursuant to or in connection with this Agreement or any other Transaction Document is, and all such information hereafter furnished by the Servicer to the Administrator, any Purchaser Agent or any Purchaser in writing pursuant to this Agreement or any other Transaction Document will be, taken as a whole, true

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and accurate in all material respects on the date such information is stated or certified; provided that with respect to projected financial information and information of a general economic or industry specific nature, the Servicer represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made.

(e) Actions, Suits. Except as set forth in Schedule III, there are no actions, suits or proceedings pending or, to the best of the Servicer’s knowledge, threatened against or affecting the Servicer or ACI or any of its Subsidiaries or their respective properties, in or before any court, arbitrator or other body, which could reasonably be expected to have a Material Adverse Effect upon the ability of the Servicer (or such Affiliate) to perform its obligations under this Agreement or any other Transaction Document to which it is a party.

(f) No Material Adverse Effect. Since the Closing Date, there has been no Material Adverse Effect on the Servicer.

(g) Credit and Collection Policy. The Servicer has complied in all material respects with the Credit and Collection Policy of each Originator and the Transferor with regard to each Receivable originated by such Originator or the Transferor, as applicable.

(h) Investment Company Act. The Servicer is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(i) Lock-Box Accounts. On or prior to the Closing Date, the Servicer has transferred and assigned all of its right, title and interest in and to, and remedies, powers and privileges under, the Lock-Box Accounts to the Seller.

(j) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(k) Effectiveness of Orders. The Confirmation Order is in full force and effect and has not been vacated or reversed, is not subject to a stay, and has not been modified or amended (other than any amendment or modification approved in writing by the Administrator and the Majority Purchaser Agents in their sole discretion).

3. Representations, Warranties and Agreements Relating to the Security Interest. The Seller hereby makes the following representations, warranties and agreements with respect to the Receivables and Related Security:

(a) The Receivables.

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(i) Creation. This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the Receivables included in the Receivables Pool in favor of the Administrator (for the benefit of the Secured Parties), which security interest is prior to all other Adverse Claims, and is enforceable as such as against creditors of and purchasers from the Seller.

(ii) Nature of Receivables. The Receivables included in the Receivables Pool constitute either “accounts” (including, without limitation, “accounts” constituting “as-extracted collateral”), “general intangibles” or “tangible chattel paper” within the meaning of the applicable UCC.

(iii) Ownership of Receivables. The Seller owns and has good and marketable title to the Receivables included in the Receivables Pool and Related Security free and clear of any Adverse Claim.

(iv) Perfection and Related Security. The Seller has caused (and shall have caused each Originator and the Transferor to cause) the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the sale of the Receivables and Related Security from such Originator to the Transferor pursuant to the Purchase and Sale Agreement and in order to perfect the sale from the Transferor to the Seller pursuant to the Sale and Contribution Agreement, and the sale and security interest therein from the Seller to the Administrator under this Agreement, to the extent that such collateral constitutes “accounts” (including, without limitation, “accounts” constituting “as-extracted collateral”), “general intangibles,” or “tangible chattel paper.”

(v) Tangible Chattel Paper. With respect to any Receivables included in the Receivables Pool that constitute “tangible chattel paper”, if any, the Seller (or the Servicer on its behalf) has in its possession the original copies of such tangible chattel paper that constitute or evidence such Receivables. The Receivables to the extent they are evidenced by “tangible chattel paper” do not have any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Seller or the Administrator.

(b) The Lock-Box Accounts.

(i) Nature of Accounts. Each Lock-Box Account constitutes a “deposit account” within the meaning of the applicable UCC.

(ii) Ownership. The Seller owns and has good and marketable title to the Lock-Box Accounts free and clear of any Adverse Claim.

(iii) Perfection. The Seller has delivered to the Administrator a fully executed Lock-Box Agreement relating to each Lock-Box Account, pursuant to which each applicable Lock-Box Bank, respectively, has agreed, following the occurrence and continuation of a Termination Event or Unmatured Termination

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Event or during a Minimum Liquidity Period, to comply with all instructions originated by the Administrator (on behalf of the Secured Parties) directing the disposition of funds in such Lock-Box Account without further consent by the Seller or the Servicer.

(c) Priority.

(i) Other than the transfer of the Receivables to the Transferor, the Seller and the Administrator under the Purchase and Sale Agreement, the Sale and Contribution Agreement and this Agreement, respectively, and/or the security interest granted to the Transferor, the Seller and the Administrator pursuant to the Purchase and Sale Agreement, the Sale and Contribution Agreement and this Agreement, respectively, neither the Transferor, the Seller nor any Originator has pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Receivables transferred or purported to be transferred under the Transaction Documents, the Lock-Box Accounts or any subaccount thereof, except for any such pledge, grant or other conveyance which has been or will be released or terminated. Neither the Seller, the Transferor nor any Originator has authorized the filing of, or is aware of any financing statements against any of the Seller, the Transferor or such Originator that include a description of Receivables transferred or purported to be transferred under the Transaction Documents, the Lock-Box Accounts or any subaccount thereof, other than any financing statement (i) relating to the sale thereof by such Originator to the Transferor under the Purchase and Sale Agreement or relating to the sale thereof by the Transferor to the Seller under the Sale and Contribution Agreement or (ii) relating to the security interest granted to the Administrator under this Agreement.

(ii) The Seller is not aware of any judgment, ERISA or tax lien filings against either the Seller, the Servicer, the Transferor, any Originator, ACI, or any of their ERISA Affiliates other than such judgment, ERISA or tax lien filing that (x)(A) has not been outstanding for greater than 30 days from the earlier of such Person’s knowledge or notice thereof, (B) is less than \$250,000 and (C) does not otherwise give rise to a Termination Event under clause (l) of Exhibit V hereto or (y) as to which no enforcement collection, execution, levy or foreclosure proceeding shall have been commenced or threatened and that solely secures the payment of taxes, if and to the extent the taxes are either (A) not yet due and payable or (B) being contested in good faith and as to which adequate reserves have been provided in accordance with generally accepted accounting principles, but, in any case, only to the extent such lien securing payment of such taxes constitutes an inchoate tax lien.

(iii) The Lock-Box Accounts are not in the name of any person other than the Seller or the Administrator. Neither the Seller nor the Servicer has consented to any bank maintaining such account to comply with instructions of any person other than the

(d) Survival of Supplemental Representations. Notwithstanding any other provision of this Agreement or any other Transaction Document, the representations contained in this Section shall be continuing, and remain in full force and effect until the Final Payout Date.

(e) No Waiver. To the extent required pursuant to the securitization program of any Conduit Purchaser, the parties to this Agreement: (i) shall not, without obtaining a confirmation of the then-current rating of the Notes, waive any of the representations set forth in this Section; (ii) shall provide the Ratings Agencies with prompt written notice of any breach of any representations set forth in this Section, and shall not, without obtaining a confirmation of the then-current rating of the Notes (as determined after any adjustment or withdrawal of the ratings following notice of such breach) waive a breach of any of the representations set forth in this Section.

(f) Servicer to Maintain Perfection and Priority. In order to evidence the interests of the Administrator under this Agreement, the Servicer shall, from time to time take such action, or execute and deliver such instruments as may be necessary (including, without limitation, such actions as are reasonably requested by the Administrator) to maintain and perfect, as a first-priority interest, the Administrator's security interest in the Receivables, Related Security and Collections. The Servicer shall, from time to time and within the time limits established by law, prepare and present to the Administrator for the Administrator's authorization and approval, all financing statements, amendments, continuations or initial financing statements in lieu of a continuation statement, or other filings necessary to continue, maintain and perfect the Administrator's security interest as a first-priority interest. The Administrator's approval of such filings shall authorize the Servicer to file such financing statements under the UCC without the signature of the Seller, any Originator, the Transferor or the Administrator where allowed by Applicable Law. Notwithstanding anything else in the Transaction Documents to the contrary, the Servicer shall not have any authority prior to the Final Payout Date to file a termination, partial termination, release, partial release, or any amendment that deletes the name of a debtor or excludes collateral of any such financing statements filed in connection with the Transaction Documents, without the prior written consent of the Administrator.

(g) Mining Operations and Mineheads. The Servicer shall (and shall cause each applicable Originator to) promptly, and in any event within 30 days of any change, deletion or addition to the location of any Originator's mining operations or mineheads set forth on Schedule V to the Purchase and Sale Agreement, (i) notify the Administrator and each Purchaser Agent of such change, deletion or addition, (ii) cause the filing or recording of such financing statements and amendments and/or releases to financing statements, mortgages or other instruments, if any, necessary to preserve and maintain the perfection and priority of the security interest of the Transferor, Seller and Administrator (on behalf of the Secured Parties) in the Pool Assets pursuant to this Agreement, in each case in form and substance reasonably satisfactory to the Administrator and (iii) deliver to the Administrator and each Purchaser Agent an updated Schedule V to the Purchase and Sale Agreement reflecting such change, deletion or addition; it being understood that no Receivable the related location of mining operations and/or mineheads of which is not as set forth on Schedule V to the Purchase and Sale Agreement as of the Closing Date shall be an Eligible Receivable until such time as each condition under this clause (g) shall

have been satisfied (and upon such satisfaction, the Purchase and Sale Agreement shall be deemed amended to reflect such updated Schedule V to the Purchase and Sale Agreement).

(h) Additional Mortgages Under Credit Agreement. The Servicer shall (and shall cause each applicable Originator to) (x) provide written notice promptly, and in any event within 30 days, to the Seller, the Administrator and each Purchaser Agent of each new Mortgage or amendment or modification of an existing Mortgage under any Credit Agreement covering as-extracted collateral and (y) file or record all amendments and/or releases to such new, amended or modified Mortgages necessary to release and remove of record any such security interest, lien or other interest of the related grantee or beneficiary in the Receivables, Contracts and Related Security, in each case in form and substance satisfactory to the Administrator.

4. Ordinary Course of Business. Seller represents and warrants that each remittance of Collections by or on behalf of the Seller to the Purchasers under this Agreement will have been (i) in payment of a debt incurred by the Seller in the ordinary course of business or financial affairs of the Seller and (ii) made in the ordinary course of business or financial affairs of the Seller.

5. Reaffirmation of Representations and Warranties. On the date of each purchase and/or reinvestment and issuance of a Letter of Credit hereunder, and on the date each Information Package or Interim Report is delivered to the Administrator, any Purchaser Agent or any Purchaser hereunder, the Seller and the Servicer, by accepting the proceeds of such purchase reinvestment or Letter of Credit, as applicable and/or the provision of such Information Package or Interim Report, shall each be deemed to have certified that (i) all representations and warranties of the Seller and the Servicer, as applicable, described in this Exhibit III, as from time to time amended in accordance with the terms hereof, are correct in all material respects on and as of such day as though made on and as of such day, except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such date), and (ii) no event has occurred and is continuing, or would result from any such purchase, reinvestment or issuance, which constitutes a Termination Event or an Unmatured Termination Event.

EXHIBIT IV COVENANTS

1. Covenants of the Seller. At all times from the date hereof until the Final Payout Date:

(a) Financial Reporting. The Seller will maintain a system of accounting established and administered in accordance with generally accepted accounting principles as in effect in the appropriate jurisdiction, and the Seller (or the Servicer on its behalf) shall furnish to the Administrator and each Purchaser Agent:

(i) Annual Reporting. Promptly upon completion and in no event later than 90 days after the close of each fiscal year of the Seller, annual unaudited financial statements of the Seller certified by a designated financial or other officer of the Seller.

(ii) Reports. (A) As soon as available and in any event not later than two Business Days prior to the Monthly Settlement Date, an Information Package as of the most recently completed calendar month, (B) if requested by the Administrator or any Purchaser at any time following the occurrence and during the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, a report substantially in the form of Annex H-1 (each, a "Weekly Report") no later than the second Business Day of each calendar week as of the most recently completed calendar week, which shall include, among other things, the Liquidity as of the last day of such calendar week, and (C) if requested by the Administrator or any Purchaser at any time following the occurrence and during the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, a report substantially in the form of Annex H-2 (each, a "Daily Report") on each Business Day as of the date that is one Business Day prior to such date.

(iii) Cash Flow Forecasts. During each Minimum Liquidity Period, from time to time a report substantially in the form of Annex J (a "Cash Flow Forecast") promptly (but in any event no later than 10 Business Days) following the request therefore from the Administrator or any Purchaser.

(iv) Other Information. Such other information (including non-financial information) as the Administrator or any Purchaser Agent may from time to time reasonably request.

(b) Notices. The Seller will notify the Administrator and each Purchaser Agent in writing of any of the following events promptly upon (but in no event later than three Business Days after) a financial or other officer learning of the occurrence thereof, with such notice describing the same, and if applicable, the steps being taken by the Person(s) affected with respect thereto:

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(i) Notice of Termination Events or Unmatured Termination Events. A statement of the chief financial officer or chief accounting officer of the Seller setting forth details of any Termination Event or Unmatured Termination Event and the action which the Seller proposes to take with respect thereto.

(ii) Representations and Warranties. The failure of any representation or warranty to be true and correct (when made or at any time thereafter) with respect to the Receivables included in the Receivables Pool.

(iii) Litigation. The institution of any litigation, arbitration proceeding or governmental proceeding which may have a Material Adverse Effect on the Seller.

(iv) Adverse Claim. (A) Any Person shall obtain an Adverse Claim upon the Pool Receivables or Collections with respect thereto, (B) any Person other than the Seller, the Servicer or the Administrator shall obtain any rights or direct any action with respect to any Lock-Box Account (or related lock-box or post office box) or (C) any Obligor shall receive any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Servicer or the Administrator.

(v) ERISA and Other Claims. Promptly after the filing or receiving thereof, copies of all reports and notices that the Seller or any ERISA Affiliate files under ERISA with the Internal Revenue Service, the Pension Benefit Guaranty Corporation or the U.S. Department of Labor or that the Seller or any ERISA Affiliate receives from any of the foregoing or from any multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) to which the Seller or any of its ERISA Affiliates is or was, within the preceding five years, a contributing employer, in each case in respect of the assessment of withdrawal liability or an event or condition that could, in the aggregate, result in the imposition of liability on the Seller and/or any such ERISA Affiliate.

(vi) Name Changes. At least ten days before any change in the Seller's name, jurisdiction of organization or any other change requiring the amendment of UCC financing statements, a notice setting forth such changes and the effective date thereof.

(vii) Material Adverse Change. Promptly after the occurrence thereof, notice of a material adverse change in the business, operations, property or financial or other condition of the Seller, the Servicer, the Transferor or any Originator.

(c) Conduct of Business. The Seller will carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and will do all things necessary to remain duly organized, validly existing and in good

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standing as a domestic organization in its jurisdiction of organization and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

(d) Compliance with Laws. The Seller will comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

(e) Furnishing of Information and Inspection of Receivables. The Seller will furnish to the Administrator and each Purchaser Agent from time to time such information with respect to the Pool Receivables as the Administrator or any Purchaser Agent may reasonably request. The Seller will, at the Seller's expense, during regular business hours with prior written notice (i) permit the Administrator and/or any Purchaser Agent, or their respective agents or representatives, (A) to examine and make copies of and abstracts from all books and records relating to the Pool Receivables or other Pool Assets and (B) to visit the offices and properties of the Seller for the purpose of examining such books and records, and to discuss matters relating to the Pool Receivables, other Pool Assets or the Seller's performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors,

employees or independent public accountants of the Seller (provided that representatives of the Seller are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Seller's expense, upon prior written notice from the Administrator and/or such Purchaser Agent, permit certified public accountants or other auditors acceptable to the Administrator to conduct a review of its books and records with respect to such Receivables; provided, that unless a Termination Event has occurred and is continuing, the Seller shall be required to reimburse the Administrator and Purchaser Agents for only one (1) such audit per year.

(f) Payments on Receivables, Accounts. The Seller will, and will cause each Originator and the Transferor to, at all times instruct all Obligors to deliver payments on the Pool Receivables to a Lock-Box Account. If any such payments or other Collections are received by the Seller, an Originator or the Transferor, it shall hold such payments in trust for the benefit of the Administrator and the Purchasers and promptly (but in any event within two Business Days after receipt) remit such funds into a Lock-Box Account. The Seller will cause each Lock-Box Bank to comply with the terms of each applicable Lock-Box Agreement. The Seller will not permit the funds other than Collections on Pool Receivables and other Pool Assets to be deposited into any Lock-Box Account. If such funds are nevertheless deposited into any Lock-Box Account, the Seller will within two Business Days identify such funds for segregation. The Seller will not, and will not permit the Servicer, any Originator or the Transferor or other Person to, commingle Collections or other funds to which the Administrator, any Purchaser Agent or any Purchaser is entitled with any other funds. The Seller shall only add, and shall only permit an Originator or the Transferor to add, a Lock-Box Bank (or the related lock-box or post office box), or Lock-Box Account to those listed on Schedule II to this Agreement, if the Administrator has received notice of such addition, a copy of any new Lock-Box Agreement and an executed and acknowledged copy of a Lock-Box Agreement (or an amendment thereto) in form and substance reasonably acceptable to the Administrator from the applicable Lock-Box Bank. The Seller shall only terminate a Lock-Box Bank or close a Lock-Box Account (or the related lock-box or post office box), with the prior written consent of the Administrator.

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(g) Sales, Liens, etc. Except as otherwise provided herein, the Seller will not sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon (including, without limitation, the filing of any financing statement) or with respect to, any Pool Receivable or other Pool Asset, or assign any right to receive income in respect thereof.

(h) Extension or Amendment of Pool Receivables. Except as otherwise permitted in Section 4.2 of this Agreement, the Seller will not, and will not permit the Servicer to, alter the delinquency status or adjust the Outstanding Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive, in any material respect, any term or condition of any related Contract (which term or condition relates to payments under, or the enforcement of, such Contract). The Seller shall at its expense, timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Contracts related to the Pool Receivables, and timely and fully comply with the Credit and Collection Policy with regard to each Receivable and the related Contract (which term or condition relates to payments under, or the enforcement of, such Contract).

(i) Change in Business. The Seller will not (i) make any change in the character of its business or (ii) make any change in any Credit and Collection Policy that could reasonably be expected to have a Material Adverse Effect, in the case of either clause (i) or (ii) above, without the prior written consent of the Administrator and the Majority Purchaser Agents. The Seller shall not make any other written change in any Credit and Collection Policy without giving prior written notice thereof to the Administrator and each Purchaser Agent.

(j) Fundamental Changes. The Seller shall not, without the prior written consent of the Administrator and the Majority Purchaser Agents, permit itself (i) to merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person or (ii) to be owned by any Person other than ACI and thereby cause ACI's percentage of ownership or control of the Seller to be reduced. The Seller shall provide the Administrator and each Purchaser with at least 10 days' prior written notice before making any change in the Seller's name, location or making any other change in the Seller's identity or corporate structure that could impair or otherwise render any UCC financing statement filed in connection with this Agreement or any other Transaction Document "seriously misleading" as such term (or similar term) is used in the applicable UCC; each notice to the Administrator and the Purchaser Agents pursuant to this sentence shall set forth the applicable change and the proposed effective date thereof. The Seller will also maintain and implement (or cause the Servicer to maintain and implement) administrative and operating procedures (including an ability to recreate records evidencing Pool Receivables and related Contracts in the event of the destruction of the originals thereof), and keep and maintain (or cause the Servicer to keep and maintain) all documents, books, records, computer tapes and disks and other information reasonably necessary or advisable for the collection of all Pool Receivables (including records adequate to permit the daily identification of each Pool Receivable and all Collections of and adjustments to each existing Pool Receivable).

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(k) Change in Payment Instructions to Obligors. The Seller shall not (and shall not cause the Servicer or any Sub-Servicer to) add to, replace or terminate any of the Lock-Box Accounts (or any related lock-box or post office box) listed in Schedule II hereto or make any change in its (or their) instructions to the Obligors regarding payments to be made to the Lock-Box Accounts (or any related lock-box or post office box), unless the Administrator shall have received (x) prior written notice of such addition, termination or change and (y) a signed and acknowledged Lock-Box Agreement (or amendment thereto) with respect to such new Lock-Box Accounts (or any related lock-box or post office box).

(l) Ownership Interest, Etc. The Seller shall (and shall cause the Servicer to), at its expense, take all action necessary or reasonably desirable to establish and maintain a valid and enforceable undivided percentage ownership or security interest, to the extent of the Purchased Interest, in the Pool Receivables, the Related Security and Collections with respect thereto, and a first priority perfected security interest in the Pool Assets, in each case free and clear of any Adverse Claim, in favor of the Administrator (on behalf of the Secured Parties), including taking such action to perfect, protect or more fully evidence the interest of the Administrator (on behalf of the Secured Parties) as the Administrator or any Purchaser may reasonably request.

(m) Certain Agreements. Without the prior written consent of the Administrator and the Majority Purchaser Agents, the Seller will not (and will not permit the Originators or the Transferor to) amend, modify, waive, revoke or terminate any Transaction Document to which it is a party or any provision of the Seller's organizational documents which requires the consent of the "Independent Director" (as defined in the Seller's LLC Agreement).

(n) Restricted Payments. (i) Except pursuant to clause (ii) below, the Seller will not: (A) purchase or redeem any shares of its capital stock, (B) declare or pay any dividend or set aside any funds for any such purpose, (C) prepay, purchase or redeem any Debt, (D) lend or advance any funds or

(E) repay any loans or advances to, for or from any of its Affiliates (the amounts described in clauses (A) through (E) being referred to as “Restricted Payments”).

(ii) Subject to the limitations set forth in clause (iii) below, the Seller may make Restricted Payments so long as such Restricted Payments are made only in one or more of the following ways: (A) the Seller may make cash payments (including prepayments) on the Company Notes in accordance with their respective terms, and (B) if no amounts are then outstanding under any Company Note, the Seller may declare and pay dividends.

(iii) The Seller may make Restricted Payments only out of the funds, if any, it receives pursuant to Sections 1.4(b)(ii) and (iv) and 1.4(d) of this Agreement. Furthermore, the Seller shall not pay, make or declare: (A) any dividend if, after giving effect thereto, the Tangible Net Worth of the Seller would be less than \$5,000,000, or (B) any Restricted Payment (including any dividend) if, after giving effect thereto, any Termination Event or Unmatured Termination Event shall have occurred and be continuing.

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(o) Other Business. The Seller will not: (i) engage in any business other than the transactions contemplated by the Transaction Documents, (ii) create, incur or permit to exist any Debt of any kind (or cause or permit to be issued for its account any letters of credit or bankers’ acceptances) other than pursuant to this Agreement or the Company Notes, or (iii) form any Subsidiary or make any investments in any other Person.

(p) Use of Seller’s Share of Collections. The Seller shall apply the Seller’s Share of Collections to make payments in the following order of priority: (i) the payment of its expenses (including all obligations payable to the Purchasers, Purchaser Agents and the Administrator under this Agreement and under the Fee Letters), (ii) the payment of accrued and unpaid interest on the Company Notes and (iii) other legal and valid organizational purposes.

(q) Further Assurances; Change in Name or Jurisdiction of Origination, etc. (i) The Seller hereby authorizes and hereby agrees from time to time, at its own expense, promptly to execute (if necessary) and deliver all further instruments and documents, and to take all further actions, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or more fully evidence the purchases or issuances made under this Agreement and/or security interest granted pursuant to this Agreement or any other Transaction Document, or to enable the Administrator (on behalf of the Secured Parties) to exercise and enforce the Purchasers’ rights and remedies under this Agreement and any other Transaction Document. Without limiting the foregoing, the Seller hereby authorizes, and will, upon the request of the Administrator, at the Seller’s own expense, execute (if necessary) and file such financing or continuation statements (including fixture filings and as extracted collateral filings), or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or evidence any of the foregoing.

(i) The Seller authorizes the Administrator to file financing or continuation statements, and amendments thereto and assignments thereof, relating to the Receivables and the Related Security, the related Contracts and the Collections with respect thereto and the other collateral subject to a lien under any Transaction Document without the signature of the Seller. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement where permitted by law.

(ii) The Seller shall at all times be organized under the laws of the State of Delaware and shall not take any action to change its jurisdiction of organization.

(iii) The Seller will not change its name, location, identity or corporate structure unless (x) the Administrator and each Purchaser Agent shall have received at least thirty (30) days’ advance written notice of such change, (y) the Seller, at its own expense, shall have taken all action necessary or appropriate to perfect or maintain the perfection of the lien under this Agreement (including, without limitation, the filing of all financing statements and the taking of such other action as the Administrator may request in connection with such change or

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relocation), and (z) if requested by the Administrator or any Purchaser, the Seller shall cause to be delivered to the Administrator or any Purchaser Agent, an opinion, in form and substance reasonably satisfactory to the Administrator and such Purchaser Agent as to such UCC perfection and priority matters as such Person may request at such time.

(r) Tangible Net Worth. The Seller will not permit its Tangible Net Worth, at any time, to be less than \$5,000,000.

(s) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity will become a Sanctioned Person. No Covered Entity, either in its own right or through any third party, will (a) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (c) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (d) use the proceeds of any Purchase to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law. The funds used to repay Seller’s obligations under this Agreement and each of the other Transaction Documents will not be derived from any unlawful activity. Each Covered Entity shall comply with all Anti-Terrorism Laws. Seller shall promptly notify the Administrator in writing upon the occurrence of a Reportable Compliance Event.

(t) Seller’s Tax Status. The Seller will remain a wholly-owned subsidiary of a United States person (within the meaning of Section 7701(a) (30) of the Internal Revenue Code) and not be subject to withholding under Section 1446 of the Internal Revenue Code. No action will be taken that would cause the Seller to (i) be treated other than as a “disregarded entity” within the meaning of U.S. Treasury Regulation § 301.7701-3 for U.S. federal income tax purposes or (ii) become an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

2. Covenants of the Servicer. At all times from the date hereof until the Final Payout Date:

(a) Financial Reporting. The Servicer will maintain a system of accounting established and administered in accordance with generally accepted accounting principles as in effect in the appropriate jurisdiction, and the Servicer shall furnish to the Administrator and each Purchaser Agent:

(i) Compliance Certificates. (a) A compliance certificate promptly upon completion of the annual report of the Performance Guarantor and in no event later than 90 days after the close of the Performance Guarantor's fiscal year, in form and substance substantially similar to Annex D signed by its chief accounting officer or treasurer solely in their capacities as officers of the Servicer stating that no Termination Event or Unmatured Termination Event exists, or if any Termination Event or Unmatured Termination Event exists, stating the nature

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and status thereof, and (b) within 45 days after the close of each fiscal quarter of the Servicer, a compliance certificate in form and substance substantially similar to Annex D.

(ii) Reports. (A) As soon as available and in any event not later than two Business Days prior to the Monthly Settlement Date, an Information Package as of the most recently completed calendar month, (B) if requested by the Administrator or any Purchaser at any time following the occurrence and during the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, a Weekly Report no later than the second Business Day of each calendar week as of the most recently completed calendar week, which shall include, among other things, the Liquidity as of the last day of such calendar week, and (C) if requested by the Administrator or any Purchaser at any time following the occurrence and during the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, a Daily Report on each Business Day as of the date that is one Business Day prior to such date.

(iii) Cash Flow Forecasts. During each Minimum Liquidity Period, a Cash Flow Forecast from time to time promptly (but in any event no later than 5 Business Days) following the request therefore from the Administrator or any Purchaser.

(iv) Other Information. Such other information (including non-financial information) as the Administrator or any Purchaser Agent may from time to time reasonably request.

(v) Annual Reporting. Promptly upon completion and in no event later than 90 days after the close of each fiscal year of ACI, the annual audited financial statements of ACI and its consolidated Subsidiaries certified by independent certified public accountants of nationally recognized standing (which shall be free of qualifications (other than any consistency qualification that may result from a change in the method used to prepare the financial statements as to which such accountants concur)), prepared in accordance with GAAP (after giving effect to Fresh Start Reporting, as applicable), including consolidated balance sheets as of the end of such period, consolidated statements of income, related profit and loss and reconciliation of surplus statements, and a statement of changes in financial position.

(b) Notices. The Servicer will notify the Administrator and each Purchaser Agent in writing of any of the following events promptly upon (but in no event later than three Business Days after) a financial or other officer learning of the occurrence thereof, with such notice describing the same, and if applicable, the steps being taken by the Person(s) affected with respect thereto:

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(i) Notice of Termination Events or Unmatured Termination Events. A statement of the chief financial officer or chief accounting officer of the Servicer setting forth details of any Termination Event or Unmatured Termination Event and the action which the Servicer proposes to take with respect thereto.

(ii) Representations and Warranties. The failure of any representation or warranty to be true and correct (when made or at any time thereafter) with respect to the Receivables included in the Receivables Pool.

(iii) Litigation. The institution of any litigation, arbitration proceeding or governmental proceeding which could reasonably be expected to have a Material Adverse Effect on the Servicer.

(iv) Adverse Claim. (A) Any Person shall obtain an Adverse Claim upon the Pool Receivables or Collections with respect thereto, (B) any Person other than the Seller, the Servicer or the Administrator shall obtain any rights or direct any action with respect to any Lock-Box Account (or related lock-box or post office box) or (C) any Obligor shall receive any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Servicer or the Administrator.

(v) ERISA. Promptly after the filing or receiving thereof notice of and, upon the request of the Administrator, copies of all reports and notices that ACI or any ERISA Affiliate of ACI files under ERISA with the Internal Revenue Service, the Pension Benefit Guaranty Corporation or the U.S. Department of Labor or that such Person or any of its ERISA Affiliates receives from any of the foregoing or from any multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) to which such Person or any ERISA Affiliate of ACI is or was, within the preceding five years, a contributing employer, in each case in respect of the assessment of withdrawal liability or an event or condition that could, in the aggregate, result in the imposition of liability on ACI and/or any such ERISA Affiliate.

(vi) Name Changes. At least ten days before any change in ACI's, any Originator's or the Transferor's name or any other change requiring the amendment of UCC financing statements, a notice setting forth such changes and the effective date thereof.

(vii) Material Adverse Change. A material adverse change in the business, operations, property or financial or other condition of ACI or any Originator or the Transferor or any of their respective Subsidiaries.

(viii) Other Debt Default. A default or any event of default under (x) any Credit Agreement, or (y) any other financing arrangement evidencing \$35,000,000 or more of indebtedness pursuant to which ACI, Arch Sales, any Originator, the Transferor or any of their Subsidiaries is a debtor or an obligor.

(ix) Permitted Merger. No later than 10 Business Days after the effective date of any Permitted Merger, a notice setting forth, in reasonable detail, the terms, conditions and Persons involved therein.

(c) Conduct of Business. The Servicer will carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and will do all things necessary to remain duly incorporated, validly existing and in good standing as a domestic corporation in its jurisdiction of incorporation and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted if the failure to have such authority could reasonably be expected to have a Material Adverse Effect.

(d) Compliance with Laws. The Servicer will comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject if the failure to comply could reasonably be expected to have a Material Adverse Effect.

(e) Furnishing of Information and Inspection of Receivables. The Servicer will furnish to the Administrator and each Purchaser Agent from time to time such information with respect to the Pool Receivables as the Administrator or any Purchaser Agent may reasonably request. The Servicer will, at the Servicer's expense, during regular business hours with prior written notice, (i) permit the Administrator and/or any Purchaser Agent, or their respective agents or representatives, (A) to examine and make copies of and abstracts from all books and records relating to the Pool Receivables or other Pool Assets, (B) to visit the offices and properties of the Servicer for the purpose of examining such books and records, and (C) to discuss matters relating to the Pool Receivables, other Pool Assets or the Servicer's performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors, employees or independent public accountants of the Servicer (provided that representatives of the Servicer are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Servicer's expense, upon prior written notice from the Administrator or such Purchaser Agent, permit certified public accountants or other auditors acceptable to the Administrator to conduct, a review of its books and records with respect to such Receivables; provided, that unless a Termination Event has occurred and is continuing, that the Servicer shall be required to reimburse the Administrator and the Purchaser Agents for only one (1) such audit per year.

(f) Payments on Receivables, Accounts. The Servicer will at all times instruct all Obligor to deliver payments on the Pool Receivables to a Lock-Box Account. The Servicer will, at all times, maintain such books and records necessary to identify Collections received from time to time on Pool Receivables and to segregate such Collections from other property of the Servicer, the Transferor and the Originators. If any such payments or other Collections are received by the Servicer, it shall hold such payments in trust for the benefit of the Administrator and the Purchasers and promptly (but in any event within two Business Days after receipt) remit such funds into a Lock-Box Account. The Servicer will cause each Lock-Box Bank to comply with the terms of each applicable Lock-Box Agreement. The Servicer will not permit the funds other than Collections on Pool Receivables and other Pool Assets to be deposited into any Lock-Box Account. If such funds are nevertheless deposited into any Lock-Box Account, the Servicer

will within two Business Days identify such funds for segregation. The Servicer will not commingle Collections or other funds to which the Administrator or any other Secured Party is entitled with any other funds. The Servicer shall only add, a Lock-Box Bank (or the related lock-box or post office box), or Lock-Box Account to those listed on Schedule II to this Agreement, if the Administrator has received notice of such addition, a copy of any new Lock-Box Agreement and an executed and acknowledged copy of a Lock-Box Agreement (or an amendment thereto) in form and substance acceptable to the Administrator from any such new Lock-Box Bank. The Servicer shall only terminate a Lock-Box Bank or close a Lock-Box Account (or the related lock-box or post office box) with the prior written consent of the Administrator.

(g) Extension or Amendment of Pool Receivables. Except as otherwise permitted in Section 4.2 of this Agreement, the Servicer will not alter the delinquency status or adjust the Outstanding Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive, in any material respect any term or condition of any related Contract (which term or condition relates to payments under, or the enforcement of, such Contract). The Servicer shall at its expense, timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Contracts related to the Pool Receivables, and timely and fully comply with the Credit and Collection Policy with regard to each Pool Receivable and the related Contract (which term or condition relates to payments under, or the enforcement of, such Contract).

(h) Change in Business. The Servicer will not (i) make any material change in the character of its business or (ii) make any change in any Credit and Collection Policy that could reasonably be expected to have a Material Adverse Effect, in the case of either (i) or (ii) above, without the prior written consent of the Administrator and the Majority Purchaser Agents. The Servicer shall not make any written change in any Credit and Collection Policy without giving prior written notice thereof to the Administrator and each Purchaser Agent.

(i) Records. The Servicer will maintain and implement administrative and operating procedures (including an ability to recreate records evidencing Pool Receivables and related Contracts in the event of the destruction of the originals thereof), and keep and maintain all documents, books, records, computer tapes and disks and other information reasonably necessary or advisable for the collection of all Pool Receivables (including records adequate to permit the daily identification of each Pool Receivable and all Collections of and adjustments to each existing Pool Receivable).

(j) Change in Payment Instructions to Obligors. The Servicer shall not (and shall not permit any Sub-Servicer to) add to, replace or terminate any of the Lock-Box Accounts (or any related lock-box or post office box) listed in Schedule II hereto or make any change in its instructions to the Obligors regarding payments to be made to the Lock-Box Accounts (or any related lock-box or post office box), unless the Administrator shall have received (x) prior written notice of such addition, termination or change and (y) a signed and acknowledged Lock-Box Agreement (or an amendment thereto) with respect to such new Lock-Box Accounts (or any related lock-box or post office box).

(k) Ownership Interest, Etc. The Servicer shall, at its expense, take all action necessary or reasonably desirable to establish and maintain a valid and enforceable undivided percentage ownership or security interest, to the extent of the Purchased Interest, in the Pool Receivables, the Related

Security and Collections with respect thereto, and a first priority perfected security interest in the Pool Assets, in each case free and clear of any Adverse Claim, in favor of the Administrator (on behalf of the Secured Parties), including taking such action to perfect, protect or more fully evidence the interest of the Administrator (on behalf of the Secured Parties) as the Administrator may reasonably request.

(l) Further Assurances; Change in Name or Jurisdiction of Origination, etc. The Servicer hereby authorizes and hereby agrees from time to time, at its own expense, promptly to execute (if necessary) and deliver all further instruments and documents, and to take all further actions, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or more fully evidence the purchases or issuances made under this Agreement and/or security interest granted pursuant to this Agreement or any other Transaction Document, or to enable the Administrator (on behalf of the Secured Parties) to exercise and enforce their respective rights and remedies under this Agreement or any other Transaction Document. Without limiting the foregoing, the Servicer hereby authorizes, and will, upon the request of the Administrator, at the Servicer's own expense, execute (if necessary) and file such financing or continuation statements (including fixture filings and as extracted collateral filings), or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or evidence any of the foregoing.

(i) The Servicer authorizes the Administrator to file financing or continuation statements, and amendments thereto and assignments thereof, relating to the Receivables and the Related Security, the related Contracts and the Collections with respect thereto and the other collateral subject to a lien under any Transaction Document without the signature of the Servicer. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement where permitted by law.

(ii) The Servicer shall at all times be organized under the laws of the State of Delaware and shall not take any action to change its jurisdiction of organization.

(iii) The Servicer will not change its name, location, identity or corporate structure unless (x) the Administrator and each Purchaser Agent shall have received at least ten (10) days' advance written notice of such change, (y) the Servicer, at its own expense, shall have taken all action necessary or appropriate to perfect or maintain the perfection of the lien under this Agreement (including, without limitation, the filing of all financing statements and the taking of such other action as the Administrator may request in connection with such change or relocation), and (z) if requested by the Administrator or any Purchaser Agent, the Servicer shall cause to be delivered to the Administrator and each Purchaser Agent, an opinion, in form and substance satisfactory to the

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Administrator and each such Purchaser Agent as to such UCC perfection and priority matters as such Person may request at such time.

(m) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity will become a Sanctioned Person. No Covered Entity, either in its own right or through any third party, will (a) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (c) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (d) use the proceeds of any Purchase to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law. The funds used to repay Servicer's obligations under this Agreement and each of the other Transaction Documents will not be derived from any unlawful activity. Each Covered Entity shall comply with all Anti-Terrorism Laws. Servicer shall promptly notify the Administrator in writing upon the occurrence of a Reportable Compliance Event.

(n) Identifying of Records. The Servicer shall identify its master data processing records relating to Pool Receivables and related Contracts with a legend that indicates that the Pool Receivables have been pledged in accordance with this Agreement.

(o) Seller's Tax Status. The Servicer shall not take or cause any action to be taken that could result in the Seller (i) being treated other than as a "disregarded entity" within the meaning of U.S. Treasury Regulation § 301.7701-3 for U.S. federal income tax purposes or (ii) becoming an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

3. Separate Existence. Each of the Seller and the Servicer hereby acknowledges that the Purchasers, the Purchaser Agents and the Administrator are entering into the transactions contemplated by this Agreement and the other Transaction Documents in reliance upon the Seller's identity as a legal entity separate from ACI and its Affiliates. Therefore, from and after the date hereof, each of the Seller and ACI shall take all steps specifically required by this Agreement or reasonably required by the Administrator, any Purchaser Agent or any Purchaser to continue the Seller's identity as a separate legal entity and to make it apparent to third Persons that the Seller is an entity with assets and liabilities distinct from those of ACI and any other Person, and is not a division of ACI, its Affiliates or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, each of the Seller and ACI shall take such actions as shall be required in order that:

(a) The Seller will be a limited liability company whose primary activities are restricted in its LLC Agreement to: (i) purchasing or otherwise acquiring from the Transferor, owning, holding, granting security interests or selling interests in Pool Assets, (ii) entering into agreements for the selling and servicing of the Receivables Pool, and (iii) conducting such other activities as it deems necessary or appropriate to carry out its primary activities;

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(b) The Seller shall not engage in any business or activity except as set forth in this Agreement nor incur any indebtedness or liability other than as expressly permitted by the Transaction Documents;

(c) (i) Not less than one member of the Seller's board of directors (the "Independent Director") shall be a natural person (A) who is not, and has not been at any time during the five (5) years preceding such person's initial appointment: (1) a direct, indirect or beneficial stockholder, equityholder, officer, director (other than the Independent Director), employee, member, manager, attorney, partner, affiliate, or supplier of Seller, ACI, Arch Sales, any Originator, the Transferor or any of their respective Subsidiaries (the "Arch Group"); provided, that indirect stock ownership of any member of the Arch Group by any person through a mutual fund or similar diversified investment pool shall not disqualify such person from being an Independent Director unless such person maintains direct or indirect control of the investment decisions of such mutual fund or similar diversified investment pool, (2) a customer of, supplier to or other person who derives more than 1% of its purchases or revenues from its activities with any member of the Arch Group; (3) a trustee,

conservator or receiver for any member of the Arch Group; (4) a person or other entity controlling, controlled by or under common control with any such equity holder, partner, member, manager, customer, supplier or other person; or (5) a member of the immediate family of any such equityholder, director, officer, employee, member, manager, partner, customer, supplier or other person and (B) (1) who has (x) prior experience as an independent director for a corporation or an independent manager of a limited liability company whose charter documents required the unanimous consent of all independent director or independent managers thereof before such corporation could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (y) at least three years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services to issuers of securitization or structured finance instruments, agreements or securities and (2) is reasonably acceptable to the Administrator and each Purchaser Agent (such acceptability of any Independent Director appointed after the date hereof must be evidenced in writing signed by the Administrator and each Purchaser Agent). Under this clause (c), the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. (ii) The operating agreement of the Seller shall provide that: (A) the Seller's board of managers or other governing body shall not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Seller unless the Independent Director shall approve the taking of such action in writing before the taking of such action, and (B) such provision and each other provision requiring an Independent Director cannot be amended without the prior written consent of the Independent Director.

(d) The Independent Director shall not at any time serve as a trustee in bankruptcy for the Seller, ACI, any Originator, the Transferor or any of their respective Affiliates;

(e) The Seller shall maintain its organizational documents in conformity with this Agreement, such that it does not amend, restate, supplement or otherwise modify its ability to

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comply with the terms and provisions of any of the Transaction Documents, including, without limitation, clause (i) of Exhibit V;

(f) The Seller shall conduct its affairs strictly in accordance with its organizational documents and observe all necessary, appropriate and customary company formalities, including, but not limited to, holding all regular and special members' and board of directors' meetings appropriate to authorize all limited liability company action, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts;

(g) Any employee, consultant or agent of the Seller will be compensated from the Seller's funds for services provided to the Seller, and to the extent that Seller shares the same officers or other employees as ACI (or any other Affiliate thereof), the salaries and expenses relating to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with such common officers and employees. The Seller will not engage any agents other than its attorneys, auditors and other professionals, and a servicer and any other agent contemplated by the Transaction Documents for the Receivables Pool, which servicer will be fully compensated for its services by payment of the Servicing Fee, and a manager, which manager will be fully compensated from the Seller's funds;

(h) The Seller will contract with the Servicer to perform for the Seller all operations required on a daily basis to service the Receivables Pool. The Seller will pay the Servicer the Servicing Fee pursuant hereto. The Seller will not incur any indirect or overhead expenses for items shared with ACI (or any other Affiliate thereof) that are not reflected in the Servicing Fee. To the extent, if any, that the Seller (or any Affiliate thereof) shares items of expenses not reflected in the Servicing Fee or the manager's fee, such as legal, auditing and other professional services, such expenses will be allocated to the extent practical on the basis of actual use or the value of services rendered, and otherwise on a basis reasonably related to the actual use or the value of services rendered; it being understood that ACI shall pay all expenses relating to the preparation, negotiation, execution and delivery of the Transaction Documents, including legal, agency and other fees;

(i) The Seller's operating expenses will not be paid by ACI, the Transferor or any Originator or any Affiliate thereof;

(j) The Seller will have its own separate stationery;

(k) The Seller's books and records will be maintained separately from those of ACI and any other Affiliate thereof and in a manner such that it will not be difficult or costly to segregate, ascertain or otherwise identify the assets and liabilities of Seller;

(l) All financial statements of ACI or any Affiliate thereof that are consolidated to include the Seller will disclose that (i) the Seller's sole business consists of the purchase or acceptance through capital contributions of the Receivables and Related Rights from the

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Transferor and the subsequent retransfer of or granting of a security interest in such Receivables and Related Rights to certain purchasers party to this Agreement, (ii) the Seller is a separate legal entity with its own separate creditors who will be entitled, upon its liquidation, to be satisfied out of the Seller's assets prior to any assets or value in the Seller becoming available to the Seller's equity holders and (iii) the assets of the Seller are not available to pay creditors of ACI or any other Affiliates of ACI or the Originators or the Transferor;

(m) The Seller's assets will be maintained in a manner that facilitates their identification and segregation from those of ACI or any Affiliates thereof;

(n) The Seller will strictly observe corporate formalities in its dealings with ACI or any Affiliates thereof, and funds or other assets of the Seller will not be commingled with those of ACI or any Affiliates thereof except as permitted by this Agreement in connection with servicing the Pool Receivables. The Seller shall not maintain joint bank accounts or other depository accounts to which ACI or any Affiliate thereof (other than ACI in its capacity as the Servicer) has independent access. The Seller is not named, and has not entered into any agreement to be named, directly or indirectly, as a direct or contingent beneficiary or loss payee on any insurance policy with respect to any loss relating to the property of ACI or any Subsidiaries or other Affiliates thereof. The

Seller will pay to the appropriate Affiliate the marginal increase or, in the absence of such increase, the market amount of its portion of the premium payable with respect to any insurance policy that covers the Seller and such Affiliate;

(o) The Seller will maintain arm's-length relationships with ACI (and any Affiliates thereof). Any Person that renders or otherwise furnishes services to the Seller will be compensated by the Seller at market rates for such services it renders or otherwise furnishes to the Seller. Neither the Seller on the one hand, nor ACI, on the other hand, will be or will hold itself out to be responsible for the debts of the other or the decisions or actions respecting the daily business and affairs of the other. The Seller and ACI will immediately correct any known misrepresentation with respect to the foregoing, and they will not operate or purport to operate as an integrated single economic unit with respect to each other or in their dealing with any other entity;

(p) The Seller shall have a separate area from ACI for its business (which may be located at the same address as such entities) and to the extent that any other such entity have offices in the same location, there shall be a fair and appropriate allocation of overhead costs between them, and each shall bear its fair share of such expenses; and

(q) To the extent not already covered in paragraphs (a) through (o) above, Seller shall comply and/or act in accordance with the provisions of Section 6.4 of the Sale and Contribution Agreement.

4. Certain Post-Closing Requirements. As soon as practicable and in any event not later than 120 days following the Closing Date, the Servicer shall (or shall cause the Seller to) deliver to the Administrator favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for the Seller, Originators, the Servicer and ACI, covering certain corporate and

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UCC perfection matters relating to the Originators organized in Kentucky, West Virginia and Virginia as well as certain UCC perfection matters with respect to county-level filings made by each Originator.

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EXHIBIT V TERMINATION EVENTS

Each of the following shall be a "Termination Event":

(a) (i) the Seller, ACI, any Originator, the Transferor or the Servicer shall fail to perform or observe any term, covenant or agreement under the Agreement or any other Transaction Document, and, except as otherwise provided herein, such failure, solely to the extent capable of cure, shall continue for 30 days, (ii) the Seller or the Servicer shall fail to make when due any payment or deposit to be made by it under the Agreement or any other Transaction Document and such failure shall continue unremedied for one Business Day, or (iii) Arch Sales shall resign as Servicer, and no successor Servicer reasonably satisfactory to the Administrator shall have been appointed;

(b) Arch Sales (or any Affiliate thereof) shall fail to transfer to any successor Servicer when required any rights pursuant to the Agreement that Arch Sales (or such Affiliate) then has as Servicer;

(c) any representation or warranty made or deemed made by the Seller, ACI, any Originator, the Transferor or the Servicer (or any of their respective officers) under or in connection with the Agreement or any other Transaction Document, or any information or report delivered by the Seller, ACI, any Originator, the Transferor or the Servicer pursuant to the Agreement or any other Transaction Document, shall prove to have been incorrect or untrue when made or deemed made or delivered, and shall remain incorrect or untrue for 10 Business Days;

(d) the Seller or the Servicer shall fail to deliver any Information Package or Interim Report pursuant to the Agreement, and such failure shall remain unremedied for two Business Days;

(e) the Agreement or any purchase or reinvestment pursuant to the Agreement shall for any reason: (i) cease to create, or the Purchased Interest shall for any reason cease to be, a valid and enforceable perfected undivided percentage ownership or security interest to the extent of the Purchased Interest in each Pool Receivable, the Related Security and Collections with respect thereto, free and clear of any Adverse Claim, or (ii) cease to create with respect to the Pool Assets, or the interest of the Administrator with respect to such Pool Assets shall cease to be, a valid and enforceable first priority perfected security interest, free and clear of any Adverse Claim;

(f) the Seller, ACI, the Transferor or any Originator shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Seller, ACI the Transferor or any Originator seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial

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part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of the property) shall occur, or the Seller, ACI and the Transferor or any Originator shall take any corporate or organizational action to authorize any of the actions set forth above in this paragraph;

(g) (i) the (A) Default Ratio shall exceed 3% or (B) the Delinquency Ratio shall exceed 6%, or (ii) the average for three consecutive calendar months of: (A) the Default Ratio shall exceed 2%, (B) the Delinquency Ratio shall exceed 4% or (C) the Dilution Ratio shall exceed 3%, or (iii) Days' Sales Outstanding shall exceed 48 days;

(h) a Change in Control shall occur;

(i) at any time (i) the sum of (A) the Aggregate Capital, plus the Adjusted LC Participation Amount, plus (B) the Total Reserves exceeds (ii) the sum of (A) the Net Receivables Pool Balance at such time, plus (B) the Purchasers' Share of the amount of Collections then on deposit in the Lock-Box Accounts (other than amounts set aside therein representing Discount and fees), and such circumstance shall not have been cured within two Business Days;

(j) (i) ACI or any of its Subsidiaries shall fail to pay any principal of or premium or interest under (x) any Credit Agreement or (y) on any of its other Debt that is outstanding in a principal amount of at least \$35,000,000 in the aggregate when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement, mortgage, indenture or instrument relating to such Debt (whether or not such failure shall have been waived under the related agreement), (ii) any other event shall occur or condition shall exist under any Credit Agreement or any agreement, mortgage, indenture or instrument relating to any such other Debt and shall continue after the applicable grace period, if any, specified in any Credit Agreement or such agreement, mortgage, indenture or instrument (whether or not such failure shall have been waived under the related agreement), if the effect of such event or condition is to give the applicable debtholders the right (whether acted upon or not) to accelerate the maturity of any Credit Agreement or such other Debt, or (iii) any Credit Agreement or any such other Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased, or an offer to repay, redeem, purchase or defease any Credit Agreement or such other Debt shall be required to be made, in each case before the stated maturity thereof;

(k) (i) ACI shall fail to perform any of its obligations under the Performance Guaranty or (ii) any Originator shall fail to perform any of its obligations under the Originator Performance Guaranty;

(l) (i) a contribution failure shall occur with respect to any Benefit Plan sufficient to give rise to a lien on any of the assets of Seller, any Originator, the Transferor, ACI or any ERISA Affiliate under Section 303(k) of ERISA and such failure is not cured and any related

V-2

lien released within 10 days or (ii) either the Internal Revenue Service or the Pension Benefit Guaranty Corporation shall have filed one or more notices of lien asserting a claim or claims pursuant to the Internal Revenue Code, or ERISA, as applicable, against the assets of (a) the Seller or (b) the Servicer, the Transferor, any Originator, ACI or any ERISA Affiliate (other than the Seller) in an amount in excess of \$250,000 and such lien is not released within 10 days;

(m) the Seller or ACI shall fail to (x) provide the Administrator and each Purchaser Agent with at least ten days' prior written notice of any replacement or appointment of any director that is to serve as an Independent Director on the Seller's board of directors or (y) obtain the prior written consent of the Administrator and each Purchaser Agent for any replacement or appointment of any director that is to serve as an Independent Director on the Seller's board of directors and, in either case, such failure shall continue for ten days;

(n) any Letter of Credit is drawn upon and, unless as a result of the LC Bank's failure to provide the notice required by Section 1.14(b), not fully reimbursed pursuant to Section 1.14 (including, if applicable, with the proceeds of any funding by any Purchaser) within two Business Days from the date of such draw;

(o) an order of the Bankruptcy Court shall be entered in any of the Chapter 11 Cases staying, reversing, vacating, amending, supplementing or otherwise modifying the Confirmation Order or any member of the Arch Group shall apply for authority to do so, in each case without the prior written consent of the Administrator and the Majority Purchaser Agents;

(p) a member of the Arch Group shall file a pleading seeking or consenting to the matters described in clause (o) above;

(q) the filing by any member of the Arch Group of any motion or proceeding that could reasonably be expected to result in material impairment of the Administrator's or any Secured Party's rights under the Transaction Documents; or a final determination by the Bankruptcy Court (or any court of competent jurisdiction) with respect to any motion or proceeding brought by any other party that results in any material impairment of the Administrator's or any Secured Party's rights under the Transaction Documents; or

(r) the existence of any Adverse Claim on any Pool Assets.

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**SCHEDULE I
CREDIT AND COLLECTION POLICY**

[Attached]

Schedule I-1

**SCHEDULE II
LOCK-BOX BANK, BLOCKED ACCOUNT AND LOCK-BOX ACCOUNT**

PNC Bank, National Association

1019291244

642545

Schedule II-1

**SCHEDULE III
ACTIONS AND PROCEEDINGS**

[NONE]

Schedule III

**SCHEDULE IV
GROUP COMMITMENTS**

Purchaser Group Name	Capacity	Commitment	Group Commitment
PNC Purchaser Group	Purchaser Group	N/A	\$ 120,000,000
PNC	Related Committed Purchaser	\$ 120,000,000	
PNC	LC Participant	\$ 120,000,000	
PNC	Purchaser Agent	N/A	
PNC	LC Bank	N/A	
Regions Purchaser Group	Purchaser Group	N/A	\$ 40,000,000
Regions	Related Committed Purchaser	\$ 40,000,000	
Regions	LC Participant	\$ 40,000,000	
Regions	Purchaser Agent	N/A	

Schedule III

ANNEX A
to Receivables Purchase Agreement

FORM OF INFORMATION PACKAGE

[Attached]

Annex A-1

ANNEX B-1
to Receivables Purchase Agreement

FORM OF PURCHASE NOTICE

, [201]

PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, PA 15222

[Each other Purchaser Agent]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 (as heretofore amended, restated, supplemented or otherwise modified, the "Receivables Purchase Agreement"), among Arch Receivable Company, LLC, ("Seller"), Arch Coal Sales Company, Inc., as Servicer, the various Conduit Purchasers, Related Committed Purchasers, LC Participants and Purchaser Agents from time to time parties thereto and PNC Bank, National Association ("PNC", as administrator (in such capacity, the "Administrator") and as the issuer of letters of credit thereunder (in such capacity, the "LC Bank"). Capitalized terms used in this Purchase Notice and not otherwise defined herein shall have the meanings assigned thereto in the Receivables Purchase Agreement.

This letter constitutes a Purchase Notice pursuant to Section 1.2(a) of the Receivables Purchase Agreement. Seller desires to sell an undivided percentage interest in a pool of receivables on , [201], for a purchase price of \$ (1) (of which \$ will be funded by PNC and \$ will be funded by Regions). Subsequent to this Purchase, the Aggregate Capital will be \$.

Seller hereby represents and warrants as of the date hereof, and as of the date of such purchase, as follows:

(i) the representations and warranties contained in Exhibit III of the Receivables Purchase Agreement are correct in all material respects on and as of such dates as though made on and as of such dates and shall be deemed to have been made on such dates (except for representations and warranties that apply solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);

(1) Such amount, which shall not be less than \$300,000 (or such lesser amount as agreed to by the Administrator and each Purchaser Agent) and shall be in integral multiples of \$100,000 in excess thereof.

Annex B-2-1

(ii) no Termination Event or Unmatured Termination Event has occurred and is continuing, or would result from such purchase;

(iii) after giving effect to the purchase proposed hereby, the sum of the Aggregate Capital plus the LC Participation Amount shall not exceed the Purchase Limit, and the Purchased Interest shall not exceed 100%; and

(iv) the Facility Termination Date shall not have occurred.

Annex B-2-2

IN WITNESS WHEREOF, the undersigned has caused this Purchase Notice to be executed by its duly authorized officer as of the date first above written.

ARCH RECEIVABLE COMPANY, LLC

By: _____

Name: _____

Title: _____

Annex B-2-3

**ANNEX B-2
to Receivables Purchase Agreement**

FORM OF ISSUANCE NOTICE

, [201]

PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, PA 15222

[Each other Purchaser Agent]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 (as heretofore amended, restated, supplemented or otherwise modified, the "Receivables Purchase Agreement"), among Arch Receivable Company, LLC, ("Seller"), Arch Coal Sales Company, Inc., as Servicer, the various Conduit Purchasers, Related Committed Purchasers, LC Participants and Purchaser Agents from time to time parties thereto and PNC Bank, National Association ("PNC", as administrator (in such capacity, the "Administrator") and as the issuer of letters of credit thereunder (in such capacity, the "LC Bank"). Capitalized terms used in this Issuance Notice and not otherwise defined herein shall have the meanings assigned thereto in the Receivables Purchase Agreement.

This letter constitutes a notice pursuant to Section 1.12(a) of the Receivables Purchase Agreement. Seller desires that LC Bank issue a Letter of Credit with a face amount of \$. Subsequent to this issuance, the LC Participation Amount will be \$ [and the Aggregate Capital will be \$].

Seller hereby represents and warrants as of the date hereof, and as of the date of such issuance, as follows:

(i) the representations and warranties contained in Exhibit III of the Receivables Purchase Agreement are correct in all material respects on and as of such dates as though made on and as of such dates and shall be deemed to have been made on such dates (except for representations and warranties that apply solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);

(ii) no Termination Event or Unmatured Termination Event has occurred and is continuing, or would result from such issuance;

Annex B-2-1

(iii) after giving effect to the issuance proposed hereby, the sum of the Aggregate Capital plus the LC Participation Amount shall not exceed the Purchase Limit, and the Purchased Interest shall not exceed 100%; and

(iv) the Facility Termination Date shall not have occurred.

Annex B-2-2

IN WITNESS WHEREOF, the undersigned has caused this Issuance Notice to be executed by its duly authorized officer as of the date first above written.

ARCH RECEIVABLE COMPANY, LLC

By: _____
Name: _____
Title: _____

Annex B-2-3

**ANNEX C
to Receivables Purchase Agreement**

FORM OF PAYDOWN NOTICE

, 200

PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, PA 15222

[Each other Purchaser Agent]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "Receivables Purchase Agreement"), among Arch Receivable Company, LLC, as Seller, Arch Coal Sales Company, Inc., as Servicer, the various Conduit Purchasers, Related Committed Purchasers, LC Participants and Purchaser Agents from time to time parties thereto and PNC Bank, National Association ("PNC"), as Administrator and as the LC Bank. Capitalized terms used in this paydown notice and not otherwise defined herein shall have the meanings assigned thereto in the Receivables Purchase Agreement.

This letter constitutes a Paydown Notice pursuant to Section 1.4(f)(i) of the Receivables Purchase Agreement. The Seller desires to reduce the Aggregate Capital on _____, (1) by the application of \$ _____ (of which \$ _____ will reduce Capital funded by the PNC Purchaser Group and \$ _____ will reduce Capital funded by the Regions Purchaser Group) in cash to pay Aggregate Capital and Aggregate Discount to accrue (until such cash can be used to pay commercial paper notes) with respect to such Aggregate Capital, together with all costs related to such reduction of Aggregate Capital. Subsequent to this paydown, the Aggregate Capital will be \$ _____.

(1) Notice must be given at least five (5) Business Days' prior to the requested paydown date, in the case of reductions in excess of \$20,000,000, or at least two (2) Business Days' prior to the requested paydown date, in the case of reductions of \$20,000,000 or less.

Annex C-1

IN WITNESS WHEREOF, the undersigned has caused this paydown notice to be executed by its duly authorized officer as of the date first above written.

ARCH RECEIVABLE COMPANY, LLC

By: _____
Name: _____
Title: _____

Annex C-2

FORM OF COMPLIANCE CERTIFICATE

To: PNC Bank, National Association, as Administrator

[Each Purchaser Agent]

This Compliance Certificate is furnished pursuant to that certain Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 by and among Arch Receivable Company, LLC (“Seller”), Arch Coal Sales Company, Inc. (the “Servicer”), the various Conduit Purchasers, Related Committed Purchasers, LC Participants and Purchaser Agents from time to time parties thereto and PNC Bank, National Association (the “Administrator”) and as the LC Bank (as amended, restated, supplemented or otherwise modified from time to time, the “Agreement”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

THE UNDERSIGNED, SOLELY IN [HIS] [HER] CAPACITY AS _____ OF SELLER, HEREBY CERTIFIES ON BEHALF OF SELLER THAT:

1. I am the duly elected _____ of Seller.
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and condition of Seller during the accounting period covered by the attached financial statements.
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Termination Event or an Unmatured Termination Event, as each such term is defined under the Agreement, during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth in paragraph 5 below.
4. Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Seller has taken, is taking, or proposes to take with respect to each such condition or event:

Annex D-1

The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this _____ day of _____, 20__.

ARCH RECEIVABLE COMPANY, LLC

By: _____
Name: _____
Title: _____

Annex D-2

FORM OF LETTER OF CREDIT APPLICATION

[Attached]

Annex E-1

FORM OF ASSUMPTION AGREEMENT

Dated as of [_____, 20__]

THIS ASSUMPTION AGREEMENT (this “AGREEMENT”), dated as of [_____, ____], is among ARCH RECEIVABLE COMPANY, LLC (the “Seller”), [_____, _____], as purchaser (the “[_____] Conduit Purchaser”), [_____, _____], as the related committed purchaser (the “[_____] Related Committed Purchaser”), [_____, _____], as related lc participant (the “[_____] LC Participant” and together with the Conduit Purchaser and the Related Committed Purchaser, the “[_____] Purchasers”), and [_____, _____], as agent for the [_____] Purchasers (the “[_____] Purchaser Agent” and together with the [_____] Purchasers, the “[_____] Purchaser Group”).

BACKGROUND

The Seller and various others are parties to that certain Third Amended and Restated Receivables Purchase Agreement dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, the “Receivables Purchase Agreement”). Capitalized terms used and not

otherwise defined herein have the respective meaning assigned to such terms in the Receivables Purchase Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1. This letter constitutes an Assumption Agreement pursuant to Section 1.2(f) of the Receivables Purchase Agreement. The Seller desires [the [] Purchasers] [the [] Related Committed Purchaser] [the [] related LC Participant] to [become Purchasers under] [increase its existing Commitment under] the Receivables Purchase Agreement and upon the terms and subject to the conditions set forth in the Receivables Purchase Agreement, the [] Purchasers agree to [become Purchasers thereunder] [increase its Commitment in an amount equal to the amount set forth as the "Commitment" under the signature of such [] Related Committed Purchaser hereto] [increase its Commitment in an amount equal to the amount set forth as the "Commitment" under the signature of such [] related LC Participant hereto].

Seller hereby represents and warrants to the [] Purchasers as of the date hereof, as follows:

(i) the representations and warranties of the Seller contained in Exhibit III of the Receivables Purchase Agreement are true and correct in all material respects on and as of the date of such purchase or reinvestment as though made on and as of such date (except for

Annex F-1

representations and warranties which apply as to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date);

(ii) no event has occurred and is continuing, or would result from such purchase or reinvestment, that constitutes a Termination Event or an Unmatured Termination Event; and

(iii) the Facility Termination Date has not occurred.

SECTION 2. Upon execution and delivery of this Agreement by the Seller and each member of the [] Purchaser Group, satisfaction of the other conditions to assignment specified in Section 1.2(e) of the Receivables Purchase Agreement (including the written consent of the Administrator and each Purchaser Agent) and receipt by the Administrator and Seller of counterparts of this Agreement (whether by facsimile or otherwise) executed by each of the parties hereto, [the [] Purchasers shall become a party to, and have the rights and obligations of Purchasers under, the Receivables Purchase Agreement] [the [] Related Committed Purchaser shall increase its Commitment in the amount set forth as the "Commitment" under the signature of the [] Related Committed Purchaser hereto][the [] related LC Participant shall increase its Commitment in the amount set forth as the "Commitment" under the signature of the [] related LC Participant hereto].

SECTION 3. Each party hereto hereby covenants and agrees that it will not institute against, or join any other Person in instituting against, any Conduit Purchaser, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding under any federal or state bankruptcy or similar law, for one year and one day after the latest maturing Note issued by such Conduit Purchaser is paid in full. The covenant contained in this paragraph shall survive any termination of the Receivables Purchase Agreement.

SECTION 4. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. This Agreement may not be amended, supplemented or waived except pursuant to a writing signed by the party to be charged. This Agreement may be executed in counterparts, and by the different parties on different counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement.

(continued on following page)

Annex F-2

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date first above written.

[], as a Conduit Purchaser

By: _____
Name Printed:
Title:

[Address]

[], as a Related Committed Purchaser

By: _____
Name Printed:
Title:

[Address]
[Commitment]

[], as a related LC Participant

By: _____
Name Printed: _____
Title: _____

[Address]

[Commitment]

[], as Purchaser Agent for []

By: _____
Name Printed: _____
Title: _____

[Address]

Annex F-3

ARCH RECEIVABLE COMPANY, LLC, as Seller

By: _____
Name Printed: _____
Title: _____

Consented and Agreed:

PNC BANK, NATIONAL ASSOCIATION, as Administrator

By: _____
Name Printed: _____
Title: _____

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

PNC BANK, NATIONAL ASSOCIATION, as LC Bank

By: _____
Name Printed: _____
Title: _____

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Annex F-4

[THE PURCHASER AGENTS]

By: _____
Name Printed: _____
Title: _____

[Address]

Annex F-5

FORM OF TRANSFER SUPPLEMENT

Dated as of [, 20]

Section 1.

Commitment assigned: \$
Assignor's remaining Commitment: \$
Capital allocable to Commitment assigned: \$
Assignor's remaining Capital: \$
Discount (if any) allocable to
Capital assigned: \$
Discount(if any) allocable to Assignor's
remaining Capital: \$

Section 2.

Effective Date of this Transfer Supplement: []

Upon execution and delivery of this Transfer Supplement by transferee and transferor and the satisfaction of the other conditions to assignment specified in Section 5.3(c) of the Receivables Purchase Agreement (as defined below), from and after the effective date specified above, the transferee shall become a party to, and have the rights and obligations of a Related Committed Purchaser under, the Third Amended and Restated Receivables Purchase Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, the "Receivables Purchase Agreement"), among Arch Receivable Company, LLC, as Seller, Arch Coal Sales Company, Inc., as initial Servicer, the various Conduit Purchasers, Related Committed Purchasers, Purchaser Agents and LC Participants from time to time parties thereto and PNC Bank, National Association, as Administrator and as LC Bank.

Annex G-1

ASSIGNOR: [], as a Related Committed Purchaser

By: _____
Name:
Title:

ASSIGNEE: [], as a Purchasing Related Committed Purchaser

By: _____
Name:
Title:

[Address]

Accepted as of date first above written:

[], as Purchaser Agent for
the [] Purchaser Group

By: _____
Name:
Title:

Annex G-2

FORM OF WEEKLY REPORT

[Attached]

Annex H-1-1

FORM OF DAILY REPORT

[Attached]

Annex H-2-1

[Reserved]

Annex I-1

FORM OF CASH FLOW FORECAST

[Attached]

Annex I-1

SECOND AMENDMENT TO THE
SECOND AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO THE SECOND AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT (this "Amendment"), dated as of April 27, 2017, is entered into among each of the parties listed on the signature pages hereto as an Originator (each an "Originator"; and collectively, the "Originators") and ARCH COAL, INC. (the "Company").

RECITALS

1. The Company and the Originators are parties to the Second Amended and Restated Purchase and Sale Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, the "Agreement").

2. The parties hereto desire to amend the Agreement as hereinafter set forth.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Certain Defined Terms. Capitalized terms that are used but not defined herein shall have the meanings set forth in the Agreement.

SECTION 2. Amendments to the Agreement.

2.1 Section 1.1 of the Agreement is hereby amended by inserting the following new paragraph at the end of such section:

"For the avoidance of doubt, no Originator is hereby selling, assigning, granting a security interest in or otherwise transferring to the Company any of such Originator's right to receive payment of the Purchase Price hereunder or any payment of the Purchase Price made in accordance with the terms of the Transaction Documents."

2.2 Section 6.1(l) of the Agreement is hereby replaced in its entirety with the following:

(l) Additional Mortgages Under Any Credit Agreement. The Company shall (and shall cause each applicable Originator to) (x) provide written notice promptly, and in any event within 30 days, to the Seller, the Administrator and each Purchaser Agent of each new Mortgage or amendment or modification of an existing Mortgage under any Credit Agreement covering as-extracted collateral and (y) file or record all amendments and/or releases to such new, amended or modified Mortgages necessary to release and remove of record any such security interest, lien or other interest of the related grantee or beneficiary in the Receivables, Contracts and Related Security, in each case in form and substance satisfactory to the Administrator.

2.3 Section 6.3(e) of the Agreement is hereby amended to replace the word "the" appearing before each usage of the defined term "Credit Agreement" therein with the word "any."

2.4 Section 6.3(i) of the Agreement is hereby replaced in its entirety with the word "[Reserved]."

SECTION 3. Representations and Warranties. Each of the Originators hereby represents and warrants as follows:

(a) Representations and Warranties. The representations and warranties made by it in the Transaction Documents are true and correct as of the date hereof (unless stated to relate solely to an earlier date, in which case such representations or warranties were true and correct as of such earlier date).

(b) Enforceability. The execution and delivery by such Person of this Amendment, and the performance of each of its obligations under this Amendment and the Agreement, as amended hereby, are within each of its organizational powers and have been duly authorized by all necessary organizational action on its part. This Amendment and the Agreement, as amended hereby, are such Person's valid and legally binding obligations, enforceable in accordance with their respective terms.

(c) No Default. Both before and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Purchase and Sale Termination Event, Unmatured Purchase and Sale Termination Event, Termination Event or Unmatured Termination Event exists or shall exist.

SECTION 4. Effect of Amendment. All provisions of the Agreement, as expressly amended and modified by this Amendment, shall remain in full force and effect. After this Amendment becomes effective, all references in the Agreement (or in any other Transaction Document) to "this Agreement", "hereof", "herein" or words of similar effect referring to the Agreement shall be deemed to be references to the Agreement as amended by this Amendment. This Amendment shall not be deemed, either expressly or impliedly, to waive, amend or supplement any provision of the Agreement other than as set forth herein.

SECTION 5. Effectiveness. This Amendment shall become effective as of the date hereof upon receipt by the Administrator of duly executed counterparts of this Amendment by each of the parties hereto in form and substance reasonably satisfactory to the Administrator.

SECTION 6. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument.

Delivery of an executed counterpart of a signature page to this Amendment by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

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SECTION 7. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York.

SECTION 8. Section Headings. The various headings of this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment, the Agreement or any provision hereof or thereof.

SECTION 9. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 10. Ratification. After giving effect to this Amendment and the transactions contemplated by this Amendment, all of the provisions of the Performance Guaranty shall remain in full force and effect and the Performance Guarantor hereby ratifies and affirms the Performance Guaranty and acknowledges that the Performance Guaranty has continued and shall continue in full force and effect in accordance with its terms.

SECTION 11. Transaction Document. For the avoidance of doubt, each party hereto agrees that this Amendment constitutes a Transaction Document.

SECTION 12. Severability. Each provision of this Amendment shall be severable from every other provision of this Amendment for the purpose of determining the legal enforceability of any provision hereof, and the unenforceability of one or more provisions of this Amendment in one jurisdiction shall not have the effect of rendering such provision or provisions unenforceable in any other jurisdiction.

[SIGNATURES BEGIN ON NEXT PAGE]

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ARCH COAL, INC.,
as Company

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Senior Vice President & Chief Financial Officer

ARCH COAL SALES COMPANY, INC.,
as Servicer

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Vice President & Treasurer

Second Amendment to
Second A&R PSA (Arch Coal)

S - 1

**ARCH COAL SALES COMPANY, INC.
ARCH ENERGY RESOURCES, LLC
ARCH WESTERN RESOURCES, LLC
CUMBERLAND RIVER COAL LLC
LONE MOUNTAIN PROCESSING LLC
MINGO LOGAN COAL LLC
MOUNTAIN COAL COMPANY, L.L.C.
THUNDER BASIN COAL COMPANY, L.L.C.
COALQUEST DEVELOPMENT LLC
HUNTER RIDGE COAL LLC
HUNTER RIDGE HOLDINGS, INC.
HUNTER RIDGE LLC
ICG BECKLEY, LLC
ICG EAST KENTUCKY, LLC
ICG ILLINOIS, LLC
ARCH COAL GROUP, LLC
ICG, LLC
ICG NATURAL RESOURCES, LLC**

**ICG TYGART VALLEY, LLC
INTERNATIONAL ENERGY GROUP, LLC
MARINE COAL SALES LLC
SIMBA GROUP LLC
UPSHUR PROPERTY LLC, as Originators**

By: /s/ John T. Drexler
Name: John T. Drexler
Title: Vice President & Treasurer

**COAL-MAC LLC
BRONCO MINING COMPANY LLC
HAWTHORNE COAL COMPANY LLC
KING KNOB COAL CO. LLC
MELROSE COAL COMPANY LLC
PATRIOT MINING COMPANY LLC
VINDEK ENERGY LLC
WHITE WOLF ENERGY LLC
WOLF RUN MINING LLC, as Originators**

By: /s/ Paul A. Lang
Name: Paul A. Lang
Title: Director/Manager

Second Amendment to
Second A&R PSA (Arch Coal)

S - 2

CONSENT TO:

PNC BANK, NATIONAL ASSOCIATION,
as Administrator and as a Purchaser Agent

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

Second Amendment to
Second A&R PSA (Arch Coal)

S - 3

REGIONS BANK,
as a Purchaser Agent

By: /s/ Linda M. Harris
Name: Linda M. Harris
Title: Senior Vice President

Second Amendment to
Second A&R PSA (Arch Coal)

S - 4

ARCH COAL, INC.,
as Performance Guarantor

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Sr. Vice President – Law, General Counsel and Secretary

Second Amendment to
Second A&R PSA (Arch Coal)

FIRST AMENDMENT TO THE
SECOND AMENDED AND RESTATED SALE AND CONTRIBUTION AGREEMENT

THIS FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED SALE AND CONTRIBUTION AGREEMENT (this "Amendment"), dated as of April 27, 2017, is entered into between ARCH COAL, INC. (individually, "ACI"), as the transferor (the "Transferor"), and ARCH RECEIVABLE COMPANY, LLC, a Delaware limited liability company (the "Company").

RECITALS

1. The Transferor and the Company are parties to the Second Amended and Restated Sale and Contribution Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, the "Agreement").

2. The parties hereto desire to amend the Agreement as hereinafter set forth.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Certain Defined Terms. Capitalized terms that are used but not defined herein shall have the meanings set forth in the Agreement.

SECTION 2. Amendments to the Agreement.

2.1 Section 1.1 of the Agreement is hereby amended by inserting the following new paragraph at the end of such section:

"For the avoidance of doubt, the Transferor is not hereby selling, assigning, granting a security interest in or otherwise transferring to the Company any of the Transferor's right to receive payment of the Purchase Price hereunder or any payment of the Purchase Price made in accordance with the terms of the Transaction Documents."

2.2 Section 6.3(i) of the Agreement is hereby replaced in its entirety with the word "[Reserved]."

SECTION 3. Representations and Warranties. The Transferor hereby represents and warrants as follows:

(a) Representations and Warranties. The representations and warranties made by it in the Transaction Documents are true and correct as of the date hereof (unless stated to relate solely to an earlier date, in which case such representations or warranties were true and correct as of such earlier date).

(b) Enforceability. The execution and delivery by such Person of this Amendment, and the performance of each of its obligations under this Amendment and the Agreement, as amended hereby, are within each of its organizational powers and have been duly authorized by all necessary organizational action on its part. This Amendment and the Agreement, as amended hereby, are such Person's valid and legally binding obligations, enforceable in accordance with their respective terms.

(c) No Default. Both before and immediately after giving effect to this Amendment and the transactions contemplated hereby, no Sale and Contribution Termination Event, Unmatured Sale and Contribution Termination Event, Termination Event or Unmatured Termination Event exists or shall exist.

SECTION 4. Effect of Amendment. All provisions of the Agreement, as expressly amended and modified by this Amendment, shall remain in full force and effect. After this Amendment becomes effective, all references in the Agreement (or in any other Transaction Document) to "this Agreement", "hereof", "herein" or words of similar effect referring to the Agreement shall be deemed to be references to the Agreement as amended by this Amendment. This Amendment shall not be deemed, either expressly or impliedly, to waive, amend or supplement any provision of the Agreement other than as set forth herein.

SECTION 5. Effectiveness. This Amendment shall become effective as of the date hereof upon receipt by the Administrator of duly executed counterparts of this Amendment by each of the parties hereto in form and substance reasonably satisfactory to the Administrator.

SECTION 6. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

SECTION 7. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York.

SECTION 8. Section Headings. The various headings of this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment, the Agreement or any provision hereof or thereof.

SECTION 9. Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 10. Ratification. After giving effect to this Amendment and the transactions contemplated by this Amendment, all of the provisions of the Performance Guaranty shall remain in full force and effect and the Performance Guarantor hereby ratifies and affirms the Performance Guaranty and

acknowledges that the Performance Guaranty has continued and shall continue in full force and effect in accordance with its terms.

SECTION 11. Transaction Document. For the avoidance of doubt, each party hereto agrees that this Amendment constitutes a Transaction Document.

SECTION 12. Severability. Each provision of this Amendment shall be severable from every other provision of this Amendment for the purpose of determining the legal enforceability of any provision hereof, and the unenforceability of one or more provisions of this Amendment in one jurisdiction shall not have the effect of rendering such provision or provisions unenforceable in any other jurisdiction.

[SIGNATURES BEGIN ON NEXT PAGE]

ARCH COAL, INC.,
as Transferor

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Sr. Vice President – Law, General Counsel and Secretary

ARCH RECEIVABLE COMPANY, LLC
as Company

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

First Amendment to
Second A&R Sale and Contribution Agreement
(Arch Coal)

CONSENT TO:

PNC BANK, NATIONAL ASSOCIATION,
as Administrator and as a Purchaser Agent

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

First Amendment to
Second A&R Sale and Contribution Agreement
(Arch Coal)

REGIONS BANK,
as a Purchaser Agent

By: /s/ Mark A. Kassis

Name: Mark A. Kassis
Title: Senior Vice President

First Amendment to
Second A&R Sale and Contribution Agreement
(Arch Coal)

S - 3

ARCH COAL, INC.,
as Performance Guarantor

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Sr. Vice President – Law, General Counsel and Secretary

First Amendment to
Second A&R Sale and Contribution Agreement
(Arch Coal)

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News from
Arch Coal, Inc.

FOR FURTHER INFORMATION:
Logan Bonacorsi
Investor Relations
314/994-2766

FOR IMMEDIATE RELEASE

Arch Coal, Inc. Reports First Quarter 2017 Results

*Earnings per share increase 55 percent
Board announces capital redeployment plan*

ST. LOUIS, May 2, 2017 — Arch Coal, Inc. (NYSE: ARCH) today reported first quarter 2017 net income of \$51.7 million, or \$2.03 per diluted share, compared with \$33.4 million, or \$1.31 per diluted share, in the fourth quarter of 2016. Excluding certain charges, adjusted diluted earnings per share (“adjusted EPS”) (1) was \$2.55 per share. The charges for the first quarter include non-cash sales contract amortization, reorganization fees and early debt extinguishment items and related tax impact. The company earned adjusted earnings before interest, taxes, depreciation, depletion, amortization, reorganization items and early debt extinguishment charges (“adjusted EBITDAR”)(1) of \$120.5 million in the first quarter of 2017, a nearly 30-percent increase versus the previous quarter. Revenues totaled \$600.9 million for the three months ended March 31, 2017.

“Arch executed a strong performance in the first quarter of 2017, with meaningful expansion in earnings per share and adjusted EBITDAR,” said John W. Eaves, Arch’s chief executive officer. “Our solid financial results underscore the strategic value of the company’s two complementary lines of business and our highly competitive position in our key operating segments. During the first quarter, we capitalized on resurgent global metallurgical markets while remaining poised to take advantage of improving fundamentals in the thermal coal markets as the year progresses.”

Arch Initiates Capital Allocation Programs

As a result of the company’s healthy liquidity position and expectations for continued cash generation in 2017, the Board of Directors has approved two capital allocation initiatives to enhance shareholder returns. First, the board has instituted a quarterly cash dividend of \$0.35 per share. The quarterly dividend will begin with the second quarter and will be paid on June 15, 2017 to stockholders of record on May 31, 2017.

(1) *Adjusted EBITDAR and Adjusted EPS are defined and reconciled in the “Reconciliation of Non-GAAP measures” in this release.*

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In addition, the board has approved the establishment of a share repurchase program that authorizes the company to purchase up to \$300 million of the company’s outstanding common stock. The repurchase program announced today has no time limit and Arch expects to fund future share repurchases with cash on hand and cash generated from operations.

Future dividend declarations and share repurchases will be subject to ongoing board review and authorization and will be based on a number of factors, including business and market conditions, Arch’s future financial performance and other capital priorities.

“Given the volatile nature of commodity markets in general, it is important that we take a prudent approach to our capital allocation initiatives,” said Eaves. “The board believes Arch’s strong free cash flow profile coupled with our low leverage will continue to provide opportunities to return value to our shareholders, while at the same time enabling us to maintain the financial flexibility to reinvest in our premier operating portfolio.”

As previously announced, the company decreased its total indebtedness and interest expense during the first quarter, bolstering its already strong financial position. Through its successful refinancing, Arch reduced its debt levels by more than \$25 million and lowered its annual interest expense by nearly \$18 million. At the end of the first quarter, Arch’s debt level totaled \$334 million, comprised of the \$300 million term loan and \$34 million in equipment financing and other debt. Arch’s cash and short-term investment balance grew by \$77 million from year-end 2016 to over \$470 million at March 31, 2017.

On April 27, 2017, Arch entered into an inventory-only Asset Based Lending (“ABL”) facility and amended its existing accounts receivable securitization facility. The new ABL increases the borrowing base that supports Arch’s outstanding letters of credit, which would have freed up approximately \$30 million of restricted cash on a pro forma basis at March 31, 2017. The combined facilities will also lower borrowing costs.

“We are extremely pleased with the further improvements to our capital structure,” said John T. Drexler, Arch’s chief financial officer. “Looking ahead, we remain committed to maintaining a healthy level of liquidity and managing our balance sheet carefully while creating and enhancing returns for our shareholders.”

Arch Focuses on Fundamental Values

Arch subsidiaries earned 14 safety and environmental awards in the three months ended March 31, 2017. Most notably, Arch’s Sentinel and Coal-Mac complexes attained West Virginia’s top safety awards among large underground and surface mines, while the West Elk mine was honored with both the top safety and environmental awards in Colorado. Furthermore, four of Arch’s operations and facilities attained a *Perfect Zero* — a dual achievement of operating without a reportable safety incident or environmental violation — for the three months ended March 31, 2017.

“We commend our employees for their outstanding safety and environmental accomplishments, and for their ongoing commitment to living our core values every day,” said Paul A. Lang,

Arch's president and chief operating officer. "We are constantly striving for improvement across our operating platform, with an ultimate goal of a *Perfect Zero* at all of our operations."

Arch Delivers Strong Operational Results

"Despite modestly lower sales volumes, we are off to a strong start in 2017," said Lang. "Our mining complexes delivered strong performances during the quarter just ended. We were successful in achieving higher price realizations across all of our operating segments in the first quarter. In particular, our Metallurgical segment delivered a standout performance — attaining an average sales price 40 percent higher than the fourth quarter of 2016. At the same time, we continue to diligently focus on managing our controllable costs, driving process improvement initiatives and maximizing revenues from our strategic unpriced volume position, with the goal of enhancing margins at each of our operations."

	Metallurgical	
	1Q17	4Q16
Tons sold (in millions)	2.1	2.4
Coking	1.5	1.7
PCI	0.1	0.2
Thermal	0.5	0.5
Average sales price per ton	\$ 90.84	\$ 65.61
Coking	\$ 105.51	\$ 75.36
PCI	\$ 62.34	\$ 54.78
Thermal	\$ 47.64	\$ 36.86
Cash cost per ton	\$ 57.67	\$ 52.98
Cash margin per ton	\$ 33.17	\$ 12.63

Cash cost per ton is defined and reconciled under "Operational Performance".

Mining complexes included in this segment are Beckley, Leer, Lone Mountain, Mountain Laurel and Sentinel

In the Metallurgical segment, first quarter 2017 cash margins increased nearly 165 percent versus the fourth quarter of 2016. Average sales price per ton rose \$25.23 in the first quarter of 2017 when compared with the fourth quarter of 2016, benefiting primarily from the ongoing strength in metallurgical coal markets. Sales volumes declined 12 percent over the same time period, due primarily to two planned longwall moves and to restricted lake season delivery schedules. Notably, Arch shipped 1.5 million tons of coking coal at an average realized price of \$105.51, a 40-percent increase over the average realized price achieved in the fourth quarter of 2016. Coking coal realizations benefited from significantly stronger pricing on index-based tons that shipped during the period as well as new sales. Higher per ton cash costs in the segment were driven by higher sales-sensitive costs, lower volume levels, and the impacts of the two longwall

moves. Arch believes its prior cost guidance for the segment is appropriate, and that this cost structure places Arch's operations firmly at the low end of the U.S. metallurgical coal industry's cost curve.

	Powder River Basin	
	1Q17	4Q16
Tons sold (in millions)	21.3	21.8
Average sales price per ton	\$ 12.57	\$ 12.41
Cash cost per ton	\$ 10.33	\$ 9.88
Cash margin per ton	\$ 2.24	\$ 2.53

Cash cost per ton is defined and reconciled under "Operational Performance".

Mining complexes included in this segment are Black Thunder and Coal Creek

In the Powder River Basin, first quarter 2017 sales volumes declined modestly compared with the fourth quarter of 2016. Average sales price per ton increased \$0.16 in the first quarter when compared to the fourth quarter of 2016, benefiting from a favorable mix of customer shipments. Segment cash costs increased \$0.45 per ton over the same time period, driven by the impact of lower volume levels, increased repair and maintenance expense and higher fuel prices. As previously indicated, the segment's fourth quarter cost performance was exceptionally strong. Arch is maintaining its cost guidance of \$10.20 to \$10.70 per ton for the full year.

	Other Thermal	
	1Q17	4Q16
Tons sold (in millions)	2.3	2.5
Average sales price per ton	\$ 35.51	\$ 34.01
Cash cost per ton	\$ 23.82	\$ 21.79
Cash margin per ton	\$ 11.69	\$ 12.22

Cash cost per ton is defined and reconciled under "Operational Performance".

Mining complexes included in this segment are Coal-Mac, Viper and West Elk

In the Other Thermal segment, average sales price per ton increased \$1.50 versus the fourth quarter, driven by stronger pricing on shipments of West Elk coal destined for the international marketplace. Volumes were modestly lower in the first quarter, due in part to reduced West Elk shipments to eastern U.S. power plants during a mild winter. While still below the guidance range, cash cost per ton increased when compared to the fourth quarter due to the impact of lower

volume levels during the period. To reflect recent increased demand for West Elk coal, Arch is reducing the top end of its cost guidance for the segment. The company now anticipates costs to be in the range of \$25.00 per ton to \$29.00 per ton for 2017.

Key Market Developments

Metallurgical Coal Markets

- The lingering impact of Cyclone Debbie, which continues to disrupt the coking coal logistics chain in Queensland, Australia, is buoying global metallurgical markets. According to the principal Queensland rail carrier an estimated 20 million metric tons of

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predominately coking coal supply was impacted due to the storm. The seaborne metallurgical market totals approximately 300 million metric tons.

- Prior to the storm, metallurgical markets appeared to be in relatively healthy balance. Steel demand grew robustly in the first quarter; Chinese coking coal imports were up 50 percent year-over-year; and the expected seaborne coking coal supply response was largely confined to U.S. producers, who moved an additional 2.4 million tons of metallurgical coal into seaborne markets during the first quarter.
- In late March, before Cyclone Debbie made landfall, the Platts price assessment for vessels loaded off the U.S. East Coast was \$162.50 per metric ton for High-Vol A, Arch's primary metallurgical product. After the storm hit, High-Vol A prices peaked mid-month at \$295 and have since settled back to \$237 per metric ton. Low-Vol and High-Vol B products are currently being assessed at \$212 and \$185 per ton, respectively.

Thermal Coal Markets

- In thermal markets, still-inflated utility stockpiles continue to dampen domestic demand and pricing, but the situation is improving. Assuming normal summer weather, Arch believes stockpiles should approach target levels by year-end.
- Moreover, Arch is encouraged by the persistent strength in natural gas prices, which continue to hold up well despite an exceptionally mild winter and significant recent increases in drilling activity. Prompt month NYMEX is currently trading over \$3.20 per million Btus and the future strip for the remainder of 2017 averages \$3.39 per million Btus.
- At the natural gas pricing levels noted above, Arch expects the vast majority of Powder River Basin-served coal plants to dispatch in front of natural gas-fueled power plants. In fact, several large customers have re-entered the market in recent weeks to shore up their coal supplies in the face of improving coal consumption.
- International thermal pricing for prompt delivery in the Asia-Pacific region remains reasonably strong. Arch took advantage of the recent move higher to place additional West Elk tons into export markets.

Company Outlook

Based on the company's current expectations regarding the direction of metallurgical coal markets, Arch has raised its coking coal volume guidance for 2017. Arch now expects to sell between 6.7 and 7.1 million tons of coking coal, which excludes PCI coal. At the midpoint of its volume guidance level, Arch is over 85 percent committed on coking coal sales for the full year, with over 30 percent of that committed volume exposed to index-based pricing. At the midpoint of guidance, Arch's thermal sales are 88 percent committed for the full year.

"We are building upon our first-quarter results and expect our company to deliver an exceptional earnings performance in 2017," said Eaves. "Arch is strategically prepared to respond to

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evolving coal market dynamics, and we believe our strategic asset base, low-cost operational profile and strong balance sheet will enable Arch to deliver significant shareholder value."

	2017		2018	
	Tons	\$ per ton	Tons	\$ per ton
Sales Volume (in millions of tons)				
Coking	6.7 - 7.1			
PCI	0.7 - 0.8			
Thermal	88.0 - 96.0			
Total	95.4 - 103.9			
Metallurgical (in millions of tons)				
Committed, Priced Coking	4.1	\$96.06	—	
Committed, Unpriced Coking	1.9		1.9	
Total Committed Coking	6.0		1.9	
Committed, Priced PCI	0.7	\$65.40	—	
Committed, Unpriced PCI	—		—	
Total Committed PCI	0.7		—	
Committed, Priced Thermal	1.3	\$40.33	0.4	\$30.58
Committed, Unpriced Thermal	—		—	

Total Committed Thermal	1.3		0.4	
Average Metallurgical Cash Cost		\$51.00 - \$56.00		
Powder River Basin (in millions of tons)				
Committed, Priced	70.2	\$12.51	33.8	\$12.21
Committed, Unpriced	2.8		3.0	
Total Committed	73.0		36.8	
Average Cash Cost		\$10.20 - \$10.70		
Other Thermal (in millions of tons)				
Committed, Priced	6.8	\$35.65	2.9	\$38.04
Committed, Unpriced	—		—	
Total Committed	6.8		2.9	
Average Cash Cost		\$25.00 - \$29.00		
Corporate (in \$ millions)				
D,D&A excluding Sales Contract Amortization		\$124 - \$132		
Sales Contract Amortization		\$50 - \$58		
ARO Accretion		\$30 - \$32		
S,G&A		\$85 - \$89		
Interest Expense		\$23 - \$27		
Capital Expenditures		\$52 - \$60		
Tax Provision		0% - 3%		

A conference call regarding Arch Coal's first quarter 2017 financial results will be webcast live today at 10 a.m. Eastern time. The conference call can be accessed via the "investor" section of the Arch Coal website (<http://investor.archcoal.com>).

Forward-Looking Statements: *This press release contains "forward-looking statements" — that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, particular uncertainties arise from changes in the demand for our coal by the domestic electric generation industry; from legislation and regulations relating to the Clean Air Act and other environmental initiatives; from operational, geological, permit, labor and weather-related factors; from fluctuations in the amount of cash we generate from operations; from future integration of acquired businesses; and from numerous other matters of national, regional and global scale, including those of a political, economic, business, competitive or regulatory nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. For a*

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description of some of the risks and uncertainties that may affect our future results, you should see the risk factors described from time to time in the reports we file with the Securities and Exchange Commission.

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Arch Coal, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(In thousands, except per share data)

	Successor Three Months Ended March 31, 2017 (Unaudited)	Predecessor Three Months Ended March 31, 2016 (Unaudited)
Revenues	\$ 600,975	\$ 428,106
Costs, expenses and other operating		
Cost of sales	461,410	411,010
Depreciation, depletion and amortization	31,921	63,699
Accretion on asset retirement obligations	7,623	8,306
Amortization of sales contracts, net	14,690	(833)
Change in fair value of coal derivatives and coal trading activities, net	854	1,210
Asset impairment and mine closure costs	—	85,520
Selling, general and administrative expenses	20,523	19,826
Other operating income, net	(2,310)	(2,220)
	534,711	586,518
Income (loss) from operations	66,264	(158,412)
Interest expense, net		

Interest expense	(9,425)	(44,451)
Interest and investment income	527	1,138
	<u>(8,898)</u>	<u>(43,313)</u>
Income (loss) before nonoperating expenses	57,366	(201,725)
Nonoperating expense		
Net loss resulting from early retirement of debt and debt restructuring	(2,030)	(2,213)
Reorganization items, net	(2,828)	(3,875)
	<u>(4,858)</u>	<u>(6,088)</u>
Income (loss) before income taxes	52,508	(207,813)
Provision for (benefit from) income taxes	840	(1,111)
	<u>51,668</u>	<u>(206,702)</u>
Net income (loss)	<u>\$ 51,668</u>	<u>\$ (206,702)</u>
Net income (loss) per common share		
Basic EPS (LPS)	<u>\$ 2.07</u>	<u>\$ (9.71)</u>
Diluted EPS (LPS)	<u>\$ 2.03</u>	<u>\$ (9.71)</u>
Basic weighted average shares outstanding	<u>25,008</u>	<u>21,293</u>
Diluted weighted average shares outstanding	<u>25,408</u>	<u>21,293</u>
Adjusted EBITDAR (A) (Unaudited)	<u>\$ 120,498</u>	<u>\$ (1,720)</u>
Adjusted diluted income (loss) per common share (A)	<u>\$ 2.55</u>	<u>\$ (5.49)</u>

(A) Adjusted EBITDAR and Adjusted diluted income per common share are defined and reconciled under “Reconciliation of Non-GAAP Measures” later in this release.

Arch Coal, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(In thousands)

	<u>March 31,</u> 2017 (Unaudited)	<u>December 31,</u> 2016
Assets		
Current assets		
Cash and cash equivalents	\$ 347,580	\$ 305,372
Short term investments	122,505	88,072
Restricted cash	68,984	71,050
Trade accounts receivable	150,399	184,483
Other receivables	22,482	19,877
Inventories	125,194	113,462
Other current assets	74,063	96,306
Total current assets	<u>911,207</u>	<u>878,622</u>
Property, plant and equipment, net	1,027,288	1,053,603
Other assets		
Equity investments	104,144	96,074
Other noncurrent assets	102,277	108,298
Total other assets	<u>206,421</u>	<u>204,372</u>
Total assets	<u>\$ 2,144,916</u>	<u>\$ 2,136,597</u>
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable	\$ 103,130	\$ 95,953
Accrued expenses and other current liabilities	172,898	205,240
Current maturities of debt	7,898	11,038
Total current liabilities	<u>283,926</u>	<u>312,231</u>
Long-term debt	318,030	351,841
Asset retirement obligations	339,865	337,227
Accrued pension benefits	37,510	38,884
Accrued postretirement benefits other than pension	101,786	101,445
Accrued workers' compensation	184,792	184,568
Other noncurrent liabilities	77,301	63,824
Total liabilities	<u>1,343,210</u>	<u>1,390,020</u>

Stockholders' equity

Common Stock	250	250
Paid-in capital	692,253	688,424
Retained earnings	85,117	33,449
Accumulated other comprehensive income	24,086	24,454
Total stockholders' equity	<u>801,706</u>	<u>746,577</u>
Total liabilities and stockholders' equity	<u>\$ 2,144,916</u>	<u>\$ 2,136,597</u>

Arch Coal, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(In thousands)

	<u>Successor</u> <u>Three Months Ended</u> <u>March 31, 2017</u> <u>(Unaudited)</u>	<u>Predecessor</u> <u>Three Months Ended</u> <u>March 31, 2016</u> <u>(Unaudited)</u>
Operating activities		
Net income (loss)	\$ 51,668	\$ (206,702)
Adjustments to reconcile to cash provided by operating activities:		
Depreciation, depletion and amortization	31,921	63,699
Accretion on asset retirement obligations	7,623	8,306
Amortization of sales contracts, net	14,690	(833)
Prepaid royalties expensed	2,281	1,286
Deferred income taxes	5,830	(429)
Employee stock-based compensation expense	2,426	1,003
Gains on disposals and divestitures	(347)	1
Asset impairment and noncash mine closure costs	—	77,550
Net loss resulting from early retirement of debt and debt restructuring	2,030	2,213
Non-cash bankruptcy reorganization items	—	(13,892)
Amortization relating to financing activities	535	3,150
Changes in:		
Receivables	37,134	7,815
Inventories	(11,732)	734
Accounts payable, accrued expenses and other current liabilities	(20,529)	39,441
Income taxes, net	(4,965)	(642)
Other	6,964	7,202
Cash provided by (used in) operating activities	<u>125,529</u>	<u>(10,098)</u>
Investing activities		
Capital expenditures	(5,950)	(5,926)
Minimum royalty payments	(63)	(71)
Proceeds from disposals and divestitures	420	—
Purchases of short term investments	(78,523)	(55,132)
Proceeds from sales of short term investments	45,886	56,134
Investments in and advances to affiliates, net	(7,905)	(2,156)
Withdrawals (deposits) of restricted cash	2,066	(12,108)
Cash used in investing activities	<u>(44,069)</u>	<u>(19,259)</u>
Financing activities		
Proceeds from issuance of term loan due 2024	298,500	—
Payments to extinguish term loan due 2021	(325,684)	—
Net payments on other debt	(2,810)	(5,410)
Debt financing costs	(7,228)	(18,403)
Net loss resulting from early retirement of debt and debt restructuring	(2,030)	(2,213)
Cash used in financing activities	<u>(39,252)</u>	<u>(26,026)</u>
Increase (decrease) in cash and cash equivalents	42,208	(55,383)
Cash and cash equivalents, beginning of period	<u>305,372</u>	<u>450,781</u>
Cash and cash equivalents, end of period	<u>\$ 347,580</u>	<u>\$ 395,398</u>

Arch Coal, Inc. and Subsidiaries
Schedule of Consolidated Debt
(In thousands)

	<u>March 31,</u> <u>2017</u> <u>(Unaudited)</u>	<u>December 31,</u> <u>2016</u>
Term loan due 2024 (\$300.0 million face value)	\$ 298,512	\$ —
Term loan due 2021 (\$325.7 million face value)	—	325,684

Other		34,424	37,195
Debt issuance costs		(7,008)	—
		<u>325,928</u>	<u>362,879</u>
Less: current maturities of debt		7,898	11,038
Long-term debt		<u>\$ 318,030</u>	<u>\$ 351,841</u>
Calculation of net debt			
Total debt (excluding debt issuance costs)	\$	332,936	\$ 362,879
Less liquid assets:			
Cash and cash equivalents		347,580	305,372
Short term investments		<u>122,505</u>	<u>88,072</u>
		<u>470,085</u>	<u>393,444</u>
Net debt	\$	<u>(137,149)</u>	<u>\$ (30,565)</u>

Arch Coal, Inc. and Subsidiaries
Operational Performance
(In millions, except per ton data)

	Successor		Predecessor	
	Three Months Ended March 31, 2017		Three Months Ended March 31, 2016	
	(Unaudited)		(Unaudited)	
Powder River Basin				
Tons Sold	21.3		16.5	
Segment Sales	\$ 268.1	\$ 12.57	\$ 218.5	\$ 13.24
Segment Cash Cost of Sales	<u>220.4</u>	<u>10.33</u>	<u>205.7</u>	<u>12.46</u>
Segment Cash Margin	47.7	2.24	12.8	0.78
Metallurgical				
Tons Sold	2.1		2.2	
Segment Sales	\$ 187.1	\$ 90.84	\$ 110.6	\$ 51.10
Segment Cash Cost of Sales	<u>118.8</u>	<u>57.67</u>	<u>104.3</u>	<u>48.19</u>
Segment Cash Margin	68.3	33.17	6.3	2.91
Other Thermal				
Tons Sold	2.3		1.3	
Segment Sales	\$ 81.4	\$ 35.51	\$ 50.8	\$ 39.80
Segment Cash Cost of Sales	<u>54.6</u>	<u>23.82</u>	<u>47.6</u>	<u>37.32</u>
Segment Cash Margin	26.8	11.69	3.2	2.48
Total Segment Cash Margin	\$ 142.8		\$ 22.2	
Selling, general and administrative expenses	(20.5)		(19.8)	
Liquidated damages under export logistics contracts	—		(1.6)	
Other	<u>(1.8)</u>		<u>(2.5)</u>	
Adjusted EBITDAR	<u>\$ 120.5</u>		<u>\$ (1.7)</u>	

Reconciliation of Non-GAAP Measures

	Successor		Predecessor	
	Three Months Ended March 31, 2017		Three Months Ended March 31, 2016	
	(Unaudited)		(Unaudited)	
Total segment sales	\$ 536.6		\$ 379.9	
Transportation costs billed to customers	64.4		37.5	
Coal risk management derivative settlements	—		0.2	
Other (1)	0.1		10.6	
Revenues	<u>\$ 601.0</u>		<u>\$ 428.1</u>	

(1) Other includes coal sales associated with mines that have operated historically but have been idled or disposed of and are no longer part of a segment.

	Successor		Predecessor	
	Three Months Ended March 31, 2017		Three Months Ended March 31, 2016	
	(Unaudited)		(Unaudited)	
Total segment cash cost of sales	\$ 393.7		\$ 357.6	

Transportation costs billed to customers	64.4	37.5
Risk management derivative settlements—diesel fuel	(0.6)	(1.3)
Other (1)	3.9	17.2
Cost of sales	\$ 461.4	\$ 411.0

(1) Other includes costs associated with mines that have operated historically but have been idled or disposed of and are no longer part of a segment and operating overhead.

Arch Coal, Inc. and Subsidiaries
Reconciliation of Non-GAAP Measures
(In thousands, except per share data)

Included in the accompanying release, we have disclosed certain non-GAAP measures as defined by Regulation G. The following reconciles these items to net income and cash flows as reported under GAAP.

Adjusted EBITDAR

Adjusted EBITDAR is defined as net income attributable to the Company before the effect of net interest expense, income taxes, depreciation, depletion and amortization, accretion on asset retirement obligations, amortization of sales contracts and reorganization items, net. Adjusted EBITDAR may also be adjusted for items that may not reflect the trend of future results.

Adjusted EBITDAR is not a measure of financial performance in accordance with generally accepted accounting principles, and items excluded from Adjusted EBITDAR are significant in understanding and assessing our financial condition. Therefore, Adjusted EBITDAR should not be considered in isolation, nor as an alternative to net income, income from operations, cash flows from operations or as a measure of our profitability, liquidity or performance under generally accepted accounting principles. The Company uses adjusted EBITDAR to measure the operating performance of its segments and allocate resources to the segments. Furthermore, analogous measures are used by industry analysts and investors to evaluate our operating performance. Investors should be aware that our presentation of Adjusted EBITDAR may not be comparable to similarly titled measures used by other companies. The table below shows how we calculate Adjusted EBITDAR.

	Successor Three Months Ended March 31, 2017 (Unaudited)	Predecessor Three Months Ended March 31, 2016 (Unaudited)
Net income (loss)	\$ 51,668	\$ (206,702)
Income tax (benefit) expense	840	(1,111)
Interest expense, net	8,898	43,313
Depreciation, depletion and amortization	31,921	63,699
Accretion on asset retirement obligations	7,623	8,306
Amortization of sales contracts, net	14,690	(833)
Asset impairment and mine closure costs	—	85,520
Net loss resulting from early retirement of debt and debt restructuring	2,030	2,213
Reorganization items, net	2,828	3,875
Adjusted EBITDAR	<u>\$ 120,498</u>	<u>\$ (1,720)</u>

Adjusted net income (loss) and adjusted diluted income (loss) per share

Adjusted net income (loss) and adjusted diluted income (loss) per common share are adjusted for the after-tax impact of reorganization items, net and are not measures of financial performance in accordance with generally accepted accounting principles. We believe that adjusted net income (loss) and adjusted diluted income (loss) per common share better reflect the trend of our future results by excluding items relating to significant transactions. The adjustments made to arrive at these measures are significant in understanding and assessing our financial condition. Therefore, adjusted net income (loss) and adjusted diluted income (loss) per share should not be considered in isolation, nor as an alternative to net income (loss) or diluted income (loss) per common share under generally accepted accounting principles.

	Successor Three Months Ended March 31, 2017 (Unaudited)	Predecessor Three Months Ended March 31, 2016 (Unaudited)
Net income (loss)	\$ 51,668	\$ (206,702)
Amortization of sales contracts, net	14,690	(833)
Asset impairment and mine closure costs	—	85,520
Net loss resulting from early retirement of debt and debt restructuring	2,030	2,213
Reorganization items, net	2,828	3,875
Tax impact of adjustment	(6,325)	(915)
Adjusted net income (loss)	<u>\$ 64,891</u>	<u>\$ (116,842)</u>
Diluted weighted average shares outstanding	<u>25,408</u>	<u>21,293</u>
Diluted income (loss) per share	<u>\$ 2.03</u>	<u>\$ (9.71)</u>

Amortization of sales contracts, net	0.58	(0.04)
Asset impairment and mine closure costs	—	4.02
Net loss resulting from early retirement of debt and debt restructuring	0.08	0.10
Reorganization items, net	0.11	0.18
Tax impact of adjustments	(0.25)	(0.04)
Adjusted diluted income (loss) per share	<u>\$ 2.55</u>	<u>\$ (5.49)</u>
