

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the Quarterly Period Ended March 31, 2002

OR

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

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

Commission file number 1-13105

ARCH COAL, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

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

One CityPlace Drive, Suite 300, St. Louis, Missouri 63141  
(Address of principal executive offices)(Zip Code)

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

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

At May 1, 2002, there were 52,376,484 shares of registrant's common stock outstanding.

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## PART I - FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

ARCH COAL, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(IN THOUSANDS)

	March 31, 2002	December 31, 2001
	----- (Unaudited)	-----
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 1,602	\$ 6,890
Trade receivables	139,104	149,956
Other receivables	32,139	32,303
Inventories	70,127	60,133
Prepaid royalties	3,035	1,997
Deferred income taxes	23,840	23,840
Other	13,190	14,337
	-----	-----
<b>Total current assets</b>	<b>283,037</b>	<b>289,456</b>
	-----	-----
Property, plant and equipment, net	1,430,170	1,396,786
	-----	-----
<b>Other assets</b>		
Prepaid royalties	51,116	35,216
Coal supply agreements	76,309	81,424
Deferred income taxes	197,209	195,411
Investment in Canyon Fuel	156,608	170,686
Other	36,750	34,580
	-----	-----
	517,992	517,317
	-----	-----
<b>Total assets</b>	<b>\$ 2,231,199</b>	<b>\$ 2,203,559</b>
	=====	=====
<b>Liabilities and stockholders' equity</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 115,228	\$ 99,081
Accrued expenses	147,133	134,062
Current portion of debt	6,500	6,500
	-----	-----
<b>Total current liabilities</b>	<b>268,861</b>	<b>239,643</b>
Long-term debt	792,354	767,355
Accrued postretirement benefits other than pension	325,618	326,098
Accrued reclamation and mine closure	126,074	123,761
Accrued workers' compensation	79,061	78,768
Accrued pension cost	5,353	22,539
Obligations under capital leases	7,691	8,210
Other noncurrent liabilities	59,548	66,443
	-----	-----
<b>Total liabilities</b>	<b>1,664,560</b>	<b>1,632,817</b>
	-----	-----
<b>Stockholders' equity</b>		
Common stock	527	527
Paid-in capital	835,585	835,427
Retained deficit	(249,700)	(239,336)
Treasury stock, at cost	(5,047)	(5,047)
Accumulated other comprehensive loss	(14,726)	(20,829)
	-----	-----
<b>Total stockholders' equity</b>	<b>566,639</b>	<b>570,742</b>
	-----	-----
<b>Total liabilities and stockholders' equity</b>	<b>\$ 2,231,199</b>	<b>\$ 2,203,559</b>
	=====	=====

See notes to condensed consolidated financial statements.

ARCH COAL, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(IN THOUSANDS, EXCEPT PER SHARE DATA)  
(UNAUDITED)

	Three Months Ended March 31,	
	2002	2001
Revenues		
Coal sales	\$ 358,595	\$ 360,043
Income from equity investment	1,268	6,059
Other revenues	8,604	15,325
	-----	-----
	368,467	381,427
	-----	-----
Costs and expenses		
Cost of coal sales	347,211	329,525
Selling, general and administrative expenses	9,870	13,794
Amortization of coal supply agreements	5,114	7,586
Other expenses	7,592	4,329
	-----	-----
	369,787	355,234
	-----	-----
Income (loss) from operations	(1,320)	26,193
Interest expense, net:		
Interest expense	(12,002)	(21,354)
Interest income	268	251
	-----	-----
	(11,734)	(21,103)
	-----	-----
Income (loss) before income taxes	(13,054)	5,090
Income tax benefit	(5,700)	(1,000)
	-----	-----
Net income (loss)	\$ (7,354)	\$ 6,090
	=====	=====
Basic and diluted earnings (loss) per common share	\$ (0.14)	\$ 0.15
	=====	=====
Weighted average shares outstanding	52,356	40,411
	=====	=====
Dividends declared per share	\$ 0.0575	\$ 0.0575
	=====	=====

See notes to condensed consolidated financial statements.

ARCH COAL, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(IN THOUSANDS)  
(UNAUDITED)

	Three Months Ended March 31,	
	2002	2001
Net income (loss)	\$ (7,354)	\$ 6,090
Adjustments to reconcile to cash provided by operating activities:		
Depreciation, depletion and amortization	42,741	44,240
Prepaid royalties expensed	1,874	1,607
Net gain on disposition of assets	(187)	(3,435)
Income from equity investment	(1,268)	(6,059)
Net distributions from (contributions to) equity investment	15,346	20,755
Changes in:		
Receivables	11,016	2,334
Inventories	(9,994)	(3,358)
Accounts payable and accrued expenses	11,218	14,249
Income taxes	(5,700)	(5,767)
Accrued postretirement benefits other than pension	(480)	(3,826)
Accrued reclamation and mine closure	2,313	(2,795)
Accrued workers' compensation benefits	293	1,044
Other	3,440	413
Cash provided by operating activities	63,258	65,492
Investing activities		
Additions to property, plant and equipment	(73,068)	(48,547)
Proceeds from dispositions of property, plant and equipment	1,706	3,631
Additions to prepaid royalties	(18,812)	(18,804)
Cash used in investing activities	(90,174)	(63,720)
Financing activities		
Net proceeds from (payments on) revolver and lines of credit	24,999	(51,725)
Payments on term loans	-	(47,000)
Reduction of obligations under capital leases	(519)	(752)
Dividends paid	(3,010)	(2,495)
Proceeds from sale of common stock	158	96,521
Cash provided by (used in) financing activities	21,628	(5,451)
Decrease in cash and cash equivalents	(5,288)	(3,679)
Cash and cash equivalents, beginning of period	6,890	6,028
Cash and cash equivalents, end of period	\$ 1,602	\$ 2,349

See notes to condensed consolidated financial statements.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
MARCH 31, 2002  
(UNAUDITED)

Note A - General

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles for interim financial reporting and Securities and Exchange Commission regulations, but are subject to any year-end adjustments that may be necessary. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Results of operations for the period ended March 31, 2002 are not necessarily indicative of results to be expected for the year ending December 31, 2002. Arch Coal, Inc. (the "Company") operates one reportable segment: the production of steam and metallurgical coal from surface and deep mines throughout the United States, for sale to utility, industrial and export markets. The Company's mines are primarily located in the central Appalachian and western regions of the United States. All subsidiaries (except as noted below) are wholly owned. Significant intercompany transactions and accounts have been eliminated in consolidation.

The Company's Wyoming, Colorado and Utah coal operations are included in a joint venture named Arch Western Resources, LLC ("Arch Western"). Arch Western is 99% owned by the Company and 1% owned by BP Amoco. The Company also acts as the managing member of Arch Western.

The membership interests in the Utah coal operations, Canyon Fuel Company, LLC ("Canyon Fuel"), are owned 65% by Arch Western and 35% by a subsidiary of ITOCHU Corporation. The Company's 65% ownership of Canyon Fuel is accounted for on the equity method in the Condensed Consolidated Financial Statements as a result of certain super-majority voting rights in the joint venture agreement. Income from Canyon Fuel is reflected in the Condensed Consolidated Statements of Operations as income from equity investment (see additional discussion in "Investment in Canyon Fuel" in Note C).

Note B - Other Comprehensive Income

Other comprehensive income items under FAS 130, Reporting Comprehensive Income, are transactions recorded in stockholders' equity during the year, excluding net income and transactions with stockholders. The Company adopted FAS 133, Accounting for Derivative Instruments and Hedging Activities, on January 1, 2001. In accordance with FAS 133, the Company recorded a cumulative effect of accounting change which is shown below. Following are the items included in accumulated other comprehensive income (loss) and the related tax effects including the adoption of FAS 133:

	Financial Derivatives	Minimum Pension Liability Adjustments	Accumulated Other Other Comprehensive Loss
	-----	-----	-----
		(in thousands)	
Adoption (January 1, 2001)			
Pre-tax amount	\$ (7,910)	\$ -	\$ (7,910)
Tax benefit	3,085	-	3,085
	-----	-----	-----
Net amount	\$ (4,825)	\$ -	\$ (4,825)
	=====	=====	=====
Three months ended			
March 31, 2001			
Pre-tax amount	\$ (15,056)	\$ -	\$ (15,056)
Tax benefit	5,872	-	5,872
	-----	-----	-----
Net amount	\$ (9,184)	\$ -	\$ (9,184)
	=====	=====	=====
March 31, 2001			
Pre-tax amount	\$ (22,966)	\$ -	\$ (22,966)
Tax benefit	8,957	-	8,957
	-----	-----	-----
Net amount	\$ (14,009)	\$ -	\$ (14,009)
	=====	=====	=====
	Financial Derivatives	Minimum Pension Liability Adjustments	Accumulated Other Comprehensive Loss
	-----	-----	-----
December 31, 2001			
Pre-tax amount	\$ (29,472)	\$ (4,673)	\$ (34,145)
Tax benefit	11,494	1,822	13,316
	-----	-----	-----
Net amount	\$ (17,978)	\$ (2,851)	\$ (20,829)
	=====	=====	=====
Three months ended			
March 31, 2002			
Pre-tax amount	\$ 10,005	\$ -	\$ 10,005
Tax benefit	(3,902)	-	(3,902)
	-----	-----	-----
Net amount	\$ 6,103	\$ -	\$ 6,103
	=====	=====	=====
March 31, 2002			
Pre-tax amount	\$ (19,467)	\$ (4,673)	\$ (24,140)
Tax benefit	7,592	1,822	9,414
	-----	-----	-----
Net amount	\$ (11,875)	\$ (2,851)	\$ (14,726)
	=====	=====	=====

The following table presents comprehensive income:

	Three Months Ended March 31,	
	2002	2001
	(in thousands)	
Net income (loss)	\$ (7,354)	\$ 6,090
Other comprehensive income (loss) net of income tax benefit	6,103	(14,009)
Total comprehensive loss	\$ (1,251)	\$ (7,919)

Note C - Investment in Canyon Fuel

The following table presents unaudited summarized financial information for Canyon Fuel, which is accounted for on the equity method:

Condensed Income Statement Information	Three Months Ended March 31,	
	2002	2001
	(in thousands)	
Revenues	\$ 77,648	\$ 70,164
Total costs and expenses	77,155	62,154
Net income	\$ 493	\$ 8,010
65% of Canyon Fuel net income	\$ 320	\$ 5,207
Effect of purchase adjustments	948	852
Arch Coal's income from its equity investment in Canyon Fuel	\$ 1,268	\$ 6,059

The Company's income from its equity investment in Canyon Fuel represents 65% of Canyon Fuel's net income after adjusting for the effect of purchase adjustments primarily related to its investment in Canyon Fuel. The Company's investment in Canyon Fuel reflects purchase adjustments primarily related to the reduction in amounts assigned to sales contracts, mineral reserves and other property, plant and equipment. The purchase adjustments are amortized consistent with the underlying assets of the joint venture.

Note D - Inventories

Inventories consists of the following:

	March 31, 2002	December 31, 2001
	(in thousands)	
Coal	\$ 37,700	\$ 28,165
Repair parts and supplies	32,427	31,968
	\$ 70,127	\$ 60,133

Note E - Debt

Debt consists of the following:

	March 31, 2002	December 31, 2001
----- (in thousands) -----		
Indebtedness to banks under lines of credit	\$ 9,000	\$ 13,500
Indebtedness to banks under revolving credit agreement, expiring May 31, 2003	111,400	80,000
Indebtedness to banks under variable rate, non-amortizing term loan due May 31, 2003	675,000	675,000
Other	3,454	5,355
	-----	-----
	798,854	773,855
Less current portion	6,500	6,500
	-----	-----
Long-term debt	\$ 792,354	\$ 767,355
	=====	=====

At March 31, 2002, the Company had two credit facilities: a \$675.0 million non-amortizing term loan in the name of Arch Western and a revolving credit facility in the name of the Company that expired on May 31, 2003. The rate of interest on the borrowings under the agreements was a rate based on LIBOR. On April 18, 2002, the Company and Arch Western completed a refinancing of their existing credit facilities. The new credit facilities include five- and six-year non-amortizing term loans totaling \$675.0 million at Arch Western and a five-year revolving credit facility totaling \$350.0 million for the Company. The five-year non-amortizing term loan at Arch Western is for \$150.0 million while the six-year non-amortizing term loan is for \$525.0 million. The rate of interest on borrowings under both of the credit facilities is based on LIBOR. The Company's credit facility is secured by ownership interests in substantially all of its subsidiaries, except its ownership interests in Arch Western and its subsidiaries. The Arch Western credit facility is secured by its ownership interests in substantially all of its subsidiaries, but is not guaranteed by the Company.

Note F - Contingencies

The Company is a party to numerous claims and lawsuits with respect to various matters. The Company provides for costs related to contingencies when a loss is probable and the amount is reasonably determinable. After conferring with counsel, it is the opinion of management that the ultimate resolution of these claims, to the extent not previously provided for, will not have a material adverse effect on the consolidated financial position, results of operations or liquidity of the Company.

Note G - Changes in Estimates and Other Non-Recurring Revenues and Expenses

During the first quarter of 2001, as a result of permit revisions at the Arch of Illinois operation, the Company reduced its reclamation liability resulting in a pre-tax gain of \$3.5 million recognized as a reduction in cost of coal sales. The gain was more than offset by expense related to stock-based compensation benefit programs that may be realized in future periods as a result of improved stock performance. The compensation related accrual resulted in a pre-tax charge of \$6.3 million, \$3.6 million of which was recorded in selling, general and administrative expenses while \$2.7 million was recorded in cost of coal sales.

Note H - Earnings (Loss) per Share

The following table sets forth the computation of basic and diluted earnings (loss) per common share from continuing operations.

	Three Months Ended March 31,	
	2002	2001
(in thousands, except per share data)		
Numerator:		
Net income (loss)	\$ (7,354)	\$ 6,090
Denominator:		
Weighted average shares - denominator for basic	52,356	40,411
Dilutive effect of employee stock options	-	169
Adjusted weighted average shares - denominator for diluted	52,356	40,580
Basic and diluted earnings (loss) per common share	\$ (0.14)	\$ 0.15

#### Note I - Subsequent Event

On April 19, 2002, the Company created a limited partnership, Natural Resource Partners L.P., with three affiliated private companies, Western Pocahontas Properties Limited Partnership, Great Northern Properties Limited Partnership and New Gauley Coal Corporation. Natural Resource Partners was formed to engage principally in the business of owning and managing coal royalty properties in the three major coal producing regions in the United States: Appalachia, the Illinois Basin and the Western United States. The partnership has filed a registration statement on Form S-1 with the Securities and Exchange Commission relating to a proposed underwritten initial public offering of common units representing limited partner interests in Natural Resource Partners. The Company is contributing approximately 454 million tons of its 3.4 billion tons of total coal reserves to Natural Resource Partners in exchange for its ownership interest in the partnership.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### FORWARD-LOOKING STATEMENTS

Statements in this quarterly report which are not statements of historical fact are forward-looking statements within the "safe harbor" provision of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on the information available to, and the expectations and assumptions deemed reasonable by, the Company at the time the statements were made. Because these forward-looking statements are subject to various risks and uncertainties, actual results may differ materially from those projected in the statements. These expectations, assumptions and uncertainties include the Company's expectation of growth in the demand for electricity; belief that legislation and regulations relating to the Clean Air Act and the relatively higher costs of competing fuels will increase demand for its compliance and low-sulfur coal; expectation that the Company will continue to have adequate liquidity from its cash flow from operations, together with available borrowings under its credit facilities, to finance the Company's working capital needs and meet its debt reduction goals; a variety of market, operational, geologic, permitting, labor and weather related factors and the other risks and uncertainties which are described below under "Contingencies" and "Certain Trends and Uncertainties."

### RESULTS OF OPERATIONS

Quarter Ended March 31, 2002, Compared  
to Quarter Ended March 31, 2001

Net Income (Loss). The net loss for the quarter ended March 31, 2002 was \$7.4 million compared to net income of \$6.1 million for the quarter ended March 31, 2001. Results for the current quarter were negatively impacted by the current state of oversupply in the coal market that resulted from an extremely mild winter and a period of economic weakness that dampened electricity demand. As a result, during the first quarter of 2002 the Company reduced the rate of production from planned levels at its mining operations by 7%. In addition, as described below, the Company continued to be negatively impacted by production difficulties at its Samples surface operation in West Virginia. Partially offsetting these negative items in the current quarter were higher contract prices for coal shipped during the quarter compared to the same period in the



prior year and reduced interest expense associated with lower debt levels and lower interest rates. During 2001, the Company was able to enter into higher priced contracts for coal to be shipped during 2002. Results for the first quarter of 2001 were positively impacted by strong margins on limited tonnage that was open to market-based pricing and by strong performances at nearly all of the Company's mines except for the West Elk mine in Colorado. Also, during the first quarter of 2001, the Company reversed previously recorded reclamation liabilities at its Arch of Illinois subsidiary where, as a result of permit revisions associated with its reclamation activities that reduced the amount of reclamation work expected, the Company was able to recognize a \$3.5 million pre-tax gain. These positive factors during the first quarter of 2001 were partially offset by accruals recorded during the same quarter related to stock-based compensation programs that may be realized in future periods as a result of improved stock price performance. The compensation related accruals resulted in a pre-tax reduction of earnings of \$6.3 million.

Results at the Samples surface operations for the first quarter of 2002 were negatively impacted by a sandstone intrusion that caused the principal coal seam to thin, which resulted in lower production and higher associated costs compared to the same period in the prior year. The sandstone intrusion was first encountered during the second quarter of 2001. During the quarter ended March 31, 2002, the Samples surface operation incurred an operating loss of \$4.5 million compared to operating income of \$1.4 million during the same period of 2001.

Revenues. Total revenues for the quarter ended March 31, 2002 were \$368.5 million, a decrease of \$12.9 million from the quarter ended March 31, 2001. The decrease was caused primarily by reduced sales caused by the oversupply conditions that existed in the market as described above. The Company shipped 24.7 million tons during the quarter ended March 31, 2002 compared to 27.2 million tons during the quarter ended March 31, 2001. Average coal sales realizations on a per ton basis were \$14.53 per ton for the quarter ended March 31, 2002 compared to \$13.24 per ton for the quarter ended March 31, 2001. The increase in the per ton realization was the result of the Company shipping under more favorably priced contracts during the first quarter of 2002 as compared to the first quarter of 2001.

Income From Equity Investment. Income from equity investment decreased during the quarter ended March 31, 2002 to \$1.3 million from \$6.1 million during the quarter ended March 31, 2001. The decrease was the result of lower realizations due to an above market price contract expiring in the prior year and reduced coal shipments related to a weak market environment in the first quarter of 2002.

Other Revenues. The decrease in other revenues of \$6.7 million in the first quarter of 2002 compared to the first quarter of 2001 was primarily attributable to additional land sales during the first quarter of 2001. These land sales resulted in a gain of \$3.3 million in the first quarter of 2001 compared to \$0.2 million during the first quarter of 2002. In addition, during the first quarter of 2001, the Company amortized a gain on a coal sales contract buy-down that resulted in \$2.4 million of income. The gain was fully amortized prior to December 31, 2001.

Income (Loss) From Operations. The following table presents income (loss) from operations excluding the unusual items discussed above.

	Three Months Ended March 31,	
	2002	2001
	(in millions)	
Income (loss) from operations (as reported)	\$ (1.3)	\$ 26.2
Gain amortization on contract buydown	-	(2.4)
Samples surface operation losses	4.5	-
Land sales	(0.2)	(3.3)
Reclamation adjustment	-	(3.5)
Stock based compensation accrual adjustment	-	6.3
Adjusted income from operations	\$ 3.0	\$ 23.3

The decrease in adjusted income from operations is primarily attributable to the Company's curtailment of production during the first quarter of 2002 in response to the weak market environment described above. The decision to scale back production during the quarter came after the Company prepared most of the operations to maximize production in order to capitalize on the higher market prices for coal the Company had previously projected for 2002. In addition, the

Company experienced higher insurance costs and higher contract mining costs when compared to the same period in the prior year. Therefore, certain costs incurred to maximize production did not result in higher revenues but did increase the cost of coal sales. Cost of coal sales on a per ton basis was \$14.07 per ton for the quarter ended March 31, 2002 compared to \$12.12 per ton for the quarter ended March 31, 2001.

**Selling, General and Administrative Expenses.** Selling, general and administrative expenses declined \$3.9 million, to \$9.9 million, during the first quarter of 2002 when compared to expenses of \$13.8 million in the first quarter of 2001. The decrease is primarily attributable to the stock-based compensation accruals recorded during the first quarter of 2001 as discussed above.

**Amortization of Coal Supply Agreements.** Amortization of coal supply agreements was reduced to \$5.1 million for the quarter ended March 31, 2002, compared to \$7.6 million in the same quarter of 2001. The decrease is a result of the expiration and buy-out of above-market contracts that were valued as assets on the Company's balance sheet and amortized in 2001.

**Other Expenses.** Other expenses increased to \$7.6 million for the first quarter of 2002 from \$4.3 million for the first quarter of 2001 primarily due to the cost of terminating certain contractual obligations for the purchase or sale of coal.

**Interest Expense.** Interest expense decreased by \$9.4 million to \$12.0 million for the first quarter of 2002 as a result of lower debt levels and lower interest rates during the recent quarter when compared to the first quarter of 2001. The net proceeds from two public stock offerings in the first half of 2001 were used to significantly reduce debt levels.

**Income Taxes.** The Company's effective tax rate is sensitive to changes in estimates of annual profitability and percentage depletion. The income tax benefit recorded in the first quarter of 2002 is primarily the result of the impact of percentage depletion.

**Adjusted EBITDA.** Adjusted EBITDA (income from operations before the effect of net interest expense; income taxes; and depreciation, depletion and amortization of Arch Coal, its subsidiaries and its ownership percentage in its equity investments) was \$49.1 million for the current quarter compared to \$80.3 million for the first quarter of 2001. The decrease in adjusted EBITDA was primarily attributable to a \$27.5 million decrease in income from operations resulting from the reduction in production levels and the Samples production issues, both of which are discussed above.

#### RECENT DEVELOPMENTS

**Natural Resource Partners L.P.** The Company announced on April 19, 2002 that it had created a limited partnership, Natural Resource Partners L.P., with three private companies - Western Pocahontas Properties Limited Partnership, Great Northern Properties Limited Partnership and New Gauley Coal Corporation (collectively, the "WPP Group"). Natural Resource Partners was formed to engage principally in the business of owning and managing coal royalty properties in the three major coal-producing regions of the United States: Appalachia, the Illinois Basin and the Western United States. The partnership has filed a Registration Statement on Form S-1 with the Securities and Exchange Commission relating to a proposed underwritten initial public offering of common units representing limited partner interests in the partnership including 1,901,250 common units anticipated to be sold by the Company. The Company is contributing approximately 454 million tons of its 3.4 billion tons of total coal reserves to Natural Resource Partners in exchange for its ownership interest in the partnership.

**Debt Refinancing.** The Company and its Arch Western Resources subsidiary completed the refinancing of their existing credit facilities on April 18, 2002. The new credit facilities include five- and six-year term loans totaling \$675.0 million at Arch Western Resources, and a five-year revolving credit facility totaling \$350.0 million for the Company. The five-year non-amortizing term loan at Arch Western is for \$150.0 million while the six-year non-amortizing term loan is for \$525.0 million. The rate of interest on borrowings under both of the credit facilities is based on LIBOR. The Company's credit facility is secured by ownership interests in substantially all of its subsidiaries, except its ownership interests in Arch Western and its subsidiaries. The Arch Western credit facility is secured by its ownership interests in substantially all of its subsidiaries, but is not guaranteed by the Company.

## OUTLOOK

**Production Levels.** The Company reduced its rate of coal production at its eastern and western operations by approximately 7% during the first quarter of 2002 and cut its 2002 capital expenditure budget from its previous estimate of between \$180 million and \$200 million, to an expected \$150 million. These actions were taken in response to the current unfavorable spot coal prices following an extremely mild winter and a period of economic weakness that dampened electricity demand. The Company plans to increase its rate of production when market prices rebound. Although the timing of any recovery in coal market prices remains uncertain, there have been indications that prices may return to more favorable levels during the last half of 2002. These indications include a pickup in economic activity and an increase in the price of natural gas, a competing fuel source for electric generation.

**West Elk.** The Company's West Elk mine encountered higher-than-expected methane levels following the relocation of its longwall mining system to the eastern section of the mine in early 2001, which led to a reduction of planned shipments from the mine during 2001. West Elk's performance has steadily improved as the mine has implemented a series of methane control procedures. The Company is hopeful that the mine will operate at breakeven or profitable levels during the remainder of 2002. However, if the Company is unable to continue to adequately control methane levels at the mine, it may be forced to continue to operate the mine at lower levels of production than planned.

**West Virginia Operations.** On May 8, 2002, in *Kentuckians for the Commonwealth v. Rivenburgh*, the U.S. District Court for the Southern District of West Virginia enjoined the U.S. Army Corps of Engineers from issuing any new ss.404 Clean Water Act permits that authorize the placement of rock and soil into channels that comprise waters of the United States. This process is used primarily in surface mining operations where layers of dirt and rock are removed to expose the underlying coal seam, although underground mining operations also generate some of this material. The excess material is then placed into "valley fills." The court reached its conclusion on the basis that the material constituted "waste" which may not be disposed of in valley fills under Corps issued permits. The Company anticipates that a stay of the decision will be sought, and that the Corps of Engineers and industry defendants will appeal the decision.

The Company idled its Dal-Tex operation on July 23, 1999 as a result of an adverse ruling in prior litigation on the issue of valley fills. This ruling was later reversed on appeal; however, as of the date of the 2002 injunction described above, the Company had not yet completed the process necessary to obtain the ss.404 permits for the mine. Therefore, the Company will not be able to re-open its Dal-Tex surface mining operation unless the current injunction is stayed pending appeal, or the decision is reversed on appeal and it is able to obtain all necessary permits. If the current litigation is favorably resolved and the Company is able to obtain the necessary permits, it may determine to reopen the mine subject to then-existing market conditions. Unless reversed, the ruling may also affect the Company's ability to expand its current mining operations or open new mines in the future.

Previously, the Company had disclosed that longwall mineable reserves at Mingo Logan were likely to be exhausted during 2002. As a result of improvements to the mine plan, the mine is not expected to exhaust its longwall mineable reserves until 2006, subject to permit modifications.

During the second quarter of 2001, the Company's Samples surface mine in southern West Virginia encountered a larger-than-expected sandstone intrusion. The intrusion resulted in the thinning of the principal coal seam which reduced recoverable coal and drove up mining costs on a per-ton basis. In the first quarter of 2002, the Samples mine began development work on a new reserve area with more favorable geology. The Company expects the Samples mine to return to profitability during the second quarter of 2002, depending on market conditions.

**Low-Sulfur Coal Producer.** The Company continues to believe that it is well positioned to capitalize on the continuing growth in demand for low-sulfur coal to produce electricity. One hundred percent of the Company's current coal production and approximately 90% of its reserves are low in sulfur. Approximately 66% of the Company's coal reserves are compliance quality, which means that they meet Phase II standards of the Clean Air Act without application of expensive scrubbing technology. With Phase II now in effect, compliance coal has captured a growing share of United States coal demand and commands a higher price in the marketplace than high-sulfur coal.

**Chief Objectives.** The Company continues to focus on taking steps designed to improve earnings, strengthen cash generation, improve productivity and reduce costs at its large-scale mines, while building on its leading position in its target coal-producing basins, the Powder River Basin and the Central Appalachian Basin.

## LIQUIDITY AND CAPITAL RESOURCES

The following is a summary of cash provided by or used in each of the indicated types of activities during the three months ended March 31, 2002 and 2001:

	2002	2001
	-----	-----
	(in thousands)	
Cash provided by (used in):		
Operating activities	\$ 63,258	\$ 65,492
Investing activities	(90,174)	(63,720)
Financing activities	21,628	(5,451)

Cash provided by operating activities in the three months ended March 31, 2002 was comparable to the same period in 2001 in spite of production cutbacks and lower income primarily as a result of reduced working capital requirements in the first quarter of 2002.

Cash used in investing activities during the three months ended March 31, 2002 increased over the same period in 2001 due to higher capital expenditures during the first quarter of 2002 as the Company increased capital expenditures to maintain existing infrastructure and prepared to increase production for anticipated higher market prices. During the first quarters of 2001 and 2002, the Company made the third and fourth, respectively, of five annual payments under the Thundercloud federal lease, which is part of the Black Thunder mine in Wyoming. The remaining payment is due in January 2003.

Cash provided by financing activities was \$21.6 million in the first quarter of 2002 compared to cash used in financing activities of \$5.5 million during the first quarter of 2001. The cash provided by financing activities during the first quarter of 2002 reflects borrowings on the Company's revolver and line of credit caused in part by higher capital expenditure during the first quarter of 2002, while cash used in financing activities during the first quarter of 2001 reflects the pay-down of \$98.7 million of debt primarily from a February 2001 issuance of common stock which resulted in proceeds of \$92.9 million.

The Company generally satisfies its working capital requirements and funds its capital expenditures and debt-service obligations with cash generated from operations. The Company believes that cash generated from operations and its borrowing capacity will be sufficient to meet its working capital requirements, anticipated capital expenditures and scheduled debt payments for at least the next several years. The Company's ability to satisfy debt service obligations, to fund planned capital expenditures, to make acquisitions and to pay dividends will depend upon its future operating performance, which will be affected by prevailing economic conditions in the coal industry and financial, business and other factors, some of which are beyond the Company's control.

Expenditures for property, plant and equipment were \$73.1 million for the three months ended March 31, 2002, compared to \$48.5 million for the three months ended March 31, 2001. Capital expenditures are made to improve and replace existing mining equipment, expand existing mines, develop new mines and improve the overall efficiency of mining operations. The Company estimates that its capital expenditures will be approximately \$150.0 million in total for 2002. It is anticipated that these capital expenditures will be funded by available cash and existing credit facilities.

At March 31, 2002, the Company had \$39.6 million in letters of credit outstanding which when combined with borrowings under the revolver, allowed for \$396.0 million of available borrowings under the Company's revolving credit facility.

On April 18, 2002, the Company and Arch Western completed a refinancing of their existing credit facilities. The new credit facilities include five- and six-year non-amortizing term loans totaling \$675.0 million at Arch Western and a five-year revolving credit facility totaling \$350.0 million for the Company. The five-year non-amortizing term loan at Arch Western is for \$150.0 million while the six-year non-amortizing term loan is for \$525.0 million. The rate of interest on borrowings under both of the credit facilities is based on LIBOR. The Company's credit facility is secured by ownership interests in substantially all of its subsidiaries, except its ownership interests in Arch Western and its subsidiaries. The Arch Western credit facility is secured by substantially all of its subsidiaries, but is not guaranteed by the Company.

Financial covenants contained in the Company's new credit facilities consist of a maximum leverage ratio, a minimum fixed charge coverage ratio and a minimum net worth test. The leverage ratio requires that the Company not permit the ratio of total indebtedness at the end of any calendar quarter to adjusted EBITDA for the four quarters then ended exceed a specified amount. The fixed charge coverage ratio requires that the Company not permit the ratio of the Company's adjusted EBITDA plus lease expense to interest expense plus lease expense for the four quarters then ended to be less than a specified amount. The net worth test requires that the Company not permit its net worth to be less than a specified amount plus 50% of cumulative net income.

The Company periodically establishes uncommitted lines of credit with banks. These agreements generally provide for short-term borrowings at market rates. At March 31, 2002, there were \$20.0 million of such agreements in effect, of which \$9.0 million were outstanding. The Company can also issue an additional \$469.5 million in public debt and equity securities under a shelf registration statement.

The Company is exposed to market risk associated with interest rates. At March 31, 2002, debt included \$795.4 million of floating-rate debt, for which the rate of interest is a rate based on LIBOR and current market rates for bank lines of credit. To manage this exposure, the Company enters into interest-rate swap agreements to modify the interest-rate characteristics of outstanding Company debt. At March 31, 2002, the Company had interest-rate swap agreements having a total notional value of \$425.0 million. These swap agreements are used to convert variable-rate debt to fixed-rate debt. Under these swap agreements, the Company pays a weighted average fixed rate of 6.89% (before the credit spread over LIBOR) and receives a weighted average variable rate based upon 30-day and 90-day LIBOR. The Company accrues amounts to be paid or received under interest-rate swap agreements over the lives of the agreements as adjustments to interest expense, thereby adjusting the effective interest rate on the Company's debt. After taking into consideration interest-rate swap agreements, debt exposed to variable rates was \$370.4 million. Gains and losses on terminations of interest-rate swap agreements are deferred on the Company's balance sheet (in other long-term liabilities) and amortized as an adjustment to interest expense over the original term of the terminated swap agreement as if it were still in place. The remaining terms of the swap agreements at March 31, 2002 ranged from 5 to 39 months. All instruments are entered into for other than trading purposes.

The Company is also exposed to commodity price risk related to its purchase of diesel fuel. The Company enters into heating oil swaps to substantially eliminate volatility in the price of diesel fuel purchased for its operations. The swap agreements essentially fix the price paid for diesel fuel by requiring the Company to pay a fixed heating oil price and receive a floating heating oil price. The changes in the floating heating oil price highly correlate to changes in diesel fuel prices. Gains and losses on terminations of heating oil swap agreements are deferred on the balance sheet (in other long-term liabilities) and amortized as an adjustment to diesel fuel cost over the original term of the terminated heating oil swap agreement as if it were still in place.

The discussion below presents the sensitivity of the market value of the Company's financial instruments to selected changes in market rates and prices. The range of changes reflects the Company's view of changes that are reasonably possible over a one-year period. Market values are the present value of projected future cash flows based on the market rates and prices chosen. The major accounting policies for these instruments are described in Note 1 to the consolidated financial statements of the Company as of and for the year ended December 31, 2001 as filed on its Annual Report on Form 10-K with the Securities and Exchange Commission.

Changes in interest rates have different impacts on the fixed-rate and variable-rate portions of the Company's debt portfolio. A change in interest rates on the fixed portion of the debt portfolio impacts the net financial instrument position but has no impact on interest incurred or cash flows. A change in interest rates on the variable portion of the debt portfolio impacts the interest incurred and cash flows but does not impact the net financial instrument position. The sensitivity analysis related to the fixed portion of the Company's debt portfolio assumes an instantaneous 100-basis-point move in interest rates from their levels at March 31, 2002, with all other variables held constant. A 100-basis-point decrease in market interest rates would result in an \$5.0 million increase in the fair value of the fixed portion of the debt at March 31, 2002. Based on the variable-rate debt included in the Company's debt portfolio as of March 31, 2002, after considering the effect of the swap agreements, a 100-basis-point increase in interest rates would result in an annualized additional \$3.7 million of interest expense incurred based on March 31, 2002 debt levels. Similarly, relative to the Company's diesel hedge position, at March 31, 2002, a \$.05 per gallon decrease in the price of heating oil would result in a \$1.2 million increase in the fair value of the financial position of the heating oil swap.

## CONTINGENCIES

### Reclamation.

The federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA") and similar state statutes require that mine property be restored in accordance with specified standards and an approved reclamation plan. The Company accrues for the costs of final mine closure reclamation over the estimated useful mining life of the property. These costs relate to reclaiming the pit and support acreage at surface mines and sealing portals at deep mines. Other costs of final mine closure common to surface and underground mining are related to reclaiming refuse and slurry ponds, eliminating sedimentation and drainage control structures and dismantling or demolishing equipment or buildings used in mining operations. The Company also accrues for significant reclamation that is completed during the mining process prior to final mine closure. The establishment of the final mine closure reclamation liability and the other ongoing reclamation liabilities are based upon permit requirements and require various estimates and assumptions, principally associated with costs and productivities.

The Company reviews its entire environmental liability periodically and makes necessary adjustments, including permit changes and revisions to costs and productivities to reflect current experience. The Company's management believes it is making adequate provisions for all expected reclamation and other associated costs.

### Legal Contingencies.

The Company is a party to numerous claims and lawsuits with respect to various matters, including those discussed below. The Company provides for costs related to contingencies, including environmental matters, when a loss is probable and the amount is reasonably determinable. After conferring with counsel, it is the opinion of management that the ultimate resolution of these claims, to the extent not previously provided for, will not have a material adverse effect on the consolidated financial condition, results of operations or liquidity of the Company.

Kentuckians for the Commonwealth v. Rivenburgh. On May 8, 2002, the U.S. District Court for the Southern District of West Virginia enjoined the U.S. Army Corps of Engineers from issuing any new ss.404 Clean Water Act permits that authorize the placement of rock and soil into channels that comprise waters of the United States. This process is used in surface mining operations where layers of dirt and rock are removed to expose the underlying coal seam, although underground mining operations also generate some of this material. The excess material is then placed into "valley fills". The court reached its conclusion on the basis that the material constituted "waste" which may not be disposed of in valley fills under Corps issued permits. The Company anticipates that a stay of the decision will be sought, and that the Corps of Engineers and industry defendants will appeal the decision. The Company is not a party to this litigation, however the restrictions imposed by it, unless overturned, will affect all coal mining in the state, including the Company's operations, that require the issuance of ss.404 permits. Because it is not financially viable for coal producers to operate some mining properties without valley fills, if the court's decision is not reversed on appeal, future mining operations in the region may be severely restricted.

Cumulative Hydrologic Impact Assessment ("CHIA") Litigation. On January 20, 2000, two environmental organizations, the Ohio Valley Environmental Coalition and the Hominy Creek Watershed Association, filed suit against the West Virginia DEP in U.S. District Court in Huntington, West Virginia. In addition to allegations that the West Virginia DEP violated state law and provisions of the Clean Water Act, the plaintiffs allege that the West Virginia DEP's issuance of permits for surface and underground coal mining has violated certain non-discretionary duties mandated by SMCRA. Specifically, the plaintiffs allege that the West Virginia DEP has failed to require coal operators seeking permits to conduct water monitoring to verify stream flows and ascertain water quality, to always include certain water quality information in their permit applications and to analyze the probable hydrologic consequences of their operations. The plaintiffs also allege that the West Virginia DEP has failed to analyze the cumulative hydrologic impact of mining operations on specific watersheds.

The plaintiffs sought an injunction to prohibit the West Virginia DEP from issuing any new permits which fail to comply with all of the elements identified in their complaint. The complaint identified, and sought to enjoin, three pending permits sought by the Company in connection with its Mingo Logan operations in order to continue existing surface mining operations at the Phoenix reserve. On January 15, 2001, the West Virginia DEP notified the plaintiffs that the Company had completed all steps necessary to obtain the permits. On March 8, 2001, the Court denied the plaintiffs' motion for a

preliminary injunction seeking to enjoin the DEP's decision to issue the permits. The Company subsequently received some of the permits necessary to continue operating the surface mine. If the plaintiffs ultimately prevail in this litigation, the Company's ability to mine surface coal at Mingo Logan could be adversely affected, and depending upon the length of the suspension, the effect could be material. This matter does not affect Mingo Logan's existing permits related to its underground operations.

Citizens Coal Council v. Norton. On March 29, 2002, the U.S. District Court for the District of Columbia issued a ruling that could restrict underground mining activities conducted in the vicinity of public roads, within a variety of federally protected lands, within national forests and within a certain proximity of occupied dwellings. The lawsuit, Citizens Coal Council v. Norton, was filed in February 2000 to challenge regulations issued by the Department of Interior providing, among other things, that subsidence and underground activities that may lead to subsidence are not surface mining activities within the meaning of SMCRA. SMCRA generally contains restrictions and certain prohibitions on the locations where surface mining activities can be conducted. The District Court entered summary judgment upon the plaintiffs' claims that the Secretary of the Interior's determination violated SMCRA. By order dated April 9, 2002, the court remanded the regulations to the Secretary of the Interior for reconsideration.

The Company is not a party to this litigation. Its significance for the coal mining industry remains unclear because this ruling is subject to appellate review, and the Department of Interior and the National Mining Association, a trade group that intervened in this action, have announced their intention to seek a stay of the order pending appeal to the U.S. Court of Appeals for the District of Columbia Circuit. If the stay is not granted, if the District Court's decision is not overturned, or if some legislative solution is not enacted, this ruling could have a material adverse affect on all coal mine operations that utilize underground mining techniques, including those of the Company. While it may still be possible to obtain permits for underground mining operations in these areas, the time and expense of that permitting process is likely to increase significantly.

#### CERTAIN TRENDS AND UNCERTAINTIES

Substantial Leverage - Variable Interest Rate - Covenants.

As of March 31, 2002, the Company had outstanding consolidated indebtedness of \$798.9 million, representing approximately 58.5% of the Company's capital employed. Despite making substantial progress in reducing debt, the Company continues to have significant debt-service obligations, and the terms of its credit agreements limit its flexibility and result in a number of limitations on the Company. The Company also has significant lease and royalty obligations. The Company's ability to satisfy debt service, lease and royalty obligations and to effect any refinancing of its indebtedness will depend upon future operating performance, which will be affected by prevailing economic conditions in the markets that the Company serves as well as financial, business and other factors, many of which are beyond the Company's control. The Company may be unable to generate sufficient cash flow from operations and future borrowings, or other financings may be unavailable in an amount sufficient to enable it to fund its debt service, lease and royalty payment obligations or its other liquidity needs.

The Company's relative amount of debt and the terms of its credit agreements could have material consequences to its business, including, but not limited to: (i) making it more difficult to satisfy debt covenants and debt service, lease payment and other obligations; (ii) making it more difficult to pay quarterly dividends as the Company has in the past; (iii) increasing the Company's vulnerability to general adverse economic and industry conditions; (iv) limiting the Company's ability to obtain additional financing to fund future acquisitions, working capital, capital expenditures or other general corporate requirements; (v) reducing the availability of cash flows from operations to fund acquisitions, working capital, capital expenditures or other general corporate purposes; (vi) limiting the Company's flexibility in planning for, or reacting to, changes in the Company's business and the industry in which the Company competes; or (vii) placing the Company at a competitive disadvantage when compared to competitors with less relative amounts of debt.

After taking into consideration the Company's interest-rate swaps which convert the Company's variable rate debt to fixed, approximately 46% of the Company's indebtedness bears interest at variable rates that are linked to short-term interest rates. If interest rates rise, the Company's costs relative to those obligations would also rise.

Terms of the Company's credit facilities and leases contain financial and other covenants that create limitations on the Company's ability to, among other things, effect acquisitions or dispositions and borrow additional funds, and require the Company to, among other things, maintain various financial ratios and comply with various other financial covenants. Failure by the Company to

comply with such covenants could result in an event of default under these agreements which, if not cured or waived, would enable the Company's lenders to declare amounts borrowed due and payable, or otherwise result in unanticipated costs.

Losses.

The Company reported a net loss of \$7.4 million for the quarter ended March 31, 2002. The losses in the first quarter of 2002 were primarily due to continued increased costs and decreased production at the Company's Samples surface operations as described above and decreased production at the Company's other mines due to adverse market conditions during the quarter.

Because the coal mining industry is subject to significant regulatory oversight and due to the possibility of continued adverse pricing trends or other industry trends beyond the Company's control, the Company may suffer losses in the future if legal and regulatory rulings, mine idlings and closures, adverse pricing trends or other factors affect the Company's ability to mine and sell coal profitably.

Environmental and Regulatory Factors.

The coal mining industry is subject to regulation by federal, state and local authorities on matters such as:

- o the discharge of materials into the environment;
- o employee health and safety;
- o mine permits and other licensing requirements;
- o reclamation and restoration of mining properties after mining is completed;
- o management of materials generated by mining operations;
- o surface subsidence from underground mining;
- o water pollution;
- o legislatively mandated benefits for current and retired coal miners;
- o air quality standards;
- o protection of wetlands;
- o endangered plant and wildlife protection;
- o limitations on land use;
- o storage of petroleum products and substances that are regarded as hazardous under applicable laws; and
- o management of electrical equipment containing polychlorinated biphenyls, or PCBs.

In addition, the electric generating industry, which is the most significant end-user of coal, is subject to extensive regulation regarding the environmental impact of its power generation activities, which could affect demand for the Company's coal. The possibility exists that new legislation or regulations may be adopted or that the enforcement of existing laws could become more stringent, either of which may have a significant impact on the Company's mining operations or its customers' ability to use coal and may require the Company or its customers to change operations significantly or incur substantial costs.

While it is not possible to quantify the expenditures incurred by the Company to maintain compliance with all applicable federal and state laws, those costs have been and are expected to continue to be significant. The Company posts performance bonds pursuant to federal and state mining laws and regulations for the estimated costs of reclamation and mine closing, including the cost of treating mine water discharge when necessary. Compliance with these laws has substantially increased the cost of coal mining for all domestic coal producers.

Clean Air Act. The federal Clean Air Act and similar state and local laws, which regulate emissions into the air, affect coal mining and processing operations primarily through permitting and emissions control requirements. The Clean Air Act also indirectly affects coal mining operations by extensively regulating the emissions from coal-fired industrial boilers and power plants, which are the largest end-users of the Company's coal. These regulations can take a variety of forms, as explained below.

The Clean Air Act imposes obligations on the Environmental Protection Agency, or EPA, and the states to implement regulatory programs that will lead to the attainment and maintenance of EPA-promulgated ambient air quality standards, including standards for sulfur dioxide, particulate matter, nitrogen oxides and ozone. Owners of coal-fired power plants and industrial boilers have been required to expend considerable resources in an effort to comply with these ambient air standards. Significant additional emissions control expenditures

will be needed in order to meet the current national ambient air standard for ozone. In particular, coal-fired power plants will be affected by state regulations designed to achieve attainment of the ambient air quality standard for ozone. Ozone is produced by the combination of two precursor pollutants: volatile organic compounds and nitrogen oxides. Nitrogen oxides are a by-product of coal combustion. Accordingly, emissions control requirements for new and expanded coal-fired power plants and industrial boilers will continue to become more demanding in the years ahead.

In July 1997, the EPA adopted more stringent ambient air quality standards for particulate matter and ozone. In a February 2001 decision, the U.S. Supreme Court largely upheld the EPA's position, although it remanded the EPA's ozone implementation policy for further consideration. On remand, the Court of Appeals for the D.C. Circuit affirmed EPA's adoption of these more stringent ambient air quality standards. As a result of the finalization of these standards, states that are not in attainment for these standards will have to revise their State Implementation Plans to include provisions for the control of ozone precursors and/or particulate matter. Revised State Implementation Plans could require electric power generators to further reduce nitrogen oxide and particulate matter emissions. The potential need to achieve such emissions reductions could result in reduced coal consumption by electric power generators. Thus, future regulations regarding ozone, particulate matter and other pollutants could restrict the market for coal and the development of new mines by the Company. This in turn may result in decreased production by the Company and a corresponding decrease in the Company's revenues. Although the future scope of these ozone and particulate matter regulations cannot be predicted, future regulations regarding these and other ambient air standards could restrict the market for coal and the development of new mines.

Furthermore, in October 1998, the EPA finalized a rule that will require 19 states in the Eastern United States that have ambient air quality problems to make substantial reductions in nitrogen oxide emissions by the year 2004. To achieve these reductions, many power plants would be required to install additional control measures. The installation of these measures would make it more costly to operate coal-fired power plants and, depending on the requirements of individual state implementation plans, could make coal a less attractive fuel.

Along with these regulations addressing ambient air quality, EPA has initiated a regional haze program designed to protect and to improve visibility at and around National Parks, National Wilderness Areas and International Parks. This program restricts the construction of new coal-fired power plants whose operation may impair visibility at and around federally protected areas. Moreover, this program may require certain existing coal-fired power plants to install additional control measures designed to limit haze-causing emissions, such as sulfur dioxide, nitrogen oxides and particulate matter. By imposing limitations upon the placement and construction of new coal-fired power plants, EPA's regional haze program could affect the future market for coal.

Additionally, the U.S. Department of Justice, on behalf of the EPA, has filed lawsuits against several investor-owned electric utilities and brought an administrative action against one government-owned electric utility for alleged violations of the Clean Air Act. The EPA claims that these utilities have failed to obtain permits required under the Clean Air Act for alleged major modifications to their power plants. The Company supplies coal to some of the currently affected utilities, and it is possible that other of the Company's customers will be sued. These lawsuits could require the utilities to pay penalties and install pollution control equipment or undertake other emission reduction measures, which could adversely impact their demand for coal.

Other Clean Air Act programs are also applicable to power plants that use the Company's coal. For example, the acid rain control provisions of Title IV of the Clean Air Act require a reduction of sulfur dioxide emissions from power plants. Because sulfur is a natural component of coal, required sulfur dioxide reductions can affect coal mining operations. Title IV imposes a two phase approach to the implementation of required sulfur dioxide emissions reductions. Phase I, which became effective in 1995, regulated the sulfur dioxide emissions levels from 261 generating units at 110 power plants and targeted the highest sulfur dioxide emitters. Phase II, implemented January 1, 2000, made the regulations more stringent and extended them to additional power plants, including all power plants of greater than 25 megawatt capacity. Affected electric utilities can comply with these requirements by:

- o burning lower sulfur coal, either exclusively or mixed with higher sulfur coal;
- o installing pollution control devices such as scrubbers, which reduce the emissions from high sulfur coal;
- o reducing electricity generating levels; or
- o purchasing or trading emission credits.

Specific emissions sources receive these credits that electric utilities and industrial concerns can trade or sell to allow other units to emit higher levels of sulfur dioxide. Each credit allows its holder to emit one ton of sulfur dioxide.

In addition to emissions control requirements designed to control acid rain and to attain the national ambient air quality standards, the Clean Air Act also imposes standards on sources of hazardous air pollutants. Although these standards have not yet been extended to coal mining operations, the EPA recently announced that it will regulate hazardous air pollutants from coal-fired power plants. Under the Clean Air Act, coal-fired power plants will be required to control hazardous air pollution emissions by no later than 2009. These controls are likely to require significant new improvements in controls by power plant owners. The most prominently targeted pollutant is mercury, although other by-products of coal combustion may be covered by future hazardous air pollutant standards for coal combustion sources.

Other proposed initiatives may have an effect upon coal operations. One such proposal is the Bush Administration's recently announced Clear Skies Initiative. As proposed, this initiative is designed to reduce emissions of sulfur dioxide, nitrogen oxides, and mercury from power plants. Other so-called multi-pollutant bills, which could regulate additional air pollutants, have been proposed by various members of Congress. While the details of all of these proposed initiatives vary, there appears to be a movement towards increased regulation of a number of air pollutants. Were such initiatives enacted into law, power plants could choose to shift away from coal as a fuel source to meet these requirements.

Mine Health and Safety Laws. Stringent safety and health standards have been imposed by federal legislation since the adoption of the Mine Health and Safety Act of 1969. The Mine Safety and Health Act of 1977, which significantly expanded the enforcement of health and safety standards of the Mine Health and Safety Act of 1969, imposes comprehensive safety and health standards on all mining operations. In addition, as part of the Mine Health and Safety Acts of 1969 and 1977, the Black Lung Act requires payments of benefits by all businesses conducting current mining operations to coal miners with black lung and to some survivors of a miner who dies from this disease. Because the regulatory requirements imposed by mine worker health and safety laws are comprehensive and ongoing in nature, non-compliance cannot be eliminated completely.

Surface Mining Control And Reclamation Act. SMCRA establishes operational, reclamation and closure standards for all aspects of surface mining as well as many aspects of deep mining. SMCRA requires that comprehensive environmental protection and reclamation standards be met during the course of and upon completion of mining activities. In conjunction with mining the property, the Company is contractually obligated under the terms of their leases to comply with all laws, including SMCRA and equivalent state and local laws. These obligations include reclaiming and restoring the mined areas by grading, shaping, preparing the soil for seeding and by seeding with grasses or planting trees for use as pasture or timberland, as specified in the approved reclamation plan.

SMCRA also requires the Company to submit a bond or otherwise financially secure the performance of its reclamation obligations. The earliest a reclamation bond can be completely released is five years after reclamation has been achieved. Federal law and some states impose on mine operators the responsibility for repairing the property or compensating the property owners for damage occurring on the surface of the property as a result of mine subsidence, a consequence of longwall mining and possibly other mining operations. In addition, the Abandoned Mine Lands Act, which is part of SMCRA, imposes a tax on all current mining operations, the proceeds of which are used to restore mines closed before 1977. The maximum tax is \$0.35 per ton of coal produced from surface mines and \$0.15 per ton of coal produced from underground mines.

The Company also leases some of its coal reserves to third party operators. Under SMCRA, responsibility for unabated violations, unpaid civil penalties and unpaid reclamation fees of independent mine lessees and other third parties could potentially be imputed to other companies that are deemed, according to the regulations, to have "owned" or "controlled" the mine operator. Sanctions against the "owner" or "controller" are quite severe and can include civil penalties, reclamation fees and reclamation costs. The Company is not aware of any currently pending or asserted claims against it asserting that it "owns" or "controls" any of its lessees' operations.

On March 29, 2002, the U.S. District Court for the District of Columbia issued a ruling that could restrict underground mining activities conducted in the vicinity of public roads, within a variety of federally protected lands, within national forests and within a certain proximity of occupied dwellings. The lawsuit, Citizens Coal Council v. Norton, was filed in February 2000 to challenge regulations issued by the Department of Interior providing, among other things, that subsidence and underground activities that may lead to subsidence are not surface mining activities within the meaning of SMCRA. SMCRA

generally contains restrictions and certain prohibitions on the locations where surface mining activities can be conducted. The District Court entered summary judgment upon the plaintiff's claims that the Secretary of the Interior's determination violated SMCRA. By order dated April 9, 2002, the court remanded the regulations to the Secretary of the Interior for reconsideration.

The significance of this decision for the coal mining industry remains unclear because this ruling is subject to appellate review, and the Department of Interior and the National Mining Association, a trade group that intervened in this action, have announced their intention to seek a stay of the order pending appeal to the U.S. Court of Appeals for the District of Columbia Circuit. If the stay is not granted, the District Court's decision is not overturned, or if some legislative solution is not enacted, this ruling could have a material adverse effect on all coal mine operations that utilize underground mining techniques, including those of the Company. While it still may be possible to obtain permits for underground mining operations in these areas, the time and expense of that permitting process are likely to increase significantly.

**Framework Convention on Global Climate Change.** The United States and more than 160 other nations are signatories to the 1992 Framework Convention on Global Climate Change, commonly known as the Kyoto Protocol, that is intended to limit or capture emissions of greenhouse gases such as carbon dioxide and methane. The U.S. Senate has neither ratified the treaty commitments, which would mandate a reduction in U.S. greenhouse gas emissions, nor enacted any law specifically controlling greenhouse gas emissions and the Bush Administration has withdrawn support for this treaty. Nonetheless, future regulation of greenhouse gases could occur either pursuant to future U.S. treaty obligations or pursuant to statutory or regulatory changes under the Clean Air Act. Efforts to control greenhouse gas emissions could result in reduced demand for coal if electric power generators switch to lower carbon sources of fuel. These restrictions or uncertainties could have a material adverse effect on the Company's business.

**Clean Water Act.** The Clean Water Act affects coal mining operations by imposing restrictions on effluent discharge into navigable waters, a term which courts have defined to include wetlands. Regular monitoring, as well as compliance with reporting requirements and performance standards, are preconditions for the issuance and renewal of permits governing the discharge of pollutants into water. The Company is also subject to ss. 404 of the Clean Water Act, which imposes permitting and mitigation requirements associated with the dredging and filling of wetlands. The Company is contractually obligated to obtain all necessary wetlands permits required under ss. 404, which permits are issued by the U.S. Army Corps of Engineers. However, mitigation requirements under those existing, and possible future, wetlands permits may vary considerably.

The U.S. Army Corps of Engineers' authority to issue Clean Water Act Section 404 permits for the discharge of mining wastes into valley fills was, however, challenged in an August 2001 lawsuit filed by a citizens group, Kentuckians For The Commonwealth, Inc., in the United States District Court for the Southern District of West Virginia. On May 8, 2002, the court enjoined the Army Corps of Engineers from issuing any new ss.404 permits that authorize the placement of rock and soil into channels that comprise waters of the United States. The court reached this conclusion on the basis that the material constituted "waste" which may not be disposed of under Corps issued permits. A stay of the decision is currently being sought, and an appeal by the Corps of Engineers and industry defendants is expected. If the plaintiff in this litigation is eventually successful, the costs, time and difficulty associated with obtaining Clean Water Act permits for surface mining operations could increase and could in fact become infeasible. Additionally, conditions made part of individual Section 404 and 402 permits could require more extensive and costly reclamation.

**West Virginia Antidegradation Policy.** In January 2002, a number of environmental groups and individuals filed suit in the U.S. District Court for the Southern District of West Virginia to challenge the EPA's approval of West Virginia's antidegradation implementation policy. Under the federal Clean Water Act, state regulatory authorities must conduct an antidegradation review before approving permits for the discharge of pollutants to waters that have been designated as high quality by the state. Antidegradation review involves public and intergovernmental scrutiny of permits and requires permittees to demonstrate that the proposed activities are justified in order to accommodate significant economic or social development in the area where the waters are located. The plaintiffs in this lawsuit, Ohio Valley Environmental Coalition v. Whitman, challenge provisions in West Virginia's antidegradation implementation policy that exempt current holders of National Pollutant Discharge Elimination System (NPDES) permits and Section 404 permits, among other parties, from the

antidegradation-review process. The Company is exempt from antidegradation review under these provisions. Revoking this exemption and subjecting the Company to the antidegradation review process could delay the issuance or reissuance of Clean Water Act permits to the Company or cause these permits to be denied. If the plaintiffs are successful and if the Company discharges into waters that have been designated as high-quality by the state, the costs, time and difficulty associated with obtaining and complying with Clean Water Act permits for surface mining of its operations could increase.

Comprehensive Environmental Response, Compensation and Liability Act. CERCLA and similar state laws affect coal mining operations by, among other things, imposing cleanup requirements for threatened or actual releases of hazardous substances that may endanger public health or welfare or the environment. Under CERCLA and similar state laws, joint and several liability may be imposed on waste generators, site owners and lessees and others regardless of fault or the legality of the original disposal activity. Although the EPA excludes most wastes generated by coal mining and processing operations from the hazardous waste laws, such wastes can, in certain circumstances, constitute hazardous substances for the purposes of CERCLA. In addition, the disposal, release or spilling of some products used by coal companies in operations, such as chemicals, could implicate the liability provisions of the statute. Thus, coal mines that the Company currently owns or has previously owned or operated, and sites to which the Company sent waste materials, may be subject to liability under CERCLA and similar state laws. In particular, the Company may be liable under CERCLA or similar state laws for the cleanup of hazardous substance contamination at sites where it owns surface rights.

Mining Permits and Approvals. Numerous governmental permits or approvals are required for mining operations. In connection with obtaining these permits and approvals, the Company may be required to prepare and present to federal, state or local authorities data pertaining to the effect or impact that any proposed production of coal may have upon the environment. The requirements imposed by any of these authorities may be costly and time consuming and may delay commencement or continuation of mining operations. Regulations also provide that a mining permit can be refused or revoked if an officer, director or a shareholder with a 10% or greater interest in the entity is affiliated with another entity that has outstanding permit violations. Thus, past or ongoing violations of federal and state mining laws could provide a basis to revoke existing permits and to deny the issuance of additional permits.

In order to obtain mining permits and approvals from state regulatory authorities, mine operators, including the Company, must submit a reclamation plan for restoring, upon the completion of mining operations, the mined property to its prior condition, productive use or other permitted condition. Typically the Company submits the necessary permit applications between 12 and 18 months before it plans to begin mining a new area. In the Company's experience, permits generally are approved several months after a completed application is submitted. In the past, the Company has generally obtained its mining permits without significant delay. However, the Company cannot be sure that it will not experience difficulty in obtaining mining permits in the future.

Future legislation and administrative regulations may emphasize the protection of the environment and, as a consequence, the activities of mine operators, including the Company, may be more closely regulated. Legislation and regulations, as well as future interpretations of existing laws, may also require substantial increases in equipment expenditures and operating costs, as well as delays, interruptions or the termination of operations. The Company cannot predict the possible effect of such regulatory changes.

Under some circumstances, substantial fines and penalties, including revocation or suspension of mining permits, may be imposed under the laws described above. Monetary sanctions and, in severe circumstances, criminal sanctions may be imposed for failure to comply with these laws.

As indicated by the legal action involving valley fills that is discussed in "Contingencies - Legal Contingencies - Kentuckians for the Commonwealth v. Rivenburgh" above, the regulatory environment in West Virginia is uncertain with respect to coal mining. No assurance can be made that the plaintiffs will not ultimately prevail in this litigation. In such event, there could be a material adverse effect on the Company's financial condition or results of operations.

West Virginia Cumulative Hydrologic Impact Analysis Litigation. Two environmental groups sued the West Virginia Department of Environmental Protection in January 2000 in federal court, alleging various violations of the Clean Water Act and SMCRA. The lawsuit was amended in September 2001 to name Gale Norton, Secretary of the Interior, as a defendant. The U.S. Office of Surface Mining is a division within the Department of Interior. The lawsuit, Ohio River Valley Environmental Coalition, Inc. v. Castle, specifically alleges

that the West Virginia Department of Environmental Protection has violated its non-discretionary duty to require all surface and underground mining permit applications to include certain stream flow and water quality data and an analysis of the probable hydrologic consequences of the proposed mine, and that the West Virginia Department of Environmental Protection failed to conduct SMCRA-required cumulative hydrologic impacts analysis prior to issuing mining permits. The lawsuit also alleges that the Office of Surface Mining has a non-discretionary duty to apply the federal SMCRA law in West Virginia due to the deficiencies in the state program. In March 2001, the district court denied the plaintiff's motion for a preliminary injunction on its claims against the West Virginia Department of Environmental Protection. In September 2001, the district court denied a motion to dismiss for lack of jurisdiction under Bragg filed by defendant Michael Callaghan, Secretary of the West Virginia Department of Environmental Protection. Callaghan filed an interlocutory appeal of this decision in October 2001. The Fourth Circuit Court of Appeals is awaiting briefing under an extended schedule in this case. If the plaintiffs are eventually successful in this lawsuit, the West Virginia Department of Environmental Protection will have to modify its procedures and requirements for the content and review of mining permit applications, or the federal government will be ordered to assume control over mining permits in West Virginia. Any of these changes are likely to increase the cost of preparing applications and the time required for their review, and may entail additional operating expenditures and, possibly, restrictions on operating.

West Virginia SMCRA Bond Lawsuit. In November 2000, the West Virginia Highlands Conservancy filed a lawsuit in federal district court against the U.S. Department of Interior, the U.S. Office of Surface Mining and the West Virginia Department of Environmental Protection. The lawsuit, West Virginia Highlands Conservancy v. Norton, which seeks declaratory and injunctive relief, generally challenges the adequacy of the two-tier West Virginia alternative bond reclamation program. The first tier requires mine operators to post a bond of up to \$5,000 per acre mined. The second tier creates a special reclamation fund which is funded by an assessment on mine operators of three cents per ton of coal. The West Virginia Highlands Conservancy claims that, individually and collectively, the alternative bond reclamation program has inadequate funds to cover the state's cost of conducting mining site reclamation for those sites where the mine operator has defaulted, or might default, on its reclamation obligations. Based upon the alleged inadequacy of the alternative bonding program, the lawsuit claims that the Department of the Interior and the Office of Surface Mining violated their obligations under SMCRA by either (1) not asserting federal control over the West Virginia SMCRA bonding program or (2) not revoking federal approval of the West Virginia SMCRA program and assuming control under SMCRA. The lawsuit also alleges that the West Virginia Department of Environmental Protection (1) failed to ensure that the state bonding program met certain minimum requirements and (2) improperly issued SMCRA permits without requiring mine operators to post sufficient reclamation bonds.

In May 2001, the district court dismissed all claims against the West Virginia Department of Environment Protection based upon the principle of sovereign immunity. The Office of Surface Mining, in June 2001, initiated formal administrative action against the West Virginia Department of Environmental Protection regarding the alleged deficiencies in the state bonding program.

The remaining claims in this lawsuit against the federal defendants were the subject of an August 2001 order by the district court. The court denied the federal defendants' motion to dismiss the suit and granted partial summary judgment for the plaintiffs. The court allowed the Office of Surface Mining to continue its administrative action. That action required the West Virginia Department of Environmental Protection to submit proposed new regulatory initiatives to the state legislature's rulemaking committee and, within 45 days of the close of the 2002 legislative session, the state was required to provide final, enacted legislation, signed by the Governor of West Virginia, that addressed all problems with the current state bonding system. The West Virginia Legislature passed, and the Governor of West Virginia signed, an amended alternative bond program, called the 7-Up Plan, and the U.S. Office of Surface Mining approved those amendments.

The plaintiffs filed a motion in January 2002 asking the court to compel the Office of Surface Mining to perform its non-discretionary duties and find that the new alternative bonding program promulgated by West Virginia still fails to meet the requirements of the federal SMCRA. In March 2002, the court denied the plaintiffs' motion, based in part upon representations by the Office of Surface Mining that it would make a final determination regarding the adequacy of the 7-Up Plan by no later than May 28, 2002. In any event, the ultimate modification to the bonding program will likely result in an increase in the amount of reclamation bonds that coal mine operators in West Virginia, including the Company, must post and could result in other taxes or fees related to the operation of coal mines in the state. This would increase the cost of operating the mines. Any changes to the state reclamation bonding program could also complicate, protract the process of and increase the cost of applying for and obtaining necessary permits.

Endangered Species. The federal Endangered Species Act and counterpart state legislation protects species threatened with possible extinction. Protection of endangered species may have the effect of prohibiting or delaying the Company from obtaining mining permits and may include restrictions on timber harvesting, road building and other mining or silvicultural activities in areas containing the affected species. A number of species indigenous to the Company's properties are protected under the Endangered Species Act. Based on the species that have been identified to date and the current application of applicable laws and regulations, however, the Company does not believe there are any species protected under the Endangered Species Act that would materially and adversely affect its ability to mine coal from its properties in accordance with current mining plans.

Other Environmental Laws Affecting the Company. The Company is required to comply with numerous other federal, state and local environmental laws in addition to those previously discussed. These additional laws include, for example, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Toxic Substance Control Act and the Emergency Planning and Community Right-to-Know Act. The Company believes that it is in substantial compliance with all applicable environmental laws.

#### Competition-Excess Industry Capacity.

The coal industry is intensely competitive, primarily as a result of the existence of numerous producers in the coal-producing regions in which the Company operates, and a number of the Company's competitors have greater financial resources. The Company competes with several major coal producers in the central Appalachian and Powder River Basin areas. The Company also competes with a number of smaller producers in those and other market regions. The Company is also subject to the risk of reduced profitability as a result of excess industry capacity, which results in reduced coal prices.

#### Electric Industry Factors.

Demand for coal and the prices that the Company will be able to obtain for its coal are closely linked to coal consumption patterns of the domestic electric generation industry, which has accounted for approximately 90% of domestic coal consumption in recent years. These coal consumption patterns are influenced by factors beyond the Company's control, including the demand for electricity (which is dependent to a significant extent on summer and winter temperatures); government regulation; technological developments and the location, availability, quality and price of competing sources of coal; alternative fuels such as natural gas, oil and nuclear; and alternative energy sources such as hydroelectric power. Demand for the Company's low-sulfur coal and the prices that the Company will be able to obtain for it will also be affected by the price and availability of high-sulfur coal, which can be marketed in tandem with emissions allowances in order to meet federal Clean Air Act requirements. Any reduction in the demand for the Company's coal by the domestic electric generation industry may cause a decline in profitability.

Electric utility deregulation is expected to provide incentives to generators of electricity to minimize their fuel costs and is believed to have caused electric generators to be more aggressive in negotiating prices with coal suppliers. Deregulation may have a negative effect on the Company's profitability to the extent it causes the Company's customers to be more cost-sensitive.

#### Reliance On And Terms Of Long-Term Coal Supply Contracts.

During 2001, sales of coal under long-term contracts, which are contracts with a term greater than 12 months, accounted for 77% of the Company's total revenues. The prices for coal shipped under these contracts may be below the current market price for similar type coal at any given time. As a consequence of the substantial volume of its sales which are subject to these long-term agreements, the Company has less coal available with which to capitalize on stronger coal prices if and when they arise. In addition, because long-term contracts typically allow the customer to elect volume flexibility, the Company's ability to realize the higher prices that may be available in the spot market may be restricted when customers elect to purchase higher volumes under such contracts, or the Company's exposure to market-based pricing may be increased should customers elect to purchase fewer tons. The increasingly short terms of sales contracts and the consequent absence of price adjustment provisions in such contracts also make it more likely that inflation related increases in mining costs during the contract term will not be recovered by the Company.

#### Reserve Degradation And Depletion.

The Company's profitability depends substantially on its ability to mine coal reserves that have the geological characteristics that enable them to be mined at competitive costs. Replacement reserves may not be available when required or, if available, may not be capable of being mined at costs comparable to those characteristic of the depleting mines. The Company has in the past acquired and will in the future acquire, coal reserves for its mine portfolio from third parties. The Company may not be able to accurately assess the geological characteristics of any reserves that it acquires, which may adversely affect the profitability and financial condition of the Company. Exhaustion of reserves at particular mines can also have an adverse effect on operating results that is disproportionate to the percentage of overall production represented by such mines. Mingo Logan's Mountaineer Mine is estimated to exhaust its longwall mineable reserves in 2006. The Mountaineer Mine generated \$12.0 million and \$11.8 million of the Company's total operating income in the first quarters of 2002 and 2001, respectively.

#### Potential Fluctuations In Operating Results-Factors Routinely Affecting Results Of Operations.

The Company's mining operations are inherently subject to changing conditions that can affect levels of production and production costs at particular mines for varying lengths of time and can result in decreases in profitability. Weather conditions, equipment replacement or repair, fuel prices, fires, variations in coal seam thickness, amounts of overburden rock and other natural materials and other geological conditions have had, and can be expected in the future to have, a significant impact on operating results. A prolonged disruption of production at any of the Company's principal mines, particularly its Mingo Logan operation in West Virginia, would result in a decrease, which could be material, in the Company's revenues and profitability. Other factors affecting the production and sale of the Company's coal that could result in decreases in its profitability include: (i) expiration or termination of, or sales price redeterminations or suspension of deliveries under, coal supply agreements; (ii) disruption or increases in the cost of transportation services; (iii) changes in laws or regulations, including permitting requirements; (iv) litigation; (v) the timing and amount of insurance recoveries; (vi) work stoppages or other labor difficulties; (vii) mine worker vacation schedules and related maintenance activities; and (viii) changes in coal market and general economic conditions.

Decreases in the Company's profitability as a result of the factors described above could adversely impact quarterly or annual results materially. Any such adverse impact on the Company's operating results could cause its stock price to decline substantially, particularly if the results are below research analyst or investor expectations.

#### Transportation.

The coal industry depends on rail, trucking and barge transportation to deliver shipments of coal to customers, and transportation costs are a significant component of the total cost of supplying coal. Disruption of these transportation services could temporarily impair the Company's ability to supply coal to its customers and thus adversely affect the Company's business and operating results. Increases in transportation costs, or changes in such costs relative to transportation costs for coal produced by its competitors or of other fuels, could have an adverse effect on the Company's business and results of operations.

#### Reserves - Title.

There are numerous uncertainties inherent in estimating quantities of recoverable reserves, including many factors beyond the control of the Company. Estimates of economically recoverable coal reserves and net cash flows necessarily depend upon the number of variable factors and assumptions, such as geological and mining conditions which may not be fully identified by available exploration data or may differ from experience in current operations, historical production from the area compared with production from other producing areas, the assumed effects of regulation by governmental agencies and assumptions concerning coal prices, operating costs, severance and excise taxes, development costs and reclamation costs, all of which may cause estimates to vary considerably from actual results.

For these reasons, estimates of the economically recoverable quantities attributable to any particular group of properties, classifications of such reserves based on risk of recovery and estimates of net cash flows expected therefrom, prepared by different engineers or by the same engineers at different times, may vary substantially. Actual coal tonnage recovered from identified reserve areas or properties and revenues and expenditures with respect to the Company's reserves may vary from estimates, and such variances may be material. These estimates thus may not accurately reflect the Company's actual reserves.

A significant part of the Company's mining operations are conducted on properties leased by the Company. The loss of any lease could adversely affect the Company's ability to develop the associated reserves. Because title to most of the Company's leased properties and mineral rights is not usually verified until a commitment is made by the Company to develop a property, which may not occur until after the Company has obtained necessary permits and completed exploration of the property, the Company's right to mine certain of its reserves may be adversely affected if defects in title or boundaries exist. In order to obtain leases or mining contracts to conduct mining operations on property where these defects exist, the Company has had to, and may in the future have to, incur unanticipated costs. In addition, the Company may not be able to successfully negotiate new leases or mining contracts for properties containing additional reserves or maintain its leasehold interests in properties on which mining operations are not commenced during the term of the lease.

#### Certain Contractual Arrangements.

The Company's affiliate, Arch Western Resources, LLC, is the owner of Company reserves and mining facilities in the western United States. The agreement under which Arch Western was formed provides that a subsidiary of the Company, as the managing member of Arch Western, generally has exclusive power and authority to conduct, manage and control the business of Arch Western. However, consent of BP Amoco, the other member of Arch Western, would generally be required in the event that Arch Western proposes to make a distribution, incur indebtedness, sell properties or merge or consolidate with any other entity if, at such time Arch Western has a debt rating less favorable than specified ratings with Moody's Investors Service or Standard & Poor's or fails to meet specified indebtedness and interest ratios.

In connection with the Company's June 1, 1998 acquisition of Atlantic Richfield Company's ("ARCO") coal operations, the Company entered into an agreement under which it agreed to indemnify ARCO against specified tax liabilities in the event that these liabilities arise as a result of certain actions taken prior to June 1, 2013, including the sale or other disposition of certain properties of Arch Western, the repurchase of certain equity interests in Arch Western by Arch Western or the reduction under certain circumstances of indebtedness incurred by Arch Western in connection with the acquisition. Depending on the time at which any such indemnification obligation were to arise, it could impact the Company's profitability for the period in which it arises.

The membership interests in Canyon Fuel, which operates three coal mines in Utah, are owned 65% by Arch Western and 35% by a subsidiary of ITOCHU Corporation of Japan. The agreement which governs the management and operations of Canyon Fuel provides for a management board to manage its business and affairs. Some major business decisions concerning Canyon Fuel require the vote of 70% of the membership interests and therefore limit the Company's ability to make these decisions. These decisions include admission of additional members; approval of annual business plans; the making of significant capital expenditures; sales of coal below specified prices; agreements between Canyon Fuel and any member; the institution or settlement of litigation; a material change in the nature of Canyon Fuel's business or a material acquisition; the sale or other disposition, including by merger, of assets other than in the ordinary course of business; incurrence of indebtedness; entering into leases; and the selection and removal of officers. The Canyon Fuel agreement also contains various restrictions on the transfer of membership interests in Canyon Fuel.

The Company's Amended and Restated Certificate of Incorporation requires the affirmative vote of the holders of at least two-thirds of outstanding common stock voting thereon to approve a merger or consolidation and certain other fundamental actions involving or affecting control of the Company. The Company's Bylaws require the affirmative vote of at least two-thirds of the members of the Board of Directors of the Company in order to declare dividends and to authorize certain other actions.

#### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The information required by this Item is contained under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report and is incorporated herein by reference.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The information required by this Item is contained in the "Contingencies - Legal Contingencies" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report and is incorporated herein by reference.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITIES HOLDERS

(a) The Company's Annual Meeting of Stockholders was held on April 25, 2002, at the Company's headquarters at One CityPlace Drive, Suite 300, St. Louis, Missouri, at 10:00 a.m., central time

(b) At such Annual Meeting, the holders of the Company's common stock elected the following nominees for director:

Nominee	Total Votes For	Total Votes Withheld
James R. Boyd	41,998,937	1,595,502
Douglas H. Hunt	42,027,937	1,566,502
A. Michael Perry	42,007,048	1,587,391

At such Annual Meeting, the Company's stockholders, by a vote of 21,886,589 for, 15,157,678 against and 99,253 abstained, also approved an amendment to increase the number of shares under the Arch Coal, Inc. 1997 Stock Incentive Plan.

At such Annual Meeting, the Company's stockholders, by a vote of 38,587,248 for, 4,903,997 against and 103,191 abstained, also approved the Arch Coal, Inc. 1997 Stock Incentive Plan for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended.

At such Annual Meeting, the Company's stockholders, by a vote of 42,527,493 for, 1,029,013 against and 37,931 abstained, also ratified the appointment of Ernst & Young LLP as the Company's independent auditors for 2002.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a)

- 3.1 Amended and Restated Certificate of Incorporation of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the Quarter Ended March 31, 2000)
- 3.2 Amended and Restated Bylaws of Arch Coal, Inc. (incorporated herein by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the Year Ended December 31, 2000)
- 4.1 Stockholders Agreement, dated as of April 4, 1997, among Carboex International, Ltd., Ashland Inc. and Arch Coal, Inc. (formerly Arch Mineral Corporation) (incorporated herein by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-4 (Registration No. 333-28149) filed on May 30, 1997)
- 4.2 Assignment of Rights, Obligations and Liabilities under the Stockholders Agreement between Carboex International, Limited and Carboex, S.A. effective as of October 15, 1998 (incorporated herein by reference to Exhibit 4.2 of the Company's Annual Report on Form 10-K for the Year Ended December 31, 1998)
- 4.3 Registration Rights Agreement, dated as of April 4, 1997, among Arch Coal, Inc. (formerly Arch Mineral Corporation), Ashland Inc., Carboex International, Ltd. and the entities listed on Schedules I and II thereto (incorporated herein by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-4 (Registration No. 333-28149) filed on May 30, 1997, except for amended Schedule I thereto, incorporated herein by reference to Exhibit 4.2 of the Company's Quarterly Report on Form 10-Q for the Quarter Ended March 31, 1998)

- 4.4 Assignment of Registration Rights between Carboex International, Limited and Carboex, S.A. effective as of October 15, 1998 (incorporated herein by reference to Exhibit 4.4 of the Company's Annual Report on Form 10-K for the Year Ended December 31, 1998)
- 4.5 Agreement Relating to Nonvoting Observer, executed as of April 4, 1997, among Carboex International, Ltd., Ashland Inc., Ashland Coal, Inc. and Arch Coal, Inc. (formerly Arch Mineral Corporation) (incorporated herein by reference to Exhibit 4.3 of the Company's Registration Statement on Form S-4 (Registration No. 333-28149) filed on May 30, 1997)
- 4.6 Assignment of Right to Maintain a Non-Voting Observer at Meetings of the Board of Directors of Arch Coal, Inc. between Carboex International, Limited and Carboex, S.A. effective as of October 15, 1998 (incorporated herein by reference to Exhibit 4.6 of the Company's Annual Report on Form 10-K for the Year Ended December 31, 1998)
- 4.7 Amended and Restated Credit Agreement, dated as of April 18, 2002, by and among the Company, the Lenders party thereto, PNC Bank, National Association, as administrative agent, JPMorgan Chase Bank, as syndication agent, and Citibank, N.A., Credit Lyonnais New York Branch, and U.S. Bank National Association, as documentation agents (attached to this Quarterly Report on Form 10-Q as Exhibit 4.7)
- 4.8 Amended and Restated Credit Agreement, dated as of April 18, 2002, by and among the Arch Western Resources, LLC, the Lenders party thereto, PNC Bank, National Association, as administrative agent, JPMorgan Chase Bank, as syndication agent, and Citibank, N.A., Credit Lyonnais New York Branch, and U.S. Bank National Association, as documentation agents (attached to this Quarterly Report on Form 10-Q as Exhibit 4.8)
- 4.9 Form of Rights Agreement, dated March 3, 2000, between Arch Coal, Inc. and First Chicago Trust Company of New York, as Rights Agent (incorporated herein by reference to Exhibit 1 to a Current Report on Form 8-A filed on March 9, 2000)
- 10.1 Arch Coal, Inc. 1997 Stock Incentive Plan (as Amended and Restated on February 28, 2002) (attached to this Quarterly Report on Form 10-Q as Exhibit 10.1)
- (b) Reports on Form 8-K: A report on Form 8-K dated March 18, 2002 announcing that the Company had reduced production and that its earnings would subsequently fall short of expectations was filed by the Company in the quarter ended March 31, 2002.

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 thereunto duly authorized.

ARCH COAL, INC.  
(Registrant)

Date: May 13, 2002

/s/ John W. Lorson  
John W. Lorson  
Controller  
(Chief Accounting Officer)

INDEX TO EXHIBITS

1. Arch Coal, Inc. Amended and Restated Credit Agreement dated as of April 18, 2002
2. Arch Western Resources, LLC Amended and Restated Credit Agreement dated as of April 18, 2002
3. Arch Coal, Inc. Amended and Restated 1997 Stock Incentive Plan

\$350,000,000 REVOLVING CREDIT FACILITY  
 AMENDED AND RESTATED CREDIT AGREEMENT

by and among  
 ARCH COAL, INC.  
 and  
 THE LENDERS PARTY HERETO  
 and  
 PNC BANK, NATIONAL ASSOCIATION,  
 as  
 Administrative Agent  
 and  
 JPMORGAN CHASE BANK,  
 as  
 Syndication Agent  
 and  
 CITIBANK, N.A.,  
 CREDIT LYONNAIS NEW YORK BRANCH,  
 and  
 U.S. BANK NATIONAL ASSOCIATION,  
 as Documentation Agents

Dated as of April 18, 2002

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J.P. MORGAN SECURITIES, INC.  
 and  
 PNC CAPITAL MARKETS, INC.,  
 as Lead Arrangers and Joint Bookrunners

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT is dated as of April 18, 2002, and is made by and among ARCH COAL, INC., a Delaware corporation (the "Borrower"), the LENDERS (as hereinafter defined), JPMORGAN CHASE BANK, in its capacity as syndication agent, CITIBANK, N.A., CREDIT LYONNAIS NEW YORK BRANCH, U.S. BANK NATIONAL ASSOCIATION, each in its capacity as a documentation agent, and PNC BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent for the Banks under this Agreement.

WITNESSETH:

WHEREAS, the Borrower, JPMorgan Chase Bank (successor in such capacity to Morgan Guaranty Trust Company of New York), as syndication agent, Wachovia Corporation (successor in such capacity to First Union National Bank), as documentation agent, PNC Bank, National Association, as administrative agent, and certain lenders are parties to that Credit Agreement dated as of June 1, 1998, as amended as of January 21, 2000 (the "Original Credit Agreement"), providing for a \$600,000,000 revolving credit facility and a \$300,000,000 term loan facility to the Borrower; and

WHEREAS, the Borrower has requested certain amendments to the Original Credit Agreement and, subject to the terms and conditions hereof, the parties hereto agree that, effective as of the date hereof, the Original Credit Agreement shall hereby be amended and restated for the convenience of such parties in its entirety as set forth below, to provide that the revolving credit facility under the Original Credit Agreement shall be continued and refinanced hereby and that the term loan facility under the Original Credit Agreement shall be repaid in full; and

WHEREAS, the pledge of equity interests of certain Subsidiaries of the Borrower and the guaranties for the revolving credit facility under the Original Credit Agreement shall continue to secure the revolving credit loans and all other obligations hereunder;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

1. CERTAIN DEFINITIONS

1.1 Certain Definitions.

In addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly requires otherwise:

ACC shall mean the U.S. operations of ARCO Coal Company, a division of ARCO.

Acquisition shall mean the transactions contemplated by the Purchase Agreement and the Contribution Agreement, as such documents may be amended, modified or supplemented after the Closing Date as permitted by Section 7.2.15.

Acquisition Documents shall mean collectively the Purchase Agreement, the Contribution Agreement, the Tax Sharing Agreement, and the LLC Agreements, as limited by their schedules and exhibits, as the same may be amended, modified or supplemented after the Closing Date as permitted by Section 7.2.15.

Administrative Agent shall mean PNC Bank, National Association, in its capacity as administrative agent for the Lenders under this Agreement and its successors in such capacity.

Administrative Agent's Fee shall have the meaning assigned to that term in Section 9.15.

Administrative Agent's Letter shall have the meaning assigned to that term in Section 9.15.

Affiliate as to any Person shall mean 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 5% or more of any class of the voting or other equity interests of such Person, or (iii) 5% 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. Notwithstanding the foregoing, a Subsidiary of the Borrower (other than an Excluded Subsidiary) shall not be deemed an Affiliate of the Borrower.

Agents shall mean collectively the Administrative Agent and the Syndication Agent, and Agent shall mean any one of the Agents, individually.

Agreement shall mean the Original Credit Agreement (including all schedules and exhibits) as hereby amended and restated by this Amended and Restated Credit Agreement (including all schedules and exhibits), as the same may hereafter be supplemented, amended, restated, refinanced, replaced, or modified from time to time in accordance herewith.

Applicable Commitment Fee Rate shall mean the percentage rate per annum at the indicated level of Debt Rating in effect from time to time as set forth in the pricing grid on Schedule 1.1(A) below the heading "Commitment Fee." The Applicable Commitment Fee Rate shall be computed in accordance with the parameters set forth on Schedule 1.1(A). It is expressly agreed that on the Restatement Effective Date, the Applicable Commitment Fee Rate shall be such rate as computed in accordance with the parameters set forth on Schedule 1.1(A) but no less than the rate set forth in the pricing grid in Level III thereof. For periods after the Restatement Effective Date, the Applicable Commitment Fee Rate shall be the amount determined under Schedule 1.1(A) based upon the applicable Debt Rating in effect from time to time.

Applicable Letter of Credit Fee Rate shall mean the rate per annum at the indicated level of Debt Rating in effect from time to time as set forth in the pricing grid on Schedule 1.1(A) below the heading "Letter of Credit Fee." The Applicable Letter of Credit Fee Rate shall be computed in accordance with the parameters set forth on Schedule 1.1(A). It is expressly agreed that on the Restatement Effective Date, the Applicable Letter of Credit Fee Rate shall be such rate as computed in accordance with the parameters set forth on Schedule 1.1(A) but no less than the rate set forth in the pricing grid in Level III thereof. For periods after the Restatement Effective Date, the Applicable Letter of Credit Fee Rate shall be the amount determined under Schedule 1.1(A) based upon the applicable Debt Rating in effect from time to time.

Applicable Margin shall mean, as applicable:

(A).....the percentage spread to be added to Euro-Rate under the Euro-Rate Option at the indicated level of Debt Rating in effect from time to time as set forth in the pricing grid on Schedule 1.1(A) below the heading "Revolving Credit Euro-Rate Spread," or

(B).....the percentage spread to be added to the Base Rate under the Base Rate Option at the indicated level of Debt Rating in effect from time to time as set forth in the pricing grid on Schedule 1.1(A) below the heading "Revolving Credit Base Rate Spread."

The Applicable Margin shall be computed in accordance with the parameters set forth on Schedule 1.1(A). It is expressly agreed that on the Restatement Effective Date, the Applicable Margin shall be such amount as determined in accordance with Schedule 1.1(A) but no less than the amount set forth in the pricing grid in Level III thereof. For periods after the Restatement Effective Date, the Applicable Margin shall be the amount determined under clause (A) or clause (B) above.

Appropriate Percentage shall mean, with respect to each Special Subsidiary, the percentage of the equity of such Person owned by the Borrower or any Subsidiary of the Borrower.

Arch Coal Group shall mean, as of any date of determination, the Borrower and its Subsidiaries (other than the Excluded Subsidiaries and the Securitization Subsidiary).

Arch of Wyoming LLC shall mean Arch of Wyoming, LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Arch of Wyoming LLC Agreement shall mean that certain Limited Liability Agreement, dated as of April 15, 1998, of Arch of Wyoming LLC.

Arch Western shall mean Arch Western Resources, LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Arch Western Credit Facility shall mean that certain Credit Agreement by and among Arch Western, PNC Bank, as administrative agent, and JPMorgan Chase Bank (successor in such capacity to Morgan Guaranty Trust Company of New York), as syndication agent, providing for a \$675,000,000 term loan facility to Arch Western, dated as of June 1, 1998, as amended and restated on the Restatement Effective Date, as the same may hereafter be supplemented, amended, restated, refinanced, replaced, or modified from time to time.

Arch Western Group shall mean, as of any date of determination, AWAC, Arch Western and the Subsidiaries of Arch Western.

Arch Western LLC Agreement shall mean that certain Limited Liability Company Agreement by and between AWAC and Delta Housing, Inc., a Delaware corporation, dated as of June 1, 1998, with AWAC and Delta Housing, Inc. as members and creating Arch Western Resources, LLC, a Delaware limited liability company.

ARCO shall mean Atlantic Richfield Company, a corporation organized and existing under the laws of the State of Delaware.

Arrangers shall mean PNC and Morgan.

Assignment and Assumption Agreement shall mean an Assignment and Assumption Agreement by and among a Purchasing Bank, a Transferor Bank and the Administrative Agent, as agent and on behalf of the remaining Banks, substantially in the form of Exhibit 1.1(A).

AU Sub LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of April 8, 1998, as amended, of AU Sub LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Authorized Officer shall mean those individuals, designated by written notice to the Administrative Agent from the Borrower, authorized to execute notices, reports and other documents on behalf of the Loan Parties required hereunder. The Borrower may amend such list of individuals from time to time by giving written notice of such amendment to the Administrative Agent.

Average Pledged Account Balance shall mean, as of the date of determination, the average daily balance on deposit in or credited to the Escrow Account during that period commencing on the first day of the Period of Restriction in effect on the date of determination and continuing through the date of determination. For purposes of this definition, "Escrow Account" shall have the meaning ascribed to such term by that Pledge Agreement (Investment Property), dated as of the Restatement Effective Date, executed by Arch Western and each of its Subsidiaries, as the same may be supplemented, amended, restated, replaced, or modified from time to time, pursuant to the Arch Western Credit Facility.

AWAC shall mean Arch Western Acquisition Corporation, a corporation organized and existing under the laws of the State of Delaware.

Banks shall mean the financial institutions named on Schedule 1.1(B) and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a Bank.

Base Net Worth shall mean the sum of \$462,811,000, plus 50% of consolidated net income of the Borrower and its Subsidiaries (before the after-tax effect of changes in accounting principles) for each fiscal quarter in which net income was earned plus 100% of the net increase in Consolidated Tangible Net Worth resulting from the issuance of any equity securities by the Borrower, for the period from April 1, 2002 through the date of determination. In no event shall Base Net Worth be reduced on account of a consolidated net loss for any fiscal period.

Base Rate shall mean the greater of (i) the interest rate per annum announced from time to time by the Administrative Agent at its Principal Office as its then prime rate, which rate may not be the lowest rate then being charged commercial borrowers by the Administrative Agent, or (ii) the Federal Funds Effective Rate plus 1/2% per annum.

Base Rate Option shall mean the option of the Borrower to have Revolving Credit Loans bear interest at the rate and under the terms and conditions set forth in Section 3.1.1(a)(i).

Benefit Arrangement shall mean at any time 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 otherwise contributed to by any member of the ERISA Group.

Borrower shall mean Arch Coal, Inc., a corporation organized and existing under the laws of the State of Delaware.

Borrower Shares shall have the meaning set forth in Section 5.1.2.

Borrowing Date shall mean, with respect to any Loan, the date for the making thereof or the renewal or conversion thereof at or to the same or a different Interest Rate Option, which shall be a Business Day.

Borrowing Tranche shall mean specified portions of Loans outstanding as follows: (i) any Loans to which a Euro-Rate Option applies which become subject to the same Interest Rate Option under the same Committed Loan Request by the Borrower and which have the same Interest Period shall constitute one Borrowing Tranche, and (ii) all Loans to which a Base Rate applies shall constitute one Borrowing Tranche.

Business shall mean the business of owning and operating the U.S. domestic coal properties of ACC, substantially as operated by ACC at the time of the closing of the Acquisition.

Business Day shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in Pittsburgh, Pennsylvania and New York, New York; and if the applicable Business Day relates to any Loan to which the Euro-Rate Option applies, such day must also be a day on which dealings are carried on in the London interbank market.

Canyon Fuel shall mean Canyon Fuel Company, LLC, a limited liability company organized and existing under the laws of the State of Delaware

Canyon Fuel LLC Agreement shall mean that certain Limited Liability Company agreement by and between Arch Western (or a Subsidiary of Arch Western) and Itochu Coal International, Inc., a Delaware corporation, dated as of January 1, 1997, as amended, with Arch Western and Itochu Coal International, Inc. as members of Canyon Fuel Company, LLC, a Delaware limited liability company.

Citibank shall mean Citibank, N.A., its successors and assigns.

Closing Date shall mean the Business Day on which the first Loan shall be made, which shall be June 1, 1998.

Coastal Agreement shall mean that certain Purchase and Sale Agreement among The Coastal Corporation, a Delaware corporation, Coastal Coal, Inc., a Delaware corporation, ARCO and Itochu Corporation, a Japanese corporation, dated as of October 23, 1996.

Collateral shall mean the property of the applicable Loan Parties in which security interests are to be or have been granted under the Pledge Agreements.

Collateral Agent shall mean the "Collateral Agent" as such term is defined in the Collateral Sharing Agreement.

Collateral Documents shall mean collectively, the Indemnity Agreements, the Pledge Agreements, the Collateral Sharing Agreement and each other agreement providing for a security interest in and/or lien on the Collateral.

Collateral Sharing Agreement shall mean the Amended and Restated Collateral Agency and Sharing Agreement, among Borrower, the Guarantors, the Administrative Agent on behalf of the Lenders, the Owner Trustee (as defined therein), the Loan Trustee (as defined therein), the Swap Parties (as defined therein) party thereto, and PNC Bank, as Collateral Agent (as defined therein), substantially in the form of Exhibit 1.1(C) hereto, as the same may be supplemented, amended, restated, replaced, or modified from time to time.

Commercial Letter of Credit shall mean any Letter of Credit which is a commercial letter of credit issued in respect of the purchase of goods or services by one or more of the Loan Parties in the ordinary course of their business.

Commitment shall mean as to any Bank the aggregate of its Revolving Credit Commitment and, in the case of PNC Bank, its Swing Loan Commitment, and Commitments shall mean the aggregate of the Revolving Credit Commitments and Swing Loan Commitment of all of the Banks.

Commitment Fee shall mean the fee referred to in Section 2.3.

Commitment Reduction Notice shall have the meaning set forth in Section 4.4.4.

Committed Loan shall mean either a Revolving Credit Loan or a Swing Loan.

Committed Loan Request shall mean a request for a Revolving Credit Loan or a Swing Loan or a request to select, convert to or renew a Base Rate Option or Euro-Rate Option with respect to an outstanding Revolving Credit Loan in accordance with Sections 2.4, 3.1 and 3.2.

Commodity Price Protection Agreement shall mean a crude oil or heating oil price protection agreement, for the purpose of hedging the purchase price of diesel fuel used by the Loan Parties in the ordinary course operations of their business, in a standard International Swap Dealer Association Agreement, including, without limitation, providing for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner.

Consolidated Tangible Net Worth shall mean as of any date of determination total stockholders' equity less intangible assets of the Borrower and its Subsidiaries as of such date determined and consolidated in accordance with GAAP less the positive number, if any, equal to the amount of the Investment by the Borrower and its Subsidiaries in Permitted Joint Ventures in excess of \$30,000,000 and adjusted to exclude the after tax effect of any changes in accounting principles subsequent to the Restatement Effective Date.

Contamination shall mean the presence or Release or threat of Release of Regulated Substances in, on, under or emanating to or from the Property, which pursuant to Environmental Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Laws requires the investigation, cleanup, removal, remediation, containment, abatement of or other response action or which otherwise constitutes a violation of Environmental Laws.

Contribution Agreement shall mean that certain Contribution Agreement among the Borrower, AWAC, ARCO, Delta Housing, Inc., a Delaware corporation, and Arch Western.

Credit Lyonnais shall mean Credit Lyonnais New York Branch, its successors and assigns.

Debt shall mean for any Person as of any date of determination, the difference between the following (a) and (b): (a) the sum, without duplication, of the following for such Person, as of such date, determined in accordance with GAAP: (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 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, (iv) reimbursement obligations (contingent or otherwise) under any letter of credit (other than, with respect to the Borrower and its Subsidiaries, contingent reimbursement obligations aggregating at any time up to \$25,000,000 and other than contingent reimbursement obligations in respect of the letter of credit issued to support the Port Bond), (v) fifty percent (50%) of all indebtedness and other obligations in respect of any Permitted Receivables Financing, and (vi) 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 Guarantees by such Person (the "Guaranteeing Person") of Debt of other Persons (each such other Person being a "Primary Obligor" and the obligations of a Primary Obligor which are subject to a Guarantee by a Guaranteeing Person being "Primary Obligations") (it being understood that if the Primary Obligations of the Primary Obligor do not constitute Debt, then the Guarantee by the Guaranteeing Person of the Primary Obligations of the Primary Obligor shall not constitute Debt), minus (b) the sum of (1) the principal amount, expressly excluding any interest income earned thereon, held on deposit in the Pledged Collateral Account, as of the date of determination, and (2) solely during a Period of Restriction, if any, in effect on the date of determination, the Average Pledged Account Balance as of the date of determination. It is expressly agreed that the amount of the indebtedness in respect of the Guaranty by the Borrower of the Port Bond, shall be excluded from the amount determined under clause (vi) of the previous sentence. Further, it is expressly agreed that 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 Restatement Effective Date) will be excluded from indebtedness in the determination of Debt.

Debt Rating shall mean the rating of the credit facility under this Agreement by either of Standard & Poor's or Moody's.

Derivatives Obligations shall mean, for any Person, all obligations of such Person in respect of 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 (including any option with respect to any of the foregoing transactions) or any combination of the foregoing transactions, including, without limitation obligations in respect of any Interest Rate Protection Agreement.

Documentation Agent shall mean each of Citibank, Credit Lyonnais, and U.S. Bank in its capacity as documentation agent under this Agreement, and its successors in such capacity.

Dollar, Dollars, U.S. Dollars and the symbol \$ shall mean lawful money of the United States of America.

Drawing Date shall have the meaning assigned to that term in Section 2.9.3.2.

EBITDDA for any period of determination shall mean with respect to any Person income from operations before the effect of changes in accounting principles, nonrecurring charges and extraordinary items, net interest expense, income taxes, depreciation, depletion and amortization, all for such period determined in accordance with GAAP.

Environmental Claim shall mean any administrative, regulatory or judicial action, suit, claim, notice of non-compliance or violation, notice of liability or potential liability, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit, Regulated Substances, Contamination or otherwise arising from alleged injury or threat of injury to the environment.

Environmental Complaint shall mean any written notice or complaint by any Person or Official Body setting forth allegations relating to or a cause of action for personal injury or property damage, natural resource damage, contribution or indemnity for response costs, civil or administrative penalties, criminal fines or penalties, or declaratory or equitable relief arising under any Environmental Laws or any order, notice of violation, citation, subpoena, request for information or other written notice or demand of any type issued by an Official Body pursuant to any Environmental Laws.

Environmental Law shall mean any federal, state, local or foreign statute, Law (including, but not limited to Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.ss. 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.ss. 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C.ss. 1801 et seq., the Toxic Substances Control Act, 15 U.S.C.ss. 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C.ss. 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C.ss. 300f-300j, the Federal Air Pollution Control Act, 42 U.S.C.ss. 7401 et seq., the Oil Pollution Act, 33 U.S.C.ss. 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.ss. 136 to 136y, the Occupational Safety and Health Act, 29 U.S.C.ss. 651 et seq. the Mine Safety and Health Act, 30 U.S.C.ss. 801 et seq., the Surface Mining Control and Reclamation Act 30 U.S.C.ss. 1201 et seq., each as amended, or any equivalent state or local statute, and any amendments thereto), code, consent decree, settlement agreement, directive, judicial or agency interpretation, policy or guidance regulating: (i) pollution or pollution control; (ii) protection of human health from exposure to Regulated Substances; (iii) protection of natural resources or the environment; (iv) employee 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); (v) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, transport, storage, sale, collection, distribution, disposal or Release or threat of Release of Regulated Substances; (v) the presence of Contamination; (vi) the protection of endangered or threatened species; and (vii) the protection of Environmentally Sensitive Areas.

Environmental Permit shall mean any permit, approval, license, consent, bond, or other authorization required under any Environmental Law.

Environmentally Sensitive Area shall mean (i) any wetland as defined by applicable Environmental Laws; (ii) any area designated as a coastal zone pursuant to applicable Laws, including Environmental

Laws; (iii) any area of historic or archeological significance or scenic area as defined or designated by applicable Laws, including Environmental Laws; (iv) habitats of endangered species or threatened species as designated by applicable Laws, including Environmental Laws; or (v) a floodplain or other flood hazard area as defined pursuant to any applicable Laws.

ERISA shall mean 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 shall mean, at any time, the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under Section 414 of the Internal Revenue Code.

Euro-Rate shall mean, with respect to the Loans comprising any Borrowing Tranche to which the Euro-Rate Option applies for any Interest Period, the interest rate per annum determined by the Administrative Agent by dividing (the resulting quotient rounded upward to the nearest 1/100 of 1% per annum) (i) the rate of interest determined by the Administrative Agent (which determination shall be conclusive absent manifest error) to be the average of the London interbank offered rates of interest per annum for U.S. Dollars set forth on Dow Jones Market Service display page 3750 or such other display page on the Dow Jones Market Service System as may replace such page to evidence the average of rates quoted by banks designated by the British Bankers' Association (or appropriate successor or, if the British Bankers' Association or its successor ceases to provide such quotes, a comparable replacement determined by the Administrative Agent) at 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period for an amount comparable to such Borrowing Tranche and having a borrowing date and a maturity comparable to such Interest 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:

Dow Jones Market Service page 3750 quoted by British Bankers'

$$\text{Euro-Rate} = \frac{\text{Association or appropriate successor}}{1.00 - \text{Euro-Rate Reserve Percentage}}$$

The Euro-Rate shall be adjusted with respect to any Euro-Rate Option outstanding on the effective date of any change in the Euro-Rate Reserve Percentage as of such effective date. The Administrative Agent shall give prompt notice to the Borrower and the Banks of the Euro-Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

Euro-Rate Option shall mean the option of the Borrower to have Revolving Credit Loans bear interest at the rate and under the terms and conditions set forth in Section 3.1.1(a)(ii).

Euro-Rate Reserve Percentage shall mean the maximum percentage (expressed as a decimal rounded upward to the nearest 1/100 of 1%) as determined by the Administrative Agent which is in effect during any

relevant period, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities") of a member bank in such System.

Event of Default shall mean any of the events described in Section 8.1 and referred to therein as an "Event of Default."

Excluded Subsidiaries shall mean, collectively, AWAC, Arch Western and the Subsidiaries of Arch Western.

Expiration Date shall mean, with respect to the Revolving Credit Commitments and Swing Loan Commitment, April 18, 2007.

Federal Funds Effective Rate for any day shall mean the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

Financial Projections shall have the meaning assigned to that term in Section 5.1.7(iii).

Fixed Charge Coverage Ratio shall mean the ratio of (a) the sum of EBITDDA of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's EBITDDA, each on a consolidated basis in accordance with GAAP, plus operating lease expense of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's operating lease expense, each on a consolidated basis in accordance with GAAP, to (b) the sum of interest expense (other than Permitted Loan Origination Expense) of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of interest expense of each Special Subsidiary, each on a consolidated basis in accordance with GAAP, plus operating lease expense of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of operating lease expense of each Special Subsidiary, each on a consolidated basis in accordance with GAAP, with the amounts under the numerator and denominator of such ratio all calculated as of the last day of each fiscal quarter for the four fiscal quarters of the Borrower then ended. For purposes of the above determination, during any Period of Restriction, the amount in clause (a) above shall be increased by interest income of Arch Western and its Subsidiaries (other than interest income on the Eligible Note Receivable (as defined in the Arch Western Credit Facility)), all as determined on a consolidated basis in accordance with GAAP.

GAAP shall mean Generally Accepted Accounting Principles as are in effect from time to time, subject to the provisions of Section 1.3, and applied on a consistent basis both as to classification of items and amounts.

Governmental Acts shall have the meaning assigned to that term in Section 2.9.8.

Guarantor shall mean at any time each of the Significant Subsidiaries of the Borrower.

Guarantor Joinder shall mean a joinder by a Person as a Guarantor under the Guarantor Joinder and Assumption Agreement in the form of Exhibit 1.1(G)(1).

Guaranty of any Person shall mean any obligation of such Person guaranteeing or in effect guaranteeing 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.

Guaranty Agreement shall mean the continuing Amended and Restated Guaranty and Suretyship Agreement in substantially the form of Exhibit 1.1(G)(2) executed and delivered by each of the Guarantors to the Administrative Agent for the benefit of the Lenders, as the same may be supplemented, amended, restated, replaced, or modified from time to time, with such amendment, restatement, supplement or replacement to be in form and substance satisfactory to the Administrative Agent.

Historical Statements shall have the meaning assigned to that term in Section 5.1.7(i).

Hobet Dragline Lease shall mean the lease dated as of March 1, 1983, between Branch Banking and Trust Company, as successor to One Valley Bank (formerly Kanawha Valley Bank, N.A.), as Owner Trustee, Lessor, and Hobet Mining & Construction Co., Inc., as Lessee, as amended through the Sixth Amendment thereto, dated as of June 1, 1998.

Inactive Subsidiaries shall mean, at any time, collectively, the Subsidiaries of the Borrower which: (i) do not actively conduct any business or operations, and (ii) have total assets, in the case of any such Subsidiary, with a book value, as of any date of determination, not in excess of \$250,000.

Indebtedness shall mean, 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 note purchase or acceptance credit facility, (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 and which are not more than thirty (30) days past due), or (v) any Guaranty of any such Indebtedness. It is understood that Derivatives Obligations shall not be deemed to be Indebtedness.

Indemnity Agreements shall mean collectively the Indemnity Agreements, executed and delivered in connection with the amendment dated as of January 21, 2000, to the Original Credit Agreement, by each of the applicable Loan Parties to the Administrative Agent for the benefit of the Lenders, as the same may be supplemented, amended, restated, replaced, or modified from time to time, and Indemnity Agreement shall mean any of the Indemnity Agreements.

Insolvency Proceeding shall mean, 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.

Interest Period shall have the meaning set forth in Section 3.2.

Interest Rate Option shall mean any Euro-Rate Option, Base Rate Option or Offered Rate Option.

Interest Rate Protection Agreement shall mean an interest rate protection agreement in a standard International Swap Dealer Association Agreement, including, without limitation, providing for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner.

Internal Revenue Code shall mean the Internal Revenue Code of 1986, 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.

Investments shall mean collectively all of the following with respect to any Person: (i) investments or contributions by any of the Loan Parties or their Subsidiaries directly or indirectly in or to the capital of or other payments to (except in connection with transactions for the sale of goods or services for fair value in the ordinary course of business) such Person, (ii) loans by any of the Loan Parties or their Subsidiaries to such Person, (iii) guaranties by any Loan Party or any Subsidiary of any Loan Party directly or indirectly of the obligations of such Person, or (iv) other obligations, contingent or otherwise, of any Loan Party or any Subsidiary 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 satisfactory to the Administrative Agent, in its sole discretion.

Issuing Banks shall mean, with respect to a Letter of Credit, including any replacements therefor or extensions thereof, PNC Bank or any other Bank which shall have consented to its designation by the Borrower as an "Issuing Bank" by providing prior written notice of such designation and consent to the Administrative Agent.

JPMorgan Chase shall mean JPMorgan Chase Bank, its successors and assigns.

Labor Contracts shall mean all employment agreements, employment contracts, collective bargaining agreements and other agreements among any Loan Party or Subsidiary of a Loan Party and its employees.

Law shall mean any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, judgment, lien or award of or settlement agreement with any Official Body.

Lease Documents shall have the meaning assigned to that term in the Collateral Sharing Agreement.

Lender shall mean each of the Banks.

Letter of Credit shall have the meaning assigned to that term in Section 2.9.1.

Letter of Credit Fee shall have the meaning assigned to that term in Section 2.9.2.

Letters of Credit Outstanding shall mean at any time the sum of (i) the aggregate undrawn face amount of outstanding Letters of Credit and (ii) the aggregate amount of all unpaid and outstanding Reimbursement Obligations. If the face amount of any Letter of Credit shall increase automatically over time, such increase shall be deemed to occur for purposes of computing "Letters of Credit Outstanding" under this Agreement on the date which is sixty (60) days before the actual effective date of such automatic increase.

Leverage Ratio shall mean the ratio of the sum of Debt of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of Debt of each Special Subsidiary, each on a consolidated basis in accordance with GAAP (as the numerator) to EBITDDA of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's EBITDDA, each on a consolidated basis in accordance with GAAP (as the denominator). For purposes of calculating the Leverage Ratio, Debt shall be determined as of the end of each fiscal quarter of the Borrower and EBITDDA shall be determined as of the end of each fiscal quarter of the Borrower for the four fiscal quarters then ended.

Lien shall mean 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).

LLC Agreements shall mean collectively the Arch Western LLC Agreement, Canyon Fuel LLC Agreement, Mountain Coal LLC Agreement, Arch of Wyoming LLC Agreement, AU Sub LLC Agreement, State Leases LLC Agreement and Thunder Basin LLC Agreement.

LLC Interests shall have the meaning given to such term in Section 5.1.2.

Loan Documents shall mean this Agreement, the Administrative Agent's Letter, the Guaranty Agreement, the Notes, the Pledge Agreements, the Indemnity Agreements, the Collateral Sharing Agreement, the Subordination Agreement, and any other instruments, certificates or documents delivered or contemplated to be delivered hereunder or thereunder or in connection herewith or therewith as the same may be supplemented, amended, restated, replaced, or modified from time to time in accordance herewith or therewith, and Loan Document shall mean any of the Loan Documents.

Loan Parties shall mean the Borrower and the Guarantors.

Loans shall mean collectively and Loan shall mean separately all Revolving Credit Loans and Swing Loans or any Revolving Credit Loan or Swing Loan.

Material Adverse Change shall mean 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 Loan Document, (b) is or could reasonably be expected to be materially adverse to the business, financial condition or results of operations of the Borrower and its Subsidiaries taken as a whole, or (c) impairs materially or could reasonably be expected to impair materially the ability of any Agent or any of the Lenders, to the extent permitted, to enforce their legal remedies pursuant to this Agreement or any other Loan Document.

Material Contracts shall mean all contracts, agreements or other instruments described in Regulation S-K, Item 601(b)(10) promulgated pursuant to the Securities Exchange Act of 1934, as amended, which the Borrower is required to file as an exhibit to any annual, quarterly or other report required to be filed by the Borrower under the Securities Exchange Act of 1934, as amended.

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

MLP Transaction shall mean the sale by the members of the Arch Coal Group of those properties identified on Schedule 1.1(M) in an arms-length, sale transaction on reasonable and customary terms, which transaction forms a master limited partnership or similar entity for the purpose of acquiring such properties and potentially other coal mining properties from members of the Arch Coal Group and potentially other Persons not related to the Arch Coal Group and provides partnership interests in such partnership to the Arch Coal Group.

Month, with respect to an Interest Period under the Euro-Rate Option, shall mean the interval between the days in consecutive calendar months numerically corresponding to the first day of such Interest Period. If any Interest Period for any Loan subject to a Euro-Rate Option begins on a day of a calendar month for which there is no numerically corresponding day in the month in which such Interest Period is to end, the final month of such Interest Period shall be deemed to end on the last Business Day of such final month.

Moody's shall mean Moody's Investors Service, Inc., and its successors.

Morgan shall mean J.P. Morgan Securities Inc.

Mountain Coal LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of March 6, 1998, as amended, of Mountain Coal Company, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware.

Multiemployer Plan shall mean any employee benefit plan which is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which the 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.

Multiple Employer Plan shall mean a Plan which has two or more contributing sponsors (including the Borrower 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.

Net Cash Proceeds shall mean, with respect to any transaction, an amount equal to the cash proceeds received by the Borrower or any of its Subsidiaries (other than Excluded Subsidiaries) from or in respect of such transaction (including, when received, any cash proceeds received as income or other cash proceeds of any non-cash proceeds of such transaction), less (x) any expenses or charges (including commissions, fees and taxes paid or payable) reasonably incurred by such Person in respect of such transaction, (y) any amounts considered appropriate by the chief financial officer of the Borrower to provide reserves in accordance with GAAP for payment of indemnities or liabilities that may be incurred in connection with such sale or disposition, and (z) in the case of any asset sale permitted by Section 7.2.4(vi), the amount of any debt secured by a Lien on the related asset and discharged as part of such asset sale. For purposes of this definition, if taxes or other expenses payable in connection with the sale or other disposition of any asset are not known as of the date of such sale or other disposition, then such fees,

commissions, expenses or taxes shall be estimated in good faith by the chief financial officer of the Borrower and such estimated amounts shall be deducted. At such time as any reserved amount described in clause (y) above is no longer required to be held in reserve, the balance thereof, after payment of the related liabilities or indemnities, shall be used to make a mandatory prepayment of and permanent and irrevocable Commitment reduction with respect to the Revolving Credit Loans in accordance with Section 4.4.5.

Notes shall mean the Revolving Credit Notes and Swing Loan Note.

Notices shall have the meaning assigned to that term in Section 10.6.

Obligation shall mean any obligation, Indebtedness, or liability of any of the Loan Parties to any Agent or any of the Lenders, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, under or in connection with this Agreement, any Notes, the Letters of Credit, the Administrative Agent's Letter or any other Loan Document.

Off-Balance Sheet and Capital Lease Transactions shall have the meaning assigned to such term in Section 7.2.9.

Offered Rate Option shall mean the rate of interest quoted from time to time by the Administrative Agent to the Borrower and accepted by the Borrower with respect to a Swing Loan.

Official Body shall mean any national, federal, state, local or other government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

Original Credit Agreement shall have the meaning assigned to such term in the preamble hereof.

Partnership Interests shall have the meaning given to such term in Section 5.1.2.

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

Period of Restriction shall mean any period of consecutive days beginning on a date on which, pursuant to the terms of clause (iii) of Section 7.2.14 [Loans and Investments] of the Arch Western Credit Facility, Arch Western is prohibited from making any loans to the Borrower, and continuing until such date as, pursuant to the terms of clause (iii) of Section 7.2.14 [Loans and Investments] of the Arch Western Credit Facility, Arch Western is permitted to make loans to the Borrower.

Permitted Acquisitions shall have the meaning assigned to such term in Section 7.2.3.

Permitted Investments shall mean:

(i) Direct obligations of the United States of America or any agency or instrumentality thereof or obligations backed by the full faith and credit of the United States of America maturing in twelve (12) months or less from the date of acquisition;

(ii) Commercial paper maturing in 180 days or less rated in the highest categories by Standard & Poor's or Moody's on the date of acquisition; and (iii) Demand deposits, time deposits or certificates of deposit maturing within one year in a commercial bank whose obligations are rated A-1, A or the equivalent or better by Standard & Poor's on the date of determination.

Permitted Investments in Arch Western shall have the meaning assigned to that term in Section 7.2.14(v).

Permitted Joint Venture shall mean any Person (i) with respect to which the ownership of equity interests thereof by the Borrower or any Subsidiary of the Borrower is accounted for in accordance with the "equity method" in accordance with GAAP; (ii) engaged in a line of business permitted by Section 7.2.7 [Continuation of or Change in Business]; and (iii) with respect to which the equity interests thereof were acquired by the Borrower or Subsidiary of the Borrower in an arms-length transaction; provided that any such Person shall be treated for purposes of this Agreement as a Subsidiary and not a Permitted Joint Venture if (A) the Borrower has management control over the operations of such Person and (B) the Borrower owns directly or indirectly a majority of the economic equity interest in such Person.

Permitted Liens shall mean:

(i) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable;

(ii) 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, old-age pensions or other social security programs;

(iii) 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 securing obligations to pay lease payments that are not yet due and payable or in default;

(iv) 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 to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business (it being understood that any appeal or similar bond (other than such a bond required pursuant to applicable Law to secure in the ordinary course payment of worker's compensation, reclamation liabilities or royalty bonds) in an amount exceeding \$50,000,000 shall not be in the ordinary course of business);

(v) 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;

(vi) Liens granted in the Collateral, subject to the Collateral Sharing Agreement, to any Lender providing any Interest Rate Protection Agreement or any Commodity Price Protection Agreement;

(vii) 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) permitted under Section 7.2.9 [Off-Balance Sheet Financing and Capital Leases] hereof securing obligations of such Loan Party or Subsidiary to the lessor under such leases;

(viii) Liens securing Indebtedness (other than Indebtedness secured by Liens described in clause (vii) above) of not more than \$25,000,000 at any time, including, without limitation, in respect of Purchase Money Security Interests;

(viii) 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 they do not in the aggregate materially impair the ability of any member of the Arch Coal Group to perform its Obligations hereunder or under the other Loan Documents:

(1) Claims or Liens for taxes, assessments or charges due and payable and subject to interest or penalty, provided that the applicable member of the Arch Coal Group 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;

(2) Claims, Liens or encumbrances upon, and defects of title to, real or personal property, including any attachment of personal or real property or other legal process prior to adjudication of a dispute on the merits;

(3) Claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens; or

(4) Liens resulting from judgments or orders described in Section 8.1.6;

(ix) any Lien or restriction resulting from ownership, by an entity other than an Affiliate of the Borrower, of a minority interest in Canyon Fuel;

(x) Liens granted in the Collateral under the Collateral Documents to the Administrative Agent for the benefit of the Lenders;

(xi) the pledge by Coal-Mac, Inc. and Ashland Terminal, Inc. of their respective partnership interests in Dominion Terminal Associates in connection with the Port Bond; and

(xii) Liens, to secure obligations under a Permitted Receivables Financing, in those accounts receivable or contracts giving rise to accounts receivable of any member of the Arch Coal Group or of any Securitization Subsidiary, which accounts receivable or contracts giving rise to accounts receivable are either to be sold by a member of the Arch Coal Group to the Securitization Subsidiary as part of a Permitted Receivable Financing or which are an asset of the Securitization Subsidiary.

Permitted Loan Origination Expense shall mean the aggregate amount of all fees and expenses incurred by the Borrower, in connection with the closing of the transactions on the Closing Date under the Original Credit Agreement and under the Arch Western Credit Facility then in effect, on the date of the First Amendment to the Original Credit Agreement, and on the Restatement Effective Date under this Agreement and under the Arch Western Credit Facility as amended and restated on such date, which are required to be capitalized in accordance with GAAP.

Permitted Receivables Financing shall mean a transaction or series of transactions pursuant to which a Securitization Subsidiary purchases accounts receivable or contracts giving rise to accounts receivable from any one or more members of the Arch Coal Group and finances such accounts receivable through the issuance of Indebtedness or equity interests or through the sale of such accounts; provided that (a) the Board of Directors of the Borrower shall have determined in good faith that such Permitted Receivables Financing is economically fair and reasonable to the Borrower, (b) all sales of accounts receivables to or by such Securitization Subsidiary are made at fair market value (as determined in good faith by the Board of Directors of the Borrower), (c) the provisions thereof shall be market terms (as determined in good faith by the Board of Directors of the Borrower), (d) no portion of the Indebtedness of a Securitization Subsidiary is guaranteed by or is recourse to the Borrower or any of its other Subsidiaries (other than recourse for customary representations, warranties, covenants and indemnities, none of which shall related to the collectibility of such accounts receivable), (e) neither the Borrower nor any of its other Subsidiaries has any obligation to maintain or preserve such Securitization Subsidiary's financial condition, (f) the aggregate amount of accounts receivable and contracts giving rise to accounts receivable sold by the members of the Arch Coal Group shall not exceed \$75,000,000, and 50 % of the principal amount of the financing thereof to the Arch Coal Group, immediately upon the closing of such financing transaction, shall be used to make a permanent reduction of the Revolving Credit Commitments.

Person shall mean 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 shall mean 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 Internal Revenue Code and either (i) is 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 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.

Pledge Agreements shall mean collectively the Amended and Restated Pledge Agreement in substantially the form of Exhibit 1.1(P) hereto and each other similar pledge agreement in form and substance acceptable to the Administrative Agent, each as executed and delivered by the applicable Loan Parties to the Administrative Agent for the benefit of the Lenders, as the same may be supplemented, amended, restated, replaced, or modified from time to time, and Pledge Agreement shall mean any of the Pledge Agreements.

Pledged Collateral Account shall mean that account pledged as collateral security pursuant to that Pledge Agreement (Pledged Collateral Account), dated as of the Restatement Effective Date, executed by Arch Western, as the same may be supplemented, amended, restated, replaced, or modified from time to time, pursuant to the Arch Western Credit Facility.

PNC Bank shall mean PNC Bank, National Association, its successors and assigns.

Port Bond shall mean collectively, those certain Coal Terminal Revenue Refunding Bonds (Dominion Terminal Associates Project), Series 1987-A, B, C and D Bonds issued by Peninsula Ports Authority of Virginia, a political subdivision of the Commonwealth of Virginia, in the face amount of \$23,240,000, together with any renewals thereof or replacements therefor so long as the face amount thereof is not in excess of \$23,240,000.

Potential Default shall mean any event or condition which with notice, passage of time or a determination by the Administrative Agent or the Required Banks, or any combination of the foregoing, would constitute an Event of Default.

Principal Office shall mean the main banking office of the Administrative Agent in Pittsburgh, Pennsylvania.

Prior Security Interest shall mean a valid and enforceable perfected first-priority security interest under the Uniform Commercial Code in the Collateral which is subject only to Liens for taxes not yet due and payable to the extent such prospective tax payments are given priority by statute or, in the case of the Collateral, Purchase Money Security Interests as permitted hereunder.

Prohibited Transaction shall mean any prohibited transaction as defined in Section 4975 of the Internal Revenue 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.

Property shall mean all real property, both owned and leased, of any Loan Party or Subsidiary of a Loan Party.

Purchase Agreement shall mean that certain Purchase and Sale Agreement among ARCO, ARCO Uinta Coal Company, a Delaware corporation, the Borrower and AWAC, dated as of March 22, 1998, together with all schedules and exhibits thereto.

Purchase Money Security Interest shall mean 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.

Purchasing Bank shall mean a Bank which becomes a party to this Agreement by executing an Assignment and Assumption Agreement.

Regulated Substances shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental 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," "municipal waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste," or "regulated substance" or any other material, substance or waste, regardless of its form or nature, which is regulated by the Environmental Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature, or which otherwise is regulated by any applicable Environmental Law including, without limitation, petroleum and petroleum products (including crude oil and any fractions thereof), natural gas, synthetic gas and any mixtures thereof, asbestos, urea formaldehyde, polychlorinated biphenyls, mercury and radioactive substances.

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

Reimbursement Obligation shall have the meaning assigned to such term in Section 2.9.3.2.

Release shall mean anything defined as a "release" under CERCLA or RCRA.

Replacement Sales Certificate shall have the meaning assigned to such term in Section 7.2.4 (iii).

Reportable Event shall mean a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan or Multiemployer Plan.

Required Banks shall mean

(A) if there are no Loans or Reimbursement Obligations outstanding, Required Banks shall mean Banks whose Commitments (excluding the Swing Loan Commitment) aggregate more than 50% of the Commitments (excluding the Swing Loan Commitment) of all of the Banks, or

(B) if there are Loans or Reimbursement Obligations outstanding, and the Revolving Credit Commitments remain in effect, Required Banks shall mean any Bank or group of Banks if the sum of the principal amount of the Revolving Credit Commitments of such Banks aggregates more than 50% of the aggregate Revolving Credit Commitments, or

(C) if there are Loans or Reimbursement Obligations outstanding but the Revolving Credit Commitments no longer remain in effect, Required Banks shall mean any Bank or group of Banks if the sum of the principal amount of the Loans and Revolving Credit Ratable Shares of Reimbursement Obligations then outstanding of such Banks aggregate more than 50% of the sum of the total principal amount of all Loans then outstanding plus the aggregate principal amount of all Reimbursements Obligations then outstanding.

Required Share shall have the meaning assigned to such term in Section 4.7. Restatement Effective Date shall mean April 18, 2002.

Revolving Credit Commitment shall mean, as to any Bank at any time, the amount initially set forth opposite its name on Schedule 1.1(B) in the column labeled "Amount of Commitment for Revolving Credit Loans," and thereafter on Schedule I to the most recent Assignment and Assumption Agreement executed by such Bank, and Revolving Credit Commitments shall mean the aggregate Revolving Credit Commitments of all of the Banks.

Revolving Credit Loans shall mean collectively and Revolving Credit Loan shall mean separately all Revolving Credit Loans or any Revolving Credit Loan made by the Banks or one of the Banks to the Borrower pursuant to Section 2.1 or 2.9.3.

Revolving Credit Note shall mean any Revolving Credit Note of the Borrower in the form of Exhibit 1.1(R) issued by the Borrower at the request of a Bank pursuant to Section 4.6 evidencing the Revolving Credit Loans to such Bank, as the same may be supplemented, amended, restated, refinanced, replaced, or modified from time to time in whole or in part.

Revolving Credit Ratable Share shall mean the proportion that a Bank's Revolving Credit Commitment (excluding the Swing Loan Commitment) bears to the Revolving Credit Commitments (excluding the Swing Loan Commitments) of all of the Banks.

Revolving Facility Usage shall mean at any time the sum of the Revolving Credit Loans outstanding, the Swing Loans outstanding and the Letters of Credit Outstanding.

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

Securitization Subsidiary shall mean a Subsidiary of the Borrower (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 the Borrower) or another special purpose vehicle that is established for the limited purpose of acquiring and financing accounts receivables and contracts giving rise to accounts receivable of any member of the Arch Coal Group and engaging in activities ancillary thereto.

Settlement Date shall mean each Business Day on which the Administrative Agent effects settlement pursuant to Section 4.7.

Significant Subsidiary shall mean any Subsidiary of Borrower other than the Excluded Subsidiaries, each Securitization Subsidiary and the Inactive Subsidiaries.

Solvent shall mean, with respect to any Person on a particular date, that on such date (i) 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, (ii) 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, (iii) 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, (iv) 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 (v) 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.

Special Subsidiary shall mean Canyon Fuel and each other Person to be treated as a Subsidiary in accordance with the proviso to the definition of Permitted Joint Venture.

Standard & Poor's shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

Standby Letter of Credit shall mean a Letter of Credit issued to support obligations of one or more Persons, contingent or otherwise, which finance the working capital and business needs of such Persons incurred in the ordinary course of business.

State Leases LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of April 8, 1998, as amended, of State Leases LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Subordination Agreement shall mean the Amended and Restated Subordination Agreement (Intercompany) in substantially the form of Exhibit 1.1(S)(1), executed and delivered by each Loan Party to the Administrative Agent for the benefit of the Lenders, as the same may be supplemented, amended, restated, replaced, or modified from time to time.

Subsidiary of any Person at any time shall mean (i) any corporation or trust of which more than 50% (by number of shares or number of votes) of the outstanding capital stock or shares of beneficial interest normally entitled to vote for the election of one or more directors or trustees (regardless of any contingency which does or may suspend or dilute the voting rights) is at such time owned directly or indirectly by such Person or one or more of such Person's Subsidiaries, (ii) any partnership of which such Person is a general partner or of which more than 50% of the partnership interests is at the time directly or indirectly owned by such Person or one or more of such Person's Subsidiaries, (iii) any limited liability company of which such Person is a member or of which more than 50% of the limited liability company interests is at the time directly or indirectly owned by such Person or one or more of such Person's Subsidiaries or (iv) any corporation, trust, partnership, limited liability company or other entity which is controlled or capable of being controlled by such Person or one or more of such Person's Subsidiaries. It is expressly agreed that each Special Subsidiary shall be deemed to be a Subsidiary of the Borrower for the purposes of this Agreement. Nonetheless, the Appropriate Percentage of the assets, income, expenses, liabilities and other items with respect to each Special Subsidiary shall be included, without duplication, for purposes of calculating the Leverage Ratio, the Fixed Charge Coverage Ratio and inclusion in Section 7.2.9 [Off-Balance Sheet Financing and Capital Leases], as described more fully in the definitions of "EBITDDA," "Leverage Ratio," "Fixed Charge Coverage Ratio" and Section 7.2.9.

Subsidiary Shares shall have the meaning assigned to that term in Section 5.1.2.

Swing Loan Commitment shall mean PNC Bank's commitment to make Swing Loans to the Borrower pursuant to Section 2.4.2 hereof, in an aggregate principal amount up to \$40,000,000.

Swing Loan Note shall mean the Swing Loan Note of the Borrower in the form of Exhibit 1.1(S)(2) evidencing the Swing Loans, as the same may be supplemented, amended, restated, refinanced, replaced, or modified from time to time in whole or in part.

Swing Loan Request shall mean a request for Swing Loans made in accordance with Section 2.4.2 hereof.

Swing Loans shall mean collectively and Swing Loan shall mean separately all Swing Loans or any Swing Loan made by PNC Bank to the Borrower pursuant to Section 2.5.

Syndication Agent shall mean JPMorgan Chase in its capacity as syndication agent for the Banks under this Agreement and its successors in such capacity.

Synthetic Lease shall have the meaning assigned to such term in Section 7.2.9.

Tax Sharing Agreement shall mean that certain Tax Sharing Agreement dated as of June 1, 1998 by and among the Borrower, AWAC, Arch Western and Delta Housing, Inc., a Delaware corporation.

Thunder Basin LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of July 10, 1998, as amended, of Thunder Basin Coal Company, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware.

Transferor Bank shall mean the selling Bank pursuant to an Assignment and Assumption Agreement.

Uniform Commercial Code shall have the meaning assigned to that term in Section 5.1.23.

U.S. shall mean the United States of America.

U.S. Bank shall mean U.S. Bank National Association, its successors and assigns.

Withholding Certificate shall have the meaning assigned to that term in Section 10.17.

## 1.2 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:

### 1.2.1 Number; Inclusion.

references to the plural include the singular, the plural, the part and the whole; "or" has the inclusive meaning represented by the phrase "and/or"; and "including" has the meaning represented by the phrase "including without limitation";

### 1.2.2 Determination.

references to "determination" of or by the Administrative Agent or the Lenders shall be deemed to include good-faith estimates by the Administrative Agent or the Lenders (in the case of quantitative determinations) and good-faith beliefs by the Administrative Agent or the Lenders (in the case of qualitative determinations) and such determination shall be conclusive absent manifest error;

### 1.2.3 Administrative Agent's Discretion and Consent.

whenever the Administrative Agent or the Lenders are granted the right herein to act in its or their sole discretion or to grant or withhold consent such right shall be exercised in good faith;

### 1.2.4 Documents Taken as a Whole.

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 to any particular provision of this Agreement or such other Loan Document;

1.2.5 Headings.

the section and other headings contained in this Agreement or such other Loan Document and the Table of Contents (if any), preceding this Agreement or such other Loan Document are for reference purposes only and shall not control or affect the construction of this Agreement or such other Loan Document or the interpretation thereof in any respect;

1.2.6 Implied References to This Agreement.

article, section, subsection, clause, schedule and exhibit references are to this Agreement or other Loan Document, as the case may be, unless otherwise specified;

1.2.7 Persons.

reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement or such other Loan Document, as the case may be, and reference to a Person in a particular capacity excludes such Person in any other capacity;

1.2.8 Modifications to Documents.

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 in accordance with the applicable provisions thereof and hereof;

1.2.9 From, To and Through.

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"; and

1.2.10 Shall; Will.

references to "shall" and "will" are intended to have the same meaning.

1.3 Accounting Principles.

Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters and all financial statements to be delivered pursuant to this Agreement shall be made and prepared in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP; provided, however, that all accounting terms used in Section 7.2 [Negative Covenants] (and all defined terms used in the definition of any accounting term used in Section 7.2), as applied to the Borrower and its Subsidiaries shall have the meaning given to such terms (and

defined terms) under GAAP as in effect on the Restatement Effective Date applied on a basis consistent with those used in preparing the Historical Statements referred to in Section 5.1.7(i) [Historical Statements]. In the event of any change after the Restatement Effective Date in GAAP, and if such change would result in the inability to determine compliance with the financial covenants set forth in Section 7.2 based upon the Borrower's regularly prepared financial statements by reason of the preceding sentence, then the parties hereto agree to endeavor, in good faith, to agree upon an amendment to this Agreement that would adjust such financial covenants in a manner that would not affect the substance thereof, but would allow compliance therewith to be determined in accordance with the Borrower's financial statements at that time.

## 2. REVOLVING CREDIT AND SWING LOAN FACILITIES

### 2.1 Revolving Credit Commitments.

#### 2.1.1 Revolving Credit Loans.

Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Bank severally agrees to make Revolving Credit Loans to the Borrower at any time or from time to time on or after the date hereof to the Expiration Date, provided that after giving effect to such Revolving Credit Loan the aggregate amount of Revolving Credit Loans from such Bank shall not exceed such Bank's Revolving Credit Commitment minus such Bank's Revolving Credit Ratable Share of the Letters of Credit Outstanding provided further that the Revolving Facility Usage at any time, shall not exceed the Revolving Credit Commitments of all the Banks. Within such limits of time and amount, and subject to the other provisions of this Agreement, the Borrower may borrow, repay and reborrow pursuant to this Section 2.1.

#### 2.1.2 Swing Loan Commitment.

Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, PNC Bank agrees to make Swing Loans (the "Swing Loans") to the Borrower at any time or from time to time after the date hereof to, but not including, the Expiration Date, in an aggregate principal amount of up to but not in excess of \$40,000,000 (the "Swing Loan Commitment"), provided that the Revolving Facility Usage at any time, shall not exceed the Revolving Credit Commitments of all the Banks. Within such limits of time and amount and subject to the other provisions of this Agreement, the Borrower may borrow, repay and reborrow pursuant to this Section 2.1.2.

### 2.2 Nature of Banks' Obligations With Respect to Revolving Credit Loans.

Each Bank shall be obligated to participate in each request for Revolving Credit Loans pursuant to Section 2.4 [Loan Requests] in accordance with its Revolving Credit Ratable Share. The aggregate of each Bank's Revolving Credit Loans outstanding hereunder to the Borrower at any time shall never exceed its Revolving Credit Commitment minus its Revolving Credit Ratable Share of the Letters of Credit Outstanding. The obligations of each Bank hereunder are several. The failure of any Bank to perform its obligations hereunder shall not affect the Obligations of the Borrower to any other party nor shall any other party be liable for the failure of such Bank to perform its obligations hereunder. The Banks shall have no obligation to make Revolving Credit Loans hereunder on or after the Expiration Date.

### 2.3 Commitment Fee.

Accruing from the date hereof until the Expiration Date, the Borrower agrees to pay to the Administrative Agent for the account of each Bank, as consideration for such Bank's Revolving Credit Commitment hereunder, a nonrefundable commitment fee (the "Commitment Fee") equal to the Applicable Commitment Fee Rate computed (on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed) on the average daily difference between the amount of (i) such Bank's Revolving Credit Commitment as the same may be constituted from time to time (for purposes of this computation, PNC Bank's Swing Loans shall not be deemed to be borrowed amounts under its Revolving Credit Commitment), and (ii) the sum of such Bank's Revolving Credit Loans outstanding plus its Revolving Credit Ratable Share of the Letters of Credit Outstanding. All Commitment Fees shall be payable in arrears on the first Business Day of each July, October, January and April after the date hereof and on the Expiration Date or upon acceleration of the Loans.

### 2.4 Loan Requests.

#### 2.4.1 Committed Loan Requests.

Except as otherwise provided herein, the Borrower may from time to time prior to the Expiration Date request the Banks to make Revolving Credit Loans, or renew or convert the Interest Rate Option applicable to existing Revolving Credit Loans pursuant to Section 3.2 [Interest Periods], by delivering to the Administrative Agent, not later than 10:00 a.m., Pittsburgh time, (i) three (3) Business Days prior to the proposed Borrowing Date with respect to the making of Revolving Credit Loans to which the Euro-Rate Option applies or the conversion to or the renewal of the Euro-Rate Option for any Revolving Credit Loans; and (ii) one (1) Business Day prior to either the proposed Borrowing Date with respect to the making of a Revolving Credit Loan to which the Base Rate Option applies or the last day of the preceding Interest Period with respect to the conversion to the Base Rate Option for any Revolving Credit Loan, of a duly completed Committed Loan Request therefor substantially in the form of Exhibit 2.4.1 or a Committed Loan Request by telephone immediately confirmed in writing by letter, facsimile or telex in the form of such Exhibit, it being understood that the Administrative Agent may rely on the authority of any individual making such a telephonic request without the necessity of receipt of such written confirmation. Each Committed Loan Request shall be irrevocable and shall specify (i) the proposed Borrowing Date; (ii) the aggregate amount of the proposed Revolving Credit Loans comprising each Borrowing Tranche, which shall be in integral multiples of \$5,000,000 and not less than \$10,000,000 for each Borrowing Tranche to which the Euro-Rate Option applies and in integral multiples of \$1,000,000 and not less than the lesser of \$5,000,000 or the maximum amount available for Borrowing Tranches to which the Base Rate Option applies; (iii) whether the Euro-Rate Option or Base Rate Option shall apply to the proposed Revolving Credit Loans comprising an applicable Borrowing Tranche; and (iv) in the case of a Borrowing Tranche to which the applicable Euro-Rate Option applies, an appropriate Interest Period for the Loans comprising such Borrowing Tranche.

#### 2.4.2 Swing Loan Requests.

Except as otherwise provided herein, the Borrower may from time to time prior to the Expiration Date request PNC Bank to make a Swing Loan by delivery to PNC Bank, not later than 12:00 noon Pittsburgh time, on the proposed Borrowing Date of a duly completed request therefor substantially in the form of Exhibit 2.4.2 hereto or a request by telephone immediately confirmed in writing by letter, facsimile or telex (each, a "Swing Loan Request"), it being understood that PNC Bank may rely on the authority of any individual making such a telephonic request without the necessity of receipt of such written confirmation. Each Swing Loan Request shall be irrevocable and shall specify (i) the proposed Borrowing Date, (ii) the term of the proposed Swing Loan, which shall be no less than one day and no longer than three days, and (iii) the principal amount of such Swing Loan, which shall be not less than \$1,000,000 and shall be an integral multiple of \$100,000.

#### 2.5 Making Revolving Credit Loans and Swing Loans.

The Administrative Agent shall, promptly after receipt by it of a Committed Loan Request pursuant to Section 2.4.1 [Committed Loan Requests], notify the Banks of its receipt of such Committed Loan Request specifying: (i) the proposed Borrowing Date and the time and method of disbursement of the Revolving Credit Loans requested thereby; (ii) the amount and type of each such Revolving Credit Loan and the applicable Interest Period (if any); and (iii) the apportionment among the Banks of such Revolving Credit Loans as determined by the Administrative Agent in accordance with Section 2.2 [Nature of Banks' Obligations, etc.]. Each Bank shall remit the principal amount of each Revolving Credit Loan to the Administrative Agent such that the Administrative Agent is able to, and the Administrative Agent shall, to the extent the Banks have made funds available to it for such purpose and subject to Section 6.2 [Each Additional Loan or Letter of Credit], fund such Revolving Credit Loans to the Borrower in U.S. Dollars and immediately available funds at the Principal Office prior to 2:00 p.m., Pittsburgh time, on the applicable Borrowing Date, provided that if any Bank fails to remit such funds to the Administrative Agent in a timely manner, the Administrative Agent may elect in its sole discretion to fund with its own funds the Revolving Credit Loans of such Bank on such Borrowing Date, and such Bank shall be subject to the repayment obligation in Section 9.16 [Availability of Funds].

#### 2.5.1 Making Swing Loans.

PNC Bank shall, after receipt by it of a Swing Loan Request pursuant to Section 2.4.2, fund such Swing Loan to the Borrower in U.S. Dollars and immediately available funds at the Principal Office prior to 3:00 p.m., Pittsburgh time, on the Borrowing Date. Swing Loans shall bear interest at the Offered Rate Option.

#### 2.6 Swing Loan Note.

The obligation of the Borrower to repay the unpaid principal amount of the Swing Loans made to it by PNC Bank together with interest thereon shall be evidenced by a demand promissory note of the Borrower dated the Closing Date in substantially the form attached hereto as Exhibit 1.1(S) payable to the order of PNC Bank in a face amount equal to the Swing Loan Commitment of PNC Bank.

## 2.7 Use of Proceeds.

On and after the Restatement Effective Date, the proceeds of the Loans shall be used to continue and refinance the indebtedness under the revolving credit facility of the Original Credit Agreement, to repay the term loans under the Original Credit Agreement, and for general corporate purposes and in accordance with Section 7.1.9 [Use of Proceeds]. Subject to Section 7.2.14 (v), proceeds of Loans may be used by the Borrower to make loans to or investments in Arch Western and Letters of Credit may be issued for the benefit or the use of any member of the Arch Western Group.

## 2.8 Borrowings to Repay Swing Loans.

PNC Bank may, at its option, exercisable at any time for any reason whatsoever, demand repayment of the Swing Loans, and each Bank shall make available to the Administrative Agent, on behalf of PNC Bank, an amount equal to such Bank's Revolving Credit Ratable Share of the aggregate principal amount of the outstanding Swing Loans, plus, if PNC Bank so requests, accrued interest thereon, provided that no Bank shall be obligated in any event to make Revolving Credit Loans in excess of its Revolving Credit Commitment minus its Revolving Credit Ratable Share of the Letters of Credit Outstanding. Revolving Credit Loans made pursuant to the preceding sentence shall bear interest at the Base Rate Option and shall be deemed to have been properly requested in accordance with Section 2.4.1 without regard to any of the requirements of that provision. PNC Bank shall provide notice to all of the Banks (which may be telephonic or written notice by letter, facsimile or telex) of the amount of such Bank's Revolving Credit Ratable Share of the aggregate principal amount of the outstanding Swing Loans, plus accrued interest thereon, to be made available to the Administrative Agent on behalf of PNC Bank under this Section 2.8. The Administrative Agent shall promptly provide to each Bank notice of the apportionment thereof among the Banks, and the Banks shall be unconditionally obligated to fund such amount (whether or not the conditions specified in Section 2.4.1 are then satisfied) by the time PNC Bank so requests, which shall not be earlier than 3:00 p.m., Pittsburgh time, on the Business Day next after the date the Banks receive such notice of apportionment from the Administrative Agent.

## 2.9 Letter of Credit Subfacility.

### 2.9.1 Issuance of Letters of Credit.

Borrower may request the issuance of a letter of credit (each a "Letter of Credit") on behalf of itself or another Loan Party by delivering or having such other Loan Party deliver to the Issuing Bank selected by the Borrower (with a copy to the Administrative Agent) a completed application and agreement for letters of credit in such form as such Issuing Bank may specify from time to time by no later than 10:00 a.m., Pittsburgh time, at least three (3) Business Days, or such shorter period as may be agreed to by the selected Issuing Bank, in advance of the proposed date of issuance. Each Letter of Credit shall be either a Standby Letter of Credit or a Commercial Letter of Credit. Subject to the terms and conditions hereof and in reliance on the agreements of the other Banks set forth in this Section 2.9, the Issuing Bank will issue a Letter of Credit provided that each Letter of Credit shall (A) have a maximum maturity of twelve (12) Months from the date of issuance, and (B) in no event expire later than ten (10) Business Days prior to the Expiration Date and provided that in no event shall (i) the Letters of Credit Outstanding exceed, at any one time, \$150,000,000, (ii) Reimbursement Obligations (contingent or otherwise) exceed, at any one time, \$10,000,000, with respect to Commercial Letters of Credit, or (iii) the Revolving Facility Usage exceed, at any one time, the Revolving Credit Commitments. Subject to Section 7.2.14(v), Letters of Credit may be issued for the benefit or the use of, directly or indirectly, any member of the Arch Western Group. No Letters of Credit shall be issued for the benefit or the use of, directly or indirectly, any Significant Subsidiary which is a member of the Arch Coal Group which is not a party to the Guaranty Agreement until such time as such Significant Subsidiary has joined the Guaranty Agreement in accordance with Section 10.18 [Joinder of Guarantors]. Schedule 2.9.1 sets forth letters of credit, issued by PNC Bank as an "Issuing Bank" under the Original Credit Agreement, which are outstanding as of the Restatement Effective Date (the "Existing Letters of Credit"). It is expressly agreed that the Existing Letters of Credit are Letters of Credit under this Agreement.

#### 2.9.2 Letter of Credit Fees.

Subject to the terms and conditions of this Agreement, any Issuing Bank selected by the Borrower shall issue the requested Letter of Credit. The Borrower shall also pay to the Issuing Bank for the Issuing Bank's sole account the Issuing Bank's then-in-effect customary fees and administrative expenses payable with respect to the Letters of Credit as the Issuing Bank may generally charge or incur from time to time in connection with the issuance, maintenance, modification (if any), assignment or transfer (if any), negotiation, and administration of Letters of Credit. The Borrower shall pay (i) to the Administrative Agent for the ratable account of the Banks a fee (the "Letter of Credit Fee") equal to the Applicable Letter of Credit Fee Rate then in effect (computed on the basis of a year of 360 days and actual days elapsed) and (ii) to the Administrative Agent for its own account a fronting fee equal to 0.125% per annum (computed on the basis of a year of 360 days and actual days elapsed), which fees shall be computed on the daily average Letters of Credit Outstanding and shall be payable quarterly in arrears commencing with the first Business Day of each January, April, July and October following issuance of each Letter of Credit and on the Expiration Date.

#### 2.9.3 Participations in Letters of Credit; Disbursements, Reimbursement.

2.9.3.1 Immediately upon issuance of each Letter of Credit, and without further action, each Bank shall be deemed to, and hereby agrees that it shall, have irrevocably purchased, for such Bank's own account and risk, from the applicable Issuing Bank an individual participation interest in such Letter of Credit in an amount equal to such Bank's Revolving Credit Ratable Share of the maximum amount which is or at any time may become available to be drawn thereunder, and each Bank shall be responsible to reimburse such Issuing Bank immediately for its Revolving Credit Ratable Share of any disbursement under any Letter of Credit which has not been reimbursed by Borrower in accordance with Section 2.9.3.2 by making its Revolving Credit Ratable Share of the Revolving Credit Loans referred to in Section 2.9.3.3 available to the Administrative Agent for the account of the Issuing Bank. Upon the request of any Bank and no less frequently than once in each calendar month, the Administrative Agent shall notify each Bank of the amount of such Bank's participation in Letters of Credit.

2.9.3.2 In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the Issuing Bank will promptly notify the Borrower and the Administrative Agent. Provided that it shall have received such notice, the Borrower shall reimburse (such obligation to reimburse the Issuing Bank shall sometimes be referred to as a "Reimbursement Obligation") the Administrative Agent on behalf of the Issuing Bank prior to 12:00 noon, Pittsburgh time, on each date that an amount is paid by the Issuing Bank under any Letter of Credit (each such date, a "Drawing Date") in an amount equal to the amount so paid by the Issuing Bank. In the event the Borrower fails to reimburse the Administrative Agent on behalf of the Issuing Bank for the full amount of any drawing under any Letter of Credit by 12:00 noon, Pittsburgh time, on the Drawing Date, the Issuing Bank will promptly notify the Administrative Agent and each Bank thereof, and the Borrower shall be deemed to have requested that Revolving Credit Loans be made by the Banks under the Base Rate Option to be disbursed on the Drawing Date under such Letter of Credit. Any notice given by the Administrative Agent or the Issuing Bank pursuant to this Section 2.9.3.2 may be oral if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

2.9.3.3 Each Bank shall upon any notice pursuant to Section 2.9.3.2 make available to the Administrative Agent, on behalf of the Issuing Bank, an amount in immediately available funds equal to its Revolving Credit Ratable Share of the amount of the drawing, whereupon the participating Banks shall each be deemed to have made a Revolving Credit Loan under the Base Rate Option to the Borrower in that amount. If any Bank so notified fails to make available to the Administrative Agent for the account of the Issuing Bank the amount of such Bank's Revolving Credit Ratable Share of such amount by no later than 2:00 p.m., Pittsburgh time, on the Drawing Date, then interest shall accrue on such Bank's obligation to make such payment from the Drawing Date to the date on which such Bank makes such payment (i) at a rate per annum equal to the Federal Funds Effective Rate during the first three days following the Drawing Date and (ii) at a rate per annum equal to the rate applicable to Revolving Credit Loans under the Base Rate Option on and after the fourth day following the Drawing Date; provided, however, that in the event that a Bank does not timely receive notice in order to so fund its Revolving Credit Ratable Share to the Administrative Agent prior to 2:00 p.m., Pittsburgh time, on the Drawing Date, interest, with respect to the Drawing Date only, shall not accrue as previously described in this sentence. The Issuing Bank will promptly give notice to the Administrative Agent and each other Bank of the occurrence of the Drawing Date, but failure of the Issuing Bank to give any such notice on the Drawing Date or in sufficient time to enable any Bank to effect such payment on such date shall not relieve such Bank from its obligation under this Section 2.9.3.3.

#### 2.9.4 Documentation.

Each Loan Party agrees to be bound by the terms of the selected Issuing Bank's application and agreement for letters of credit and the Issuing Bank's written regulations and customary practices relating to letters of credit, though such interpretation may be different from such Loan Party's own. In the event of a conflict between such application or agreement and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct, neither the Agents nor any Issuing Bank shall be liable for any error, negligence and/or mistakes, whether of omission or commission, in following any Loan Party's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

#### 2.9.5 Determinations to Honor Drawing Requests.

In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the Issuing 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.

#### 2.9.6 Nature of Participation and Reimbursement Obligations.

Each Bank's obligation in accordance with this Agreement to participate in Letters of Credit and make the Revolving Credit Loans, as contemplated by Section 2.9.3 [Participations in Letters of Credit; Disbursements, Reimbursement], as a result of a drawing under a Letter of Credit, and the Obligations of the Borrower to reimburse the Issuing 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 Section 2.9.6 under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such Bank may have against any Issuing Bank, either Agent, the Borrower or any other Person for any reason whatsoever;

(ii) the failure of any Loan Party or any other Person to comply with the conditions set forth in Sections 2.1 [Revolving Credit Commitments], 2.4 [Loan Requests], 2.5 [Making Revolving Credit Loans and Swing Loans] or 6.2 [Each Additional Loan or Letter of Credit] or as otherwise set forth in this Agreement for the making of a Revolving Credit Loan, it being acknowledged that such conditions are not required for the making of a Revolving Credit Loan under Section 2.9.3 [Participations in Letters of Credit; Disbursements; Reimbursement];

(iii) any lack of validity or enforceability of any Letter of Credit;

(iv) any claim of breach of warranty that might be made by any Loan Party or any Bank against any beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, crossclaim, defense or other right which any Loan Party or any Bank may have at any time against a beneficiary, successor beneficiary, or any transferee or assignee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), either Agent, any Issuing Bank, or any Bank or any other Person or, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Loan Party or Subsidiaries of a Loan Party and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provisions of services relating to a Letter of Credit, in each case even if the Issuing Bank has been notified thereof;

(vi) payment by any Issuing 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;

(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 Issuing Bank to issue any Letter of Credit in the form requested by any Loan Party, unless the Issuing Bank has received written notice from such Loan Party of such failure within three Business Days after the Issuing Bank shall have furnished such Loan Party 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 adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Loan Party or Subsidiaries of a Loan Party;

(x) any breach of this Agreement or any other Loan Document by any party thereto;

(xi) the occurrence or continuance of an Insolvency Proceeding with respect to any Loan Party;

(xii) the fact that an Event of Default or a Potential Default shall have occurred and be continuing;

(xiii) the fact that the Expiration Date shall have passed or this Agreement or the Commitments hereunder shall have been terminated; and

(xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

#### 2.9.7 Indemnity.

In addition to amounts payable as provided in Section 9.5 [Reimbursement and Indemnification of Agents by the Borrower], the Borrower hereby agrees to protect, indemnify, pay and save harmless the Agents and each Issuing Bank from and against any and all claims, demands, liabilities, damages, taxes, penalties, interest, judgments, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel) which any Agent or any Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit, other than as a result of (A) the gross negligence or willful misconduct of any Agent or any Issuing Bank as determined by a final judgment of a court of competent jurisdiction or (B) subject to the following clause (ii), the wrongful dishonor by an Issuing Bank of a proper demand for payment made under any Letter of Credit, or (ii) the failure of an Issuing Bank to honor a drawing under any such Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or governmental authority (all such acts or omissions herein called "Governmental Acts").

#### 2.9.8 Liability for Acts and Omissions.

As between any Loan Party, each Issuing Bank and the Agents, such Loan Party assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, neither any Agent nor any Issuing Bank shall be responsible for any of the following including any losses or damages to any Loan Party or other Person or property relating therefrom: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an 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 Issuing Bank 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 any Loan Party against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Loan Party 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, cable, telegraph, telex 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 any Issuing Bank or any Agent, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of the Agents' rights or powers hereunder or of any of the rights or powers hereunder of any Issuing Bank. Nothing in the preceding sentence shall: (x) relieve any Agent from liability for such Agent's gross negligence or willful misconduct in connection with actions or omissions described in such clauses (i) through (viii) of such sentence, or (y) relieve any Issuing Bank from liability for such Issuing Bank's gross negligence or willful misconduct in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall any Issuing Bank or any Agent be liable to any Loan Party 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, each Issuing Bank and the Agents (i) may rely on any oral or other communication believed in good faith by any Issuing Bank or any Agent 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 substantially 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 Agent; (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 Agent in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a carrier or any similar document (each an "Order") and honor any drawing in connection with any Letter of Credit that is the subject to 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 any Agent or any Issuing Bank under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not put any Agent or any Issuing Bank under any resulting liability to the Borrower or any other Bank.

### 3. INTEREST RATES

#### 3.1 Interest Rate Options.

The Borrower shall pay interest in respect of the outstanding unpaid principal amount of the Revolving Credit Loans as selected by it from the Base Rate Option or Euro-Rate Option set forth below applicable to the Revolving Credit Loans, it being understood that, subject to the provisions of this Agreement, the Borrower may select different Interest Rate Options and different Interest Periods to apply simultaneously to the Revolving Credit Loans comprising different Borrowing Tranches and may convert to or renew one or more Interest Rate Options with respect to all or any portion of the Revolving Credit Loans comprising any Borrowing Tranche, provided that there shall not be at any one time outstanding more than nine (9) Borrowing Tranches in the aggregate among all of the Revolving Credit Loans accruing interest at a Euro-Rate Option, and provided further that only the Offered Rate Option shall apply to the Swing Loans. If at any time the designated rate applicable to any Loan exceeds such Lender's highest lawful rate, the rate of interest on such Loan shall be limited to such Lender's highest lawful rate.

### 3.1.1 Interest Rate Options.

The Borrower shall have the right to select from the following Interest Rate Options applicable to the Revolving Credit Loans (subject to the provisions above regarding Swing Loans):

(i) Base Rate Option: A fluctuating rate per annum (computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed) equal to the Base Rate plus the Applicable Margin, such interest rate to change automatically from time to time effective as of the effective date of each change in the Base Rate; or

(ii) Euro-Rate Option: A rate per annum (computed on the basis of a year of 360 days and actual days elapsed) equal to the Euro-Rate plus the Applicable Margin.

Notwithstanding the foregoing, on the Restatement Effective Date, the Applicable Margin shall be the amount determined in accordance with the parameters set forth in Schedule 1.1(A) but shall be no less than the amount set forth in the pricing grid under Level III thereof. It is expressly agreed that after the Restatement Effective Date, the Applicable Margin shall be determined, based upon the applicable Debt Rating in effect from time to time, as set forth in Schedule 1.1(A).

### 3.1.2 Rate Quotations.

The Borrower may call the Administrative Agent on or before the date on which a Committed Loan Request is to be delivered to receive an indication of the rates then in effect as to Revolving Credit Loans, but it is acknowledged that such projection shall not be binding on the Administrative Agent or the Banks nor affect the rate of interest which thereafter is actually in effect when the election is made.

### 3.1.3 Change in Fees or Interest Rates.

If the Applicable Margin or Applicable Commitment Fee Rate is increased or reduced with respect to any period for which the Borrower has already paid interest or Commitment Fees, the Administrative Agent shall recalculate the additional interest or Commitment Fees due from or to the Borrower and shall, within fifteen (15) Business Days after the Borrower notifies the Administrative Agent of such increase or decrease, give the Borrower and the Banks notice of such recalculation.

3.1.3.1 Any additional interest or Commitment Fees due from the Borrower shall be paid to the Administrative Agent for the account of the Banks on the next date on which an interest or fee payment is due; provided, however, that if there are no Loans outstanding or if the Loans are due and payable, such additional interest or Commitment Fees shall be paid promptly after receipt of written request for payment from the Administrative Agent.

3.1.3.2 Any interest or Commitment Fees refund due to the Borrower shall be credited against payments otherwise due from the Borrower on the next interest or fee payment due date or, if the Loans have been repaid and the Banks are no longer committed to lend under this Agreement, the Banks shall pay the Administrative Agent for the account of the Borrower such interest or Commitment Fee refund not later than five (5) Business Days after written notice from the Administrative Agent to the Banks.

### 3.2 Interest Periods.

At any time when the Borrower shall select, convert to or renew a Euro-Rate Option, the Borrower shall notify the Administrative Agent thereof at least three (3) Business Days prior to the effective date of such Euro-Rate Option by delivering a Committed Loan Request. The notice shall specify an interest period (the "Interest Period") during which such Euro-Rate Option shall apply, such Interest Period to be one, two, three or six Months. The following provisions shall apply to any selection of, renewal of, or conversion to a Euro-Rate Option:

#### 3.2.1 Ending Date and Business Day.

any Interest Period which would otherwise end on a date which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day;

#### 3.2.2 Amount of Borrowing Tranche.

each Borrowing Tranche of Revolving Credit Loans to which the Euro-Rate Option applies shall be in integral multiples of \$5,000,000 and not less than \$10,000,000;

#### 3.2.3 Termination Before Applicable Expiration Date.

the Borrower shall not select, convert to or renew an Interest Period for any portion of the Loans that would end, in the case of Revolving Credit Loans, after the Expiration Date; and

#### 3.2.4 Renewals.

in the case of the renewal of a Euro-Rate Option at the end of an Interest Period, the first day of the new Interest Period shall be the last day of the preceding Interest Period, without duplication in payment of interest for such day.

### 3.3 Interest After Default.

To the extent permitted by Law, upon the occurrence of an Event of Default and until such time such Event of Default shall have been cured or waived:

#### 3.3.1 Letter of Credit Fees, Interest Rate.

the Letter of Credit Fees and the rate of interest for each Loan otherwise applicable pursuant to Section 2.9.2 [Letter of Credit Fees] or Section 3.1 [Interest Rate Options], respectively, shall be increased by 2.0% per annum; and

### 3.3.2 Other Obligations.

each other Obligation hereunder if not paid when due shall bear interest at a rate per annum equal to the sum of the rate of interest applicable under the Base Rate Option plus an additional 2.0% per annum from the time such Obligation becomes due and payable until it is paid in full.

### 3.3.3 Acknowledgment.

The Borrower acknowledges that the increase in rates referred to in this Section 3.3 reflects, among other things, the fact that such Loans or other amounts have become a substantially greater risk given their default status and that the Banks are entitled to additional compensation for such risk; and all such interest shall be payable by Borrower upon demand by Administrative Agent. Upon the occurrence of an Event of Default, no Loan may be made, converted to or renewed under the Euro-Rate Option.

### 3.4 Euro-Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available.

#### 3.4.1 Unascertainable.

If, on any date on which a Euro-Rate would otherwise be determined with respect to Committed Loans, the Administrative Agent shall have determined that:

(i) adequate and reasonable means do not exist for ascertaining such Euro-Rate, or

(ii) a contingency has occurred which materially and adversely affects the London interbank eurodollar market relating to the Euro-Rate,

then the Administrative Agent shall have the rights specified in Section 3.4.3.

#### 3.4.2 Illegality; Increased Costs; Deposits Not Available.

If at any time any Lender shall have determined that:

(i) the making, maintenance or funding of any Loan to which a Euro-Rate Option applies has been made impracticable or unlawful by compliance by such Lender in good faith with any Law or any interpretation or application thereof by any Official Body or with any request or directive of any such Official Body (whether or not having the force of Law), or

(ii) such Euro-Rate Option will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any such Loan, or

(iii) after making all reasonable efforts, deposits of the relevant amount in Dollars for the relevant Interest Period for a Loan to which a Euro-Rate Option applies are not available to such Lender with respect to such Loan, in the London interbank market,

then the Administrative Agent and the Lenders shall have the rights specified in Section 3.4.3.

#### 3.4.3 Administrative Agent's and Lender's Rights.

In the case of any event specified in Section 3.4.1 above, the Administrative Agent shall promptly so notify the Lenders and the Borrower thereof, and in the case of an event specified in Section 3.4.2 above, such Lender shall promptly so notify the Administrative Agent and endorse a certificate to such notice as to the specific circumstances of such notice, and the Administrative Agent shall promptly send copies of such notice and certificate to the other Lenders and the Borrower. Upon such date as shall be specified in such notice (which shall not be earlier than the date such notice is given), the obligation of (A) the Lenders, in the case of such notice given by the Administrative Agent, or (B) such Lender, in the case of such notice given by such Lender, to allow the Borrower to select, convert to or renew a Euro-Rate Option shall be suspended until the Administrative Agent shall have later notified the Borrower, or such Lender shall have later notified the Administrative Agent, of the Administrative Agent's or such Lender's, as the case may be, determination that the circumstances giving rise to such previous determination no longer exist. If at any time the Administrative Agent makes a determination under Section 3.4.1 and the Borrower has previously notified the Administrative Agent of its selection of, conversion to or renewal of a Euro-Rate Option and such Interest Rate Option has not yet gone into effect, such notification shall be deemed to provide for the selection of, conversion to or renewal of the Base Rate Option otherwise available with respect to such Revolving Credit Loans if the Borrower has requested the Euro-Rate Option with respect to such Revolving Credit Loans. If any Lender notifies the Administrative Agent of a determination under Section 3.4.2, the Borrower shall, subject to the Borrower's indemnification Obligations under Section 4.5.2 [Indemnity], as to any Loan of the Lender to which a Euro-Rate Option applies, on the date specified in such notice either convert such Loan to the Base Rate Option otherwise available with respect to such Loan or prepay such Loan in accordance with Section 4.4.1 [Voluntary Prepayments]. Absent due notice from the Borrower of conversion or prepayment, such Loan shall automatically be converted to the Base Rate Option otherwise available with respect to such Loan upon such specified date.

#### 3.5 Selection of Interest Rate Options.

If the Borrower fails to select a new Interest Period to apply to any Borrowing Tranche of Revolving Credit Loans under the Euro-Rate Option at the expiration of an existing Interest Period applicable to such Borrowing Tranche in accordance with the provisions of Section 3.2 [Interest Periods], the Borrower shall be deemed to have converted such Borrowing Tranche to the Base Rate Option in the case of Revolving Credit Loans commencing upon the last day of the existing Interest Period.

#### 4. PAYMENTS

##### 4.1 Payments.

All payments and prepayments to be made in respect of principal, interest, Commitment Fees, Letter of Credit Fees, Administrative Agent's Fee or other fees or amounts due from the Borrower hereunder shall be payable prior to 11:00 a.m., Pittsburgh time, on the date when due without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower, and without set-off, counterclaim or other deduction of any nature, and an action therefor shall immediately accrue. Such payments shall be made to the Administrative Agent at the Principal Office for the account of PNC Bank with respect to the Swing Loans and for the ratable accounts of the Banks with respect to the Revolving Credit Loans, in U.S. Dollars and in immediately available funds, and the Administrative Agent shall promptly distribute such amounts to the applicable Lenders in immediately available funds, provided that in the event payments are received by 11:00 a.m., Pittsburgh time, by the Administrative Agent with respect to the Loans and such payments are not distributed to the Lenders (or applicable Lender, as the case may be) on the same day received by the Administrative Agent, the Administrative Agent shall pay the Lenders (or applicable Lender, as the case may be) the Federal Funds Effective Rate with respect to the amount of such payments for each day held by the Administrative Agent and not distributed to the Lenders (or applicable Lender, as the case may be). The Administrative Agent's and each Lender's statement of account, ledger or other relevant record shall, in the absence of manifest error, be conclusive as the statement of the amount of principal of and interest on the Loans and other amounts owing under this Agreement and shall be deemed an "account stated." The principal amount of the Revolving Credit Loans, together with accrued interest, fees and all other Obligations payable thereon shall be due and payable on the Expiration Date.

##### 4.2 Pro Rata Treatment of Banks.

Each borrowing of Revolving Credit Loans shall be allocated to each Bank according to its Revolving Credit Ratable Share, and each selection of, conversion to or renewal of any Interest Rate Option applicable to Revolving Credit Loans and each payment or prepayment by the Borrower with respect to principal or interest on the Revolving Credit Loans or Commitment Fees, Letter of Credit Fees, or other fees (except for the Administrative Agent's Fee) or amounts due from the Borrower hereunder to the Banks with respect to the Revolving Credit Loans, shall (except as provided in Section 3.4.3 [Administrative Agent's and Lender's Rights] in the case of an event specified in Sections 3.4 [Euro-Rate Unascertainable, etc.], 4.4.2 [Replacement of a Lender] or 4.5 [Additional Compensation in Certain Circumstances]) be made in proportion to the applicable Revolving Credit Loans outstanding from each Bank and, if no such Loans are then outstanding, in proportion, as applicable, to the Revolving Credit Ratable Share of each Bank. Notwithstanding any of the foregoing, each borrowing or payment or prepayment by the Borrower of principal, interest or other amounts from the Borrower with respect to Swing Loans shall be made by or to PNC Bank according to Section 2.

#### 4.3 Interest Payment Dates.

Interest on Swing Loans or Revolving Credit Loans to which the Base Rate Option applies shall be due and payable in arrears on the first Business Day of each July, October, January and April after the date hereof and on the Expiration Date or upon acceleration of the Loans. Interest on Committed Loans (other than Swing Loans) to which the Euro-Rate Option applies shall be due and payable on the last day of each Interest Period for those Loans and, if such Interest Period is longer than three (3) Months, also on the date that is three (3) months after the commencement of such Interest Period (and if applicable, the date that is six (6) months after the commencement of such Interest Period) of such Interest Period. Interest on the principal amount of each Loan or other monetary Obligation shall be due and payable on demand after such principal amount or other monetary Obligation becomes due and payable (whether on the stated maturity date, upon acceleration or otherwise).

#### 4.4 Prepayments.

##### 4.4.1 Voluntary Prepayments.

The Borrower shall have the right at its option from time to time to prepay the Committed Loans in whole or part without premium or penalty (except as provided in Section 4.4.2 below or in Section 4.5 [Additional Compensation in Certain Circumstances]):

(i) at any time with respect to any Committed Loan to which the Base Rate Option applies,

(ii) on the last day of the applicable Interest Period with respect to Committed Loans to which a Euro-Rate Option applies,

(iii) on the date specified in a notice by any Lender pursuant to Section 3.4 [Euro-Rate Unascertainable, etc.] with respect to any Committed Loan to which a Euro-Rate Option applies.

Whenever the Borrower desires to prepay any part of the Committed Loans, it shall provide a prepayment notice to the Administrative Agent by 1:00 p.m., Pittsburgh time, at least one (1) Business Day prior to the date of prepayment of the Committed Loans or no later than 1:00 p.m., Pittsburgh time, on the date of prepayment of Swing Loans setting forth the following information:

(x) the date, which shall be a Business Day, on which the proposed prepayment is to be made;

(y) the application of the prepayment among the Swing Loans and the Revolving Credit Loans; and

(z) the total principal amount of such prepayment, which shall not be less than \$10,000,000 for any Revolving Credit Loan, and in increments of \$1,000,000 above \$10,000,000, and not less than \$1,000,000 for Swing Loans, and in increments of \$100,000 above \$1,000,000.

All prepayment notices shall be irrevocable. The principal amount of the Committed Loans for which a prepayment notice is given, together with interest on such principal amount (except with respect to interest on Revolving Credit Loans to which the Base Rate Option applies which shall be paid in accordance with this Agreement on the next due date for the payment thereof), shall be due and payable on the date specified in such prepayment notice as the date on which the proposed prepayment is to be made. Except as provided in Section 3.4.3 [Administrative Agent's and Lender's Rights], if the Borrower prepays a Committed Loan but fails to specify the applicable Borrowing Tranche which the Borrower is prepaying, the prepayment shall be applied (i) first to Swing Loans, then (ii) second to Revolving Credit Loans to which the Base Rate Option applies, and then (iii) finally to Revolving Credit Loans to which the Euro-Rate Option applies. Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Banks under Section 4.5.2 [Indemnity].

#### 4.4.2 Replacement of a Lender.

In the event any Lender (i) gives notice under Section 3.4 [Euro-Rate Unascertainable, etc.] or Section 4.5.1 [Increased Costs, etc.], (ii) does not fund Revolving Credit Loans because the making of such Loans would contravene any Law applicable to such Lender, or (iii) becomes subject to the control of an Official Body (other than normal and customary supervision), then the Borrower shall have the right at its option, with the consent of the Administrative Agent, which shall not be unreasonably withheld (except that during any period when an Event of Default exists and is continuing, the Administrative Agent may withhold such consent in its sole discretion), to prepay the Loans of such Lender in whole, together with all interest and fees accrued thereon and all other amounts due and payable to such Lender under the Loan Documents, and terminate such Lender's Commitment within ninety (90) days after (x) receipt of such Lender's notice under Section 3.4 [Euro-Rate Unascertainable, etc.] or 4.5.1 [Increased Costs, Etc.], (y) the date such Lender has failed to fund Revolving Credit Loans because the making of such Loans would contravene Law applicable to such Lender, or (z) the date such Lender became subject to the control of an Official Body, as applicable; provided that the Borrower shall also pay to such Lender at the time of such prepayment any amounts required under Section 4.5 [Additional Compensation in Certain Circumstances] (except that the Borrower shall not be required to indemnify such Lender for liabilities, losses or expenses under Section 4.5.2(i) sustained by such Lender as a consequence of the prepayment of the Loans of such Lender in accordance with this Section 4.4.2 on a day other than the last day of an Interest Period with respect to Loans to which a Euro-Rate Option applies if the Loans of such Lender are being prepaid because such Lender has determined that the making, maintenance or funding of such Loans by such Lender under the Euro-Rate Option has been made unlawful or because such Lender has become subject to the control of an Official Body) and any accrued interest due on such amount and any related fees; provided, however, that the Commitment of such Lender shall be provided by one or more of the remaining Lenders or a replacement bank acceptable to the Agents and the Issuing Banks; provided, further, that the remaining Lenders shall have no obligation hereunder to increase their Commitments. Notwithstanding the foregoing, the Administrative Agent may only be replaced subject to the requirements of Section 9.14 [Successor Agents] and an Issuing Bank may only be replaced if all Letters of Credit issued by such Issuing Bank have expired or been terminated or replaced.

#### 4.4.3 Change of Lending Office.

Each Lender agrees that upon the occurrence of any event giving rise to increased costs or other special payments under Section 3.4.2 [Illegality, etc.] or 4.5.1 [Increased Costs, etc.] with respect to such Lender, it will if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans or Letters of Credit affected by such event, provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage on such Lender's good faith determination, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 4.4.3 shall affect or postpone any of the Obligations of the Borrower or any other Loan Party or the rights of any Agent or any Lender provided in this Agreement.

#### 4.4.4 Voluntary Reduction of Commitments.

The Borrower shall have the right, upon not less than five (5) Business Days' written irrevocable notice to the Administrative Agent, to terminate the Revolving Credit Commitments or, from time to time, to reduce the amount of the Revolving Credit Commitments, which notice shall specify the date and amount of any such reduction and otherwise be substantially in the form of Exhibit 4.4.4 (a "Commitment Reduction Notice"). Any such reduction shall be in a minimum amount equal to \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof, provided, that the Revolving Credit Commitments may not be reduced below the sum of the aggregate principal amount of all Revolving Facility Usage. Each reduction of Revolving Credit Commitments shall ratably reduce the Revolving Credit Commitments of the Banks.

#### 4.4.5 Mandatory Prepayment Upon Sale of Assets; Mandatory Reduction of Revolving Credit Commitments.

Within five (5) Business Days of any sale of assets by any member of the Arch Coal Group authorized by Section 7.2.4(vi) [Disposition of Assets or Subsidiaries] and immediately upon the closing of any Permitted Receivables Financing, the Revolving Credit Commitments shall automatically and permanently be reduced in an amount equal to, in the case of an asset sale under Section 7.2.4(vi), the Net Cash Proceeds of such sale of assets (as estimated in good faith by the Borrower) or, in the case of a Permitted Receivables Financing, 50% of the principal amount of such financing; provided, however, that, in the case of a sale of assets authorized by Section 7.2.4(vi), the Revolving Credit Commitments shall not be required to be reduced below \$150,000,000. On the date of any reduction of the Revolving Credit Commitments pursuant to this Section 4.4.5, the Borrower shall make a mandatory prepayment of so much of the Revolving Credit Loans as shall be necessary in order that the Revolving Facility Usage will not exceed the Revolving Credit Commitments after giving effect to such reduction. Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Banks under Section 4.5.2 [Indemnity]. If the Debt Rating applicable to the Borrower is BBB- or better by Standard & Poor's or Baa3 or better by Moody's, then at any time when either such Debt Rating is in effect, if any member of the Arch Coal Group sells assets in accordance with Section 7.2.4(vi), no reduction of the Revolving Credit Commitments pursuant to this Section 4.4.5 will be required to be made. No reduction of the Revolving Credit Commitments will be required under this Section 4.4.5 with respect to proceeds of the MLP Transaction.

#### 4.5 Additional Compensation in Certain Circumstances.

##### 4.5.1 Increased Costs or Reduced Return Resulting From Taxes, Reserves, Capital Adequacy Requirements, Expenses, Etc.

If any Law, guideline or interpretation or any change in any Law, guideline or interpretation or application thereof by any Official Body charged with the interpretation or administration thereof or compliance with any request or directive (whether or not having the force of Law) of any central bank or other Official Body:

(i) subjects any Lender to any tax or changes the basis of taxation with respect to this Agreement, the Committed Loans or payments by the Borrower of principal, interest, Commitment Fees, or other amounts due from the Borrower hereunder (except for taxes on the overall net income of such Lender),

(ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, or assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds by, any Lender, or

(iii) imposes, modifies or deems applicable any capital adequacy or similar requirement (A) against assets (funded or contingent) of, or letters of credit, other credits or commitments to extend credit extended by, any Lender, or (B) otherwise applicable to the obligations of any Lender under this Agreement,

and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon any Lender with respect to this Agreement, or the making, maintenance or funding of any part of the Committed Loans (or, in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on any Lender's capital, taking into consideration such Lender's customary policies with respect to capital adequacy) by an amount which such Lender in its sole discretion deems to be material, such Lender shall from time to time notify the Borrower and the Administrative Agent of the amount determined in good faith (using any averaging and attribution methods employed in good faith) by such Lender to be necessary to compensate such Lender for such increase in cost, reduction of income, additional expense or reduced rate of return. Such notice shall set forth in reasonable detail the basis for such determination. Such amount shall be due and payable by the Borrower to such Lender ten (10) Business Days after such notice is given.

##### 4.5.2 Indemnity.

In addition to the compensation required by Section 4.5.1 [Increased Costs, etc.], the Borrower shall indemnify each Lender against all liabilities, losses or expenses (including loss of margin, any loss or expense incurred in liquidating or employing deposits from third parties and any loss or expense incurred in connection with funds acquired by a Lender to fund or maintain Loans subject to a Euro-Rate Option) which such Lender sustains or incurs as a consequence of any

(i) payment, prepayment, conversion or renewal of any Loan to which a Euro-Rate Option applies on a day other than the last day of the corresponding Interest Period (whether or not such payment or prepayment is mandatory, voluntary or automatic and whether or not such payment or prepayment is then due);

(ii) attempt by the Borrower to revoke (expressly, by later inconsistent notices or otherwise) in whole or part any Committed Loan Requests under Section 2.4.1 [Committed Loan Requests], Section 2.4.2 [Swing Loan Requests], or Section 3.2 [Interest Periods] or notice relating to prepayments under Section 4.4.1 [Voluntary Prepayments]; or

(iii) default by the Borrower in the performance or observance of any covenant or condition contained in this Agreement or any other Loan Document, including any failure of the Borrower to pay when due (by acceleration or otherwise) any principal of or interest on the Committed Loans, Commitment Fees or any other amount due hereunder.

If any Lender sustains or incurs any such loss or expense, it shall from time to time notify the Borrower of the amount determined in good faith by such Lender (which determination may include such assumptions, allocations of costs and expenses and averaging or attribution methods as such Lender shall deem reasonable) to be necessary to indemnify such Lender for such loss or expense. Such notice shall set forth in reasonable detail the basis for such determination. Such amount shall be due and payable by the Borrower to such Lender ten (10) Business Days after such notice is given.

#### 4.6 Notes.

Upon the request of any Bank, the Revolving Credit Loans made by such Bank may be evidenced by a Revolving Credit Note in the form of Exhibit 1.1(R).

#### 4.7 Settlement Date Procedures.

In order to minimize the transfer of funds between the Banks and the Administrative Agent, the Borrower may borrow, repay and reborrow Swing Loans and PNC Bank may make Swing Loans as provided in Section 2.5 hereof during the period between Settlement Dates. Not later than 11:00 a.m., on each Settlement Date, the Administrative Agent shall notify each Bank of its Revolving Credit Ratable Share of the total of the Revolving Credit Loans and the Swing Loans (each a "Required Share"). Prior to 2:00 p.m., Pittsburgh time, on such Settlement Date, each Bank shall pay to the Administrative Agent the amount equal to the difference between its Required Share and its Revolving Credit Loans, and the Administrative Agent shall pay to each Bank its Revolving Credit Ratable Share of all payments made by the Borrower to the Administrative Agent with respect to the Revolving Credit Loans. The Administrative Agent shall also effect settlement in accordance with the foregoing sentence on the proposed Borrowing Dates for Revolving Credit Loans and may at its option effect settlement on any other Business Day. These settlement procedures are established solely as a matter of administrative convenience, and nothing contained in this Section 4.7 shall relieve the Banks of their obligations to fund Revolving Credit Loans on dates other than a Settlement Date pursuant to Sections 2.1.1 and 2.2. The Administrative Agent may at any time for any reason whatsoever require each Bank to pay immediately to the Administrative Agent such Bank's Revolving Credit Ratable Share of the outstanding Revolving Credit Loans, and each Bank may at any time require the Administrative Agent to pay immediately to such Bank its Revolving Credit Ratable Share of all payments made by the Borrower to the Administrative Agent with respect to the Revolving Credit Loans.

4.8 Taxes.

4.8.1 No Deductions.

All payments made by the Borrower hereunder shall be made free and clear of and without deduction for any present or future taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the net income of the Lenders and all income and franchise taxes of the United States applicable to the Lenders (all such non-excluded taxes, levies, imposts deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable under the Credit Agreement, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this subsection) the Administrative Agent receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant tax authority or other authority in accordance with applicable law.

4.8.2 Stamp Taxes.

In addition, the Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges, or similar levies which arise from any payment made hereunder or from the execution, delivery, or registration, or otherwise with respect to, the Credit Agreement (hereinafter referred to as "Other Taxes").

4.8.3 Indemnification for Taxes Paid by Lenders.

The Borrower shall indemnify the Lenders for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this subsection) paid by such Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date such Lender makes written demand therefor.

4.8.4 Certificate.

Within 30 days after the date of any payment of any Taxes by the Borrower, the Borrower shall furnish to the Administrative Agent for the benefit of the Lenders the original or a certified copy of a receipt evidencing payment thereof. If no Taxes are payable in respect of any payment by the Borrower, the Borrower shall, if so requested by any Lender, provide a certificate of an officer of the Borrower to that effect.

#### 4.8.5 Survival.

Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in subsections 4.8.1 through 4.8.4 shall survive the payment in full of principal and interest under any promissory note made by Borrower to any Lender under the Credit Agreement.

#### 4.8.6 Refund and Contest.

If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes or Other Taxes with respect to which the Borrower was required to take the actions specified in the second sentence of subsection 4.8.1, the relevant Lender (to the extent such Lender reasonably determines in good faith that it will not suffer any adverse effect as a result thereof) shall cooperate with the Borrower in challenging the imposition of such Taxes or Other Taxes at the Borrower's expense if so requested by the Borrower in writing. If such Lender receives a refund of Taxes or Other Taxes for which the payment has been made by the Borrower pursuant to this Agreement, which refund in the good faith judgment of such Lender is attributable to the Borrower, then such Lender shall reimburse the Borrower for such amount as such Lender determines to be the proportion of the refund as will leave it, after such reimbursement, in no better or worse position than it would have been in if the payment had not been required. No Lender nor any Agent shall be obliged to disclose information regarding its tax affairs or computations to Borrower in connection with this Section 4.8.6 or any other provision of Section 4.8.

### 5. REPRESENTATIONS AND WARRANTIES

#### 5.1 Representations and Warranties.

The Borrower represents and warrants to the Agents and each of the Lenders as follows:

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

#### 5.1.2 Shares of Borrower; Subsidiaries; and Subsidiary Shares.

On the Restatement Effective Date, Schedule 5.1.2 states the name of each of the Borrower'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") if it is a partnership and its outstanding limited liability company interests, interests assigned to managers thereof and the voting rights associated therewith (the "LLC Interests") if it is a limited liability company. On the Restatement Effective Date, Schedule 5.1.2 also sets forth the jurisdiction of incorporation of the Borrower, its authorized capital stock (the "Borrower Shares"), the voting rights associated therewith, and whether such Subsidiary is a Significant Subsidiary, Inactive Subsidiary or a Special Subsidiary. The Borrower and each Subsidiary of the Borrower has good and marketable 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. All Borrower Shares, Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, and all Borrower Shares 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. On the Restatement Effective Date, there are no options, warrants or other rights outstanding to purchase any such Borrower Shares, Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on Schedule 5.1.2.

#### 5.1.3 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 Indebtedness 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. The Borrower and each Subsidiary of the Borrower party to the Acquisition Documents has full power to enter into, execute, deliver and perform the Acquisition Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part.

#### 5.1.4 Validity and Binding Effect.

This Agreement has been duly and validly executed and delivered by each Loan Party, 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. The Acquisition Documents have been duly and validly executed and delivered by the Borrower and each of its Subsidiaries party thereto. The Acquisition Documents constitute the legal, valid and binding obligation of the Borrower and each of its Subsidiaries party thereto, enforceable against each such Person in accordance with the terms thereof, except to the extent that enforceability of the Acquisition Documents may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar law, affecting the enforceability of creditors' rights generally or limiting the right of specific performance. A complete copy of the Acquisition Documents has been delivered to the Administrative Agent.

#### 5.1.5 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 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 (ii) any Law or any material 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 of the foregoing Persons is bound or to which any of the foregoing Persons is subject, or 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 Liens granted under the Loan Documents).

#### 5.1.6 Litigation.

Except as set forth on Schedule 5.1.6, there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against such Loan Party or any Subsidiary of such Loan Party at law or equity before any Official Body which individually or in the aggregate could reasonably be expected to result in a Material Adverse Change. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of any order, writ, injunction or any decree of any Official Body which could reasonably be expected to result in a Material Adverse Change.

#### 5.1.7 Financial Statements.

##### (i) Historical Statements.

The Borrower has delivered to the Administrative Agent copies of its audited consolidated year-end financial statements for and as of the end of the fiscal year ended December 31, 2001 (the "Historical Statements"). The Historical Statements were compiled from the books and records maintained by the Borrower's management, are correct and complete and fairly represent the consolidated financial condition of the Borrower 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.

##### (ii) Accuracy of Financial Statements.

Neither the Borrower nor any Subsidiary of the Borrower has on the Restatement Effective Date any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Historical Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of the Borrower or any Subsidiary of the Borrower which could reasonably be expected to result in a Material Adverse Change. Since December 31, 2001, no Material Adverse Change has occurred, except as set forth on Schedule 5.1.7.

(iii) Financial Projections. The Borrower has delivered to the Agents financial projections of the Borrower and its Subsidiaries for the period January 1, 2002 through and including December 31, 2007 derived from various assumptions of the Borrower's management (the "Financial Projections"). On the Restatement Effective Date, the Financial Projections represent a reasonable range of possible results in light of the history of the business, present and foreseeable conditions and the intentions of the Borrower's management. The Financial Projections accurately reflect the liabilities of the Borrower and its Subsidiaries upon consummation of the transactions contemplated hereby as of the Restatement Effective Date.

#### 5.1.8 Use of Proceeds; Margin Stock.

##### 5.1.8.1 General.

The Loan Parties shall use the proceeds of the Loans in accordance with Sections 2.7 and 7.1.9.

##### 5.1.8.2 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 has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or to refund Indebtedness originally incurred for such purpose, or for any purpose which entails a violation of or which is inconsistent with the provisions of the regulations of the Board of Governors of the Federal Reserve System. None of the Loan Parties nor any Subsidiary of any Loan Party holds or intends to hold margin stock in such amounts that more than 25% of the reasonable value of the assets of any Loan Party or Subsidiary of any Loan Party are or will be represented by margin stock.

##### 5.1.9 Full Disclosure.

Neither this Agreement nor any other Loan Document, nor the Acquisition Documents, nor any certificate, statement, agreement or other documents furnished to the Administrative Agent or any Lender in connection herewith or therewith, contains with respect to the Borrower 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 misleading. There is no fact known to any Loan Party which materially adversely affects the business, financial condition or results of operations of the Borrower and its Subsidiaries taken as a whole which has not been set forth in this Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Administrative Agent and the Lenders prior to or at the date hereof in connection with the transactions contemplated hereby.

#### 5.1.10 Taxes.

All federal, state, local and other tax returns required to have been filed with respect to each Loan Party and each Subsidiary of each Loan Party have been filed, and payment or adequate provision has been made for the payment of all taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that such taxes, fees, assessments and other charges 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. 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 for any period.

#### 5.1.11 Consents and Approvals.

No consent, approval, exemption, order or authorization of, or a registration or filing with, any Official Body or any other Person is required by any Law or any agreement in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents by any Loan Party, except as listed on Schedule 5.1.11, all of which shall have been obtained or made on or prior to the Restatement Effective Date except as otherwise indicated on Schedule 5.1.11.

#### 5.1.12 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 or other extensions of credit to be made on the Restatement Effective Date under or pursuant to the Loan Documents which constitutes an Event of Default or Potential Default. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of (i) 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 (ii) any material 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 could reasonably be expected to result in a Material Adverse Change. All Material Contracts described in the definition of "Material Contracts" to which any Loan Party or any Subsidiary of any Loan Party is a party or by 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 Borrower upon each of the other parties thereto in accordance with their respective terms, and there is no default by any Loan Party or any Subsidiary of any Loan Party under any Material Contract nor, to the Loan Parties' knowledge, any default thereunder with respect to parties thereto other than any Loan Party or Subsidiary of a Loan Party 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 organization document, or any requirement of Law which could reasonably be expected to result in a Material Adverse Change.

#### 5.1.13 Insurance.

No notice has been given or claim made and no grounds exist to cancel or avoid any insurance policies or bonds to which the Loan Parties are subject, or to reduce the coverage provided thereby. Such policies and bonds 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.

#### 5.1.14 Compliance With Laws.

The Loan Parties and their Subsidiaries are in compliance in all material respects with all applicable Laws (other than Environmental Laws which are specifically addressed in Section 5.1.18 [Environmental Matters]) in all jurisdictions in which any Loan Party or Subsidiary of any Loan Party is doing business except where the failure to do so could not reasonably be expected to result in a Material Adverse Change.

#### 5.1.15 Investment Companies; Regulated Entities.

None of the Loan Parties or any Subsidiaries of any Loan Party is an "investment company" registered or required to be registered under the Investment Company Act of 1940 or under the "control" of an "investment company" as such terms are defined in the Investment Company Act of 1940 and shall not become such an "investment company" or under such "control." None of the Loan Parties or any Subsidiary of any Loan Party is subject to any other Federal or state statute or regulation limiting its ability to incur Indebtedness for borrowed money.

#### 5.1.16 Plans and Benefit Arrangements.

(i) The Borrower and each other member of the ERISA Group are in compliance in all material respects with any applicable provisions of ERISA with respect to all Benefit Arrangements and Plans. There has been no Prohibited Transaction with respect to any Benefit Arrangement or any Plan or, to the best knowledge of the Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any material liability of the Borrower or any other member of the ERISA Group. The Borrower 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 Borrower and each other member of the ERISA Group (i) have fulfilled in all material respects their obligations under the minimum funding standards of ERISA, (ii) have not incurred any liability to the PBGC (other than premium payments), and (iii) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA. All Plans and Benefit Arrangements have been administered in all material respects with their terms and applicable Law.

(ii) No event requiring notice to the PBGC under Section 302(f)(4)(A) of ERISA 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 307 of ERISA has been made or is reasonably expected to be made to any Plan.

(iii) Neither the Borrower nor any other member of the ERISA Group has incurred or reasonably expects to incur any material withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. Neither the Borrower nor any other member of the ERISA Group has been notified by any Multiemployer Plan or Multiple Employer Plan that such Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA and, to the best knowledge of the Borrower, no Multiemployer Plan or Multiple Employer Plan is reasonably expected to be reorganized or terminated, within the meaning of Title IV of ERISA.

#### 5.1.17 Employment Matters.

Each of the Loan Parties and each of their Subsidiaries is in substantial compliance with the Labor Contracts and all applicable federal, state and local labor and employment Laws including those related to 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, where the failure to comply could reasonably be expected to result in a Material Adverse Change. There are no outstanding 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.

#### 5.1.18 Environmental Matters.

Except as set forth on Schedule 5.1.18:

(a) the Loan Parties and their Subsidiaries are and have been in substantial compliance with all Environmental Laws, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change;

(b) the Loan Parties and their Subsidiaries hold and are operating in substantial compliance with Environmental Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change;

(c) neither any property of any Loan Party or any Subsidiary of any Loan Party nor their respective operations conducted thereon violates any order of any court of governmental authority made pursuant to Environmental Laws except for noncompliance with respect thereto which could not reasonably be expected to result in a Material Adverse Change;

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

(e) there are no pending or, to the knowledge of any Loan Party, threatened Environmental Complaints against any Loan Party or any Subsidiary of any Loan Party which could reasonably be expected to result in a Material Adverse Change.

#### 5.1.19 Senior Debt Status.

The Obligations of each Loan Party under this Agreement, the Guaranty Agreement and each of the other Loan Documents to which it is a party do rank and will rank at least pari passu in priority of payment with all other Indebtedness of such Loan Party except Indebtedness of such Loan Party to the extent secured by Permitted Liens. There is no Lien upon or with respect to any of the properties or income of any Loan Party or Subsidiary of any Loan Party which secures indebtedness or other obligations of any Person except for Permitted Liens.

#### 5.1.20 Title to Properties.

Each Loan Party and each Subsidiary of each Loan Party has good and marketable title to or valid leasehold interest in all material properties, assets and other rights which it purports to own or lease or which are reflected as owned or leased on its books and records, free and clear of all Liens and encumbrances except Permitted Liens, and subject to the terms and conditions of the applicable leases.

#### 5.1.21 Coastal Agreement.

Canyon Fuel is a "Buyer Indemnitee" under the Coastal Agreement and, as such, has the rights of an "Indemnified Party" under the Coastal Agreement. Consummation of the Acquisition did not alter the rights of Canyon Fuel under the Coastal Agreement.

#### 5.1.22 Patents, Trademarks, Copyrights, Licenses, Etc.

Each Loan Party and each Subsidiary of each Loan Party owns or possesses all the material patents, trademarks, service marks, trade names, copyrights, licenses, registrations and franchises necessary to own and operate its properties and to carry on its business as presently conducted and planned to be conducted by such Loan Party or Subsidiary, without known possible, alleged or actual conflict with the rights of others. All material patents, trademarks, service marks, trade names, copyrights, licenses, registrations and franchises of each Loan Party and each Subsidiary of each Loan Party are listed and described on Schedule 5.1.22.

#### 5.1.23 Security Interests.

The Liens and security interests continued on the Restatement Effective Date or thereafter granted to the Administrative Agent for the benefit of the Lenders pursuant to the Pledge Agreements in the Collateral constitute and will continue to constitute Prior Security Interests under the Uniform Commercial Code as in effect in each applicable jurisdiction (the "Uniform Commercial Code") or other applicable Law entitled to all the rights, benefits and priorities provided by the Uniform Commercial Code or such Law. Financing Statements relating to said security interests have been filed in each office and in each jurisdiction where required in order to perfect the security interests described above, possession has been taken of all stock certificates or other certificates evidencing the Collateral, all such action as is necessary

or advisable to establish such rights of the Agent has been taken, and there is no necessity for any further action in order to preserve, protect and continue such rights, except the filing of continuation statements with respect to such financing statements within six months prior to each five-year anniversary of the filing of such financing statements or within not less than six months prior to such other longer anniversary date in any jurisdiction (and the Borrower shall notify the Administrative Agent, in writing if such anniversary date is other than five years). All filing fees and other expenses in connection with each such action have been or will be paid by the Borrower.

#### 5.1.24 Status of Pledged Collateral.

All the shares of capital stock, Partnership Interests or LLC Interests included in the Collateral pledged pursuant to the Pledge Agreements are or will be upon issuance validly issued and nonassessable and owned beneficially and of record by the pledgor free and clear of any Lien or restriction on transfer, except as otherwise provided by the Pledge Agreements and except as the right of the Lenders to dispose of the shares of capital stock, Partnership Interests or LLC Interests may be limited by the Securities Act of 1933, as amended, and the regulations promulgated by the SEC thereunder and by applicable state securities laws. There are no shareholder, partnership, limited liability company or other agreements or understandings with respect to the shares of capital stock, Partnership Interests or LLC Interests included in the Collateral except for the partnership agreements and limited liability company agreements described on Schedule 5.1.24. The Loan Parties have delivered true and correct copies of such partnership agreements and limited liability company agreements to the Administrative Agent.

#### 5.1.25 Solvency.

On the Restatement Effective Date and at the time of each borrowing of Revolving Credit Loans, both the Borrower and the Borrower and its Subsidiaries on a consolidated basis are Solvent after giving effect to the transactions contemplated by the Loan Documents and any incurrence of Indebtedness and all other Obligations.

#### 5.2 Continuation of Representations.

Except as to those representations and warranties limited by their terms to the Closing Date or the Restatement Effective Date, as the case may be, the Borrower makes the representations and warranties in this Section 5 on the Restatement Effective Date and on each date thereafter on which a Loan is made or a Letter of Credit is issued as provided in and subject to Sections 6.1 [First Loans and Letters of Credit] and 6.2 [Each Additional Loan or Letter of Credit].

### 6. CONDITIONS OF LENDING AND ISSUANCE OF LETTERS OF CREDIT

The obligation of each Lender to amend and restate the Original Credit Agreement and make Loans and of the Issuing Banks to issue Letters of Credit

hereunder is subject to the performance by the Borrower of its Obligations to be performed hereunder at or prior to the making of any such Loans or issuance of such Letters of Credit and to the satisfaction of the following further conditions:

6.1 First Loans and Letters of Credit.

On the Restatement Effective Date:

6.1.1 Officer's Certificate.

The representations and warranties of the Borrower contained in Section 5 and of each Loan Party in each of the other Loan Documents shall be true and accurate on and as of the Restatement Effective Date with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which relate solely to an earlier date or time, which representations and warranties shall be true and correct on and as of the specific dates or times referred to therein), and each of the Loan Parties shall have performed and complied with all covenants and conditions hereof and thereof, no Event of Default or Potential Default shall have occurred and be continuing or shall exist; and there shall be delivered to the Administrative Agent for the benefit of each Lender a certificate of the Borrower dated the Restatement Effective Date and signed by the Chief Executive Officer, President or Chief Financial Officer of the Borrower to each such effect.

6.1.2 Secretary's Certificate.

There shall be delivered to the Administrative Agent for the benefit of each Lender a certificate dated the Restatement Effective Date and signed by the Secretary or an Assistant Secretary of each of the Loan Parties, certifying as appropriate as to:

(i) all action taken by each Loan Party in connection with this Agreement and the other Loan Documents;

(ii) the names of the officer or officers authorized to sign this Agreement and the other Loan Documents and the true signatures of such officer or officers and specifying the Authorized Officers permitted to act on behalf of each Loan Party for purposes of this Agreement and the true signatures of such officers, on which the Administrative Agent and each Lender may conclusively rely; and

(iii) in the case of the Borrower, copies of its organizational documents, including its certificate of incorporation and bylaws as in effect on the Restatement Effective Date and, in the case of the certificate of incorporation certified by the appropriate state official where such documents are filed in a state office, together with certificates from the appropriate state officials as to the continued existence and good standing of the Borrower in the state of its formation and the state of its principal place of business.

6.1.3 Delivery of Loan Documents; Filing Receipts.

This Agreement, the Notes, the Guaranty Agreement, the Collateral Documents, the Subordination Agreement, and the other Loan Documents shall have been duly executed and delivered to the Administrative Agent and shall continue

the Obligations and the liens and security interests in the Collateral for the benefit of the Lenders, together with all appropriate financing statements and appropriate stock powers and certificates evidencing the Subsidiary Shares, the Partnership Interests and the LLC Interests, and all other instruments and Collateral required to be delivered to the Administrative Agent for the benefit of the Lenders under the Collateral Documents. The Administrative Agent shall have received copies of all filing receipts and acknowledgments issued by any governmental authority to evidence any recordation or filing necessary to continue the perfection of the Lien of the Lenders on the Collateral or other satisfactory evidence of such recordation and filing.

#### 6.1.4 Opinion of Counsel.

There shall be delivered to the Administrative Agent for the benefit of each Lender a written opinion of Kirkpatrick & Lockhart LLP and of Robert G. Jones, the General Counsel for the Loan Parties (who may rely on the opinions of such other counsel as may be acceptable to the Administrative Agent), dated the Closing Date and in form and substance satisfactory to the Administrative Agent and its counsel:

(i) as to the matters set forth in Exhibit 6.1.4; and

(ii) as to such other matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

#### 6.1.5 Legal Details.

All legal details and proceedings in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be in form and substance satisfactory to the Administrative Agent and counsel for the Administrative Agent, and the Administrative Agent shall have received all such other counterpart originals or certified or other copies of such documents and proceedings in connection with such transactions, in form and substance satisfactory to the Administrative Agent and said counsel, as the Administrative Agent or said counsel may reasonably request.

#### 6.1.6 Payment of Fees.

The Borrower shall have paid or caused to be paid to the Arrangers all fees required to be paid by the Borrower to the Arrangers, to the Administrative Agent for itself and for the account of the Lenders to the extent not previously paid all fees accrued through the Restatement Effective Date and the costs and expenses for which the Arrangers and the Lenders are entitled to be reimbursed.

#### 6.1.7 Consents.

All material consents required to effectuate the transactions contemplated by the Loan Documents and by the Acquisition Documents shall have been obtained, including, as may be necessary, the consent of the requisite parties to the Lease Documents in connection with the amendment and restatement of the Collateral Sharing Agreement (including, without limitation, for the release of a portion of the Collateral as described therein).

6.1.8 Officer's Certificate Regarding No Material Adverse Change and Solvency.

Since December 31, 2001, no Material Adverse Change shall have occurred; since December 31, 2001, and through the Restatement Effective Date, there shall have been no material change in the management of the Borrower; and there shall have been delivered to the Administrative Agent for the benefit of each Lender a certificate dated the Restatement Effective Date, in form and substance satisfactory to the Agents and signed by the Chief Executive Officer, President or Chief Financial Officer of the Borrower to each such effect and further certifying that the Borrower and its Subsidiaries, on a consolidated basis are Solvent after giving effect to the transactions contemplated hereby, the accuracy of all representations and warranties by the Loan Parties under the Loan Documents, the compliance with all covenants under the Loan Documents and the absence of any Event of Default or Potential Default.

6.1.9 No Violation of Laws.

The making of the Loans, the issuance of the Letters of Credit and the consummation of the transactions contemplated hereby shall not contravene any Law applicable to any Loan Party or any of the Lenders.

6.1.10 No Actions or Proceedings.

No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of, this Agreement, the other Loan Documents or the consummation of the transactions contemplated hereby or thereby or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or any of the other Loan Documents.

6.1.11 Insurance.

The Borrower shall have delivered to the Agents evidence of the insurance required under the Loan Documents.

6.1.12 Refinancing.

(a) To permit the refinancing by the Lenders of the revolving credit loans and the prepayment of the term loans, all as outstanding under the Original Credit Agreement, Borrower shall have (i) delivered to the Administrative Agent not later than 10:00 a.m., Pittsburgh time, three (3) Business Days prior to the first Borrowing Date hereunder an appropriately completed irrevocable Committed Loan Request pursuant to which Revolving Credit Loans in an amount sufficient to refinance the revolving credit loans and prepay the term loans under the Original Credit Agreement shall be requested, and (ii) made appropriate arrangements with respect to all amounts outstanding under the Original Credit Agreement in order to accomplish the amendment and restatement thereof on such first Borrowing Date. Each Lender which was a lender under the Original Credit Agreement, by execution of this Agreement, waives all notice of prepayment of loans and all notice of termination of the commitments under the Original Credit Agreement.

(b) In the event Borrower requests that the first Borrowing Date hereunder occur on the Restatement Effective Date, Borrower shall provide to the Administrative Agent, in addition to the Committed Loan Request required by clause (a) directly above, its agreement in the form of Exhibit 6.1.12 pursuant to which Borrower shall be bound by the terms of Section 4.5.2 with respect to such proposed borrowing notwithstanding that this Agreement shall not be effective at the time of such request and may not become effective on the date such borrowing is contemplated.

#### 6.1.13 Report of Independent Engineer.

The Borrower shall have delivered to the Agents the report of Weir International, independent engineers, with respect to the coal reserves of Borrower and its Subsidiaries and such other matters as are contained in such report.

#### 6.1.14 Satisfactory Environmental Review.

The environmental condition of the Loan Parties' and their Subsidiaries' assets shall be satisfactory to the Agents in all respects.

#### 6.2 Each Additional Loan or Letter of Credit.

At the time of making any Loans or issuing any Letters of Credit other than Loans made or Letters of Credit issued on the Closing Date and after giving effect to the proposed extensions of credit: the representations and warranties of the Borrower contained in Section 5 and of the Loan Parties in the other Loan Documents shall be true on and as of the date of such additional Loan or Letter of Credit with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which expressly relate solely to an earlier date or time, which representations and warranties shall be true and correct on and as of the specific dates or times referred to therein) and the Borrower shall have performed and complied with all covenants and conditions hereof; no Event of Default or Potential Default shall have occurred and be continuing or shall exist; the making of the Loans or issuance of such Letter of Credit shall not contravene any Law applicable to the Borrower or any Subsidiary of the Borrower or any of the Lenders; and the Borrower shall have delivered to the Administrative Agent (and the Issuing Banks in the case of a request for a Letter of Credit, and PNC Bank in the case of a request for a Swing Loan) a duly executed and completed Committed Loan Request or application for a Letter of Credit as the case may be.

### 7. COVENANTS

#### 7.1 Affirmative Covenants.

The Borrower covenants and agrees that until payment in full of the Loans and Reimbursement Obligations and interest thereon, expiration or termination of all Letters of Credit, satisfaction of all of the Loan Parties' other Obligations under the Loan Documents and termination of the Commitments, the Borrower shall, and shall cause each of its Subsidiaries to, comply at all times with the following affirmative covenants:

#### 7.1.1 Preservation of Existence, Etc.

The Borrower shall, and shall cause Arch Western to, maintain its legal existence as a corporation or limited liability company, as the case may be. The Borrower shall cause each of its Subsidiaries (other than Arch Western, which is subject to the previous sentence) 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 7.2.3 [Liquidations, Mergers, etc.]. The Borrower shall, and shall cause Arch Western 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 or maintain such qualification could be corrected without a material adverse effect on the Borrower or Arch Western. The Borrower shall cause each of its Subsidiaries (other than Arch Western, which is subject to the previous sentence) 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 could not reasonably be expected to result in a Material Adverse Change.

#### 7.1.2 Payment of Liabilities, Including Taxes, Etc.

The Borrower shall, and shall cause each of its Subsidiaries to, duly pay and discharge all taxes, assessments and governmental charges or levies 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 Borrower or any Subsidiary of the Borrower, provided that neither the Borrower nor any Subsidiary of the Borrower shall be required to pay any such tax, assessment, charge, levy 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.

#### 7.1.3 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. At the request of the Administrative Agent, the Loan Parties shall deliver to the Administrative Agent and each of the Lenders (x) on each anniversary of the Restatement Effective Date and such other date as the Administrative Agent shall reasonably request an original certificate of insurance signed by the Loan Parties' independent insurance broker describing and certifying as to the existence of the insurance required to be maintained by this Agreement and the other Loan Documents and (y) from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties.

#### 7.1.4 Maintenance of Properties and Leases.

The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its respective material properties, necessary or useful in the proper conduct of the business of the Borrower or such Subsidiary of the Borrower, in good working order and condition, ordinary wear and tear excepted. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its Subsidiaries to, maintain in full force and effect all patents, trademarks, service marks, trade names, copyrights, licenses and franchises necessary for the ownership and operation of its properties and business if the failure so to maintain the same would constitute a Material Adverse Change.

#### 7.1.5 Visitation Rights.

The Borrower shall, and shall cause each of its Subsidiaries to, permit any of the officers or authorized employees or representatives of the Administrative Agent or any of the Banks to visit and inspect during normal business hours any of its properties and to examine and make excerpts from its books and records and discuss its business affairs, finances and accounts with its officers, all in such detail and at such times and as often as any of the Banks may reasonably request, provided that each Bank shall provide the Borrower and the Administrative Agent with reasonable notice prior to any visit or inspection. In the event any Bank desires to conduct an audit of the Borrower or any Subsidiary of the Borrower, such Bank shall make a reasonable effort to conduct such audit contemporaneously with any audit to be performed by the Administrative Agent.

#### 7.1.6 Keeping of Records and Books of Account.

The Borrower shall, and shall cause each Subsidiary of the Borrower to, maintain and keep proper books of record and account which enable the 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 the Borrower or any Subsidiary of the 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.

#### 7.1.7 Plans and Benefit Arrangements.

The Borrower shall, and shall cause each other member of the ERISA Group to, comply with ERISA, the Internal Revenue Code and other applicable Laws applicable to Plans and Benefit Arrangements except where such failure, alone or in conjunction with any other failure, could not reasonably be expected to result in a Material Adverse Change. Without limiting the generality of the foregoing, the Borrower shall cause all of its Plans and all Plans maintained by any member of the ERISA Group to be funded in accordance with the minimum funding requirements of ERISA and shall make, and cause each member of the ERISA Group to make, in a timely manner, all contributions due to Plans, Benefit Arrangements and Multiemployer Plans.

#### 7.1.8 Compliance With Laws.

The Borrower shall, and shall cause each of its Subsidiaries to, comply with all applicable Laws, including all Environmental Laws, in all respects, provided that it shall not be deemed to be a violation of this Section 7.1.8 if any failure to comply with any Law would not result in fines, penalties, remediation costs, other similar liabilities or injunctive relief which in the aggregate could reasonably be expected to result in a Material Adverse Change. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its Subsidiaries to, comply with all Environmental Permits applicable to their respective operations and properties; obtain, maintain, comply with and renew all Environmental Permits necessary for their respective operations and properties; and manage, use and handle all Regulated Substances in compliance with all applicable Environmental Laws, in each case, except for such non-compliance which would not or could not reasonably be expected to result in a Material Adverse Change.

#### 7.1.9 Use of Proceeds.

On and after the Restatement Effective Date, the Borrower will use the Letters of Credit and the proceeds of the Loans only (i) to continue and refinance indebtedness under the revolving credit facility of the Original Credit Agreement, (ii) to repay the term loans under the Original Credit Agreement, or (iii) for general corporate purposes and for working capital for the Borrower and its Subsidiaries. The Borrower's use of the Letters of Credit and the proceeds of the Loans shall not be for any purpose which contravenes any applicable Law or any provision hereof.

#### 7.1.10 Operation of Mines.

The Borrower shall, and shall cause each of its Subsidiaries to, operate their mines in all material respects in accordance with sound coal mining practices.

#### 7.1.11 Maintenance of Material Contracts.

The Borrower shall, and shall cause each of its Subsidiaries to, comply with the provisions of and to maintain in full force and effect all material licenses, material permits and Material Contracts (other than Environmental Permits which are addressed in Section 7.1.8 above) to which any such Person is a party, except where the failure to so maintain in full force and effect a material license, material permit or a Material Contract could not be reasonably expected to result in a Material Adverse Change.

#### 7.1.12 Further Assurances.

Each Loan Party shall, from time to time, at its expense, faithfully preserve and protect the Collateral Agent's Lien on and Prior Security Interest in the Collateral as a continuing first priority perfected Lien, subject only to Permitted Liens, and shall do such other acts and things as the Administrative Agent or the Collateral Agent in their sole discretion may deem necessary or advisable from time to time in order to preserve, perfect and protect the Liens granted under the Loan Documents and to exercise and enforce its rights and remedies thereunder with respect to the Collateral.

### 7.1.13 Subordination of Intercompany Loans.

Each Loan Party shall cause any intercompany Indebtedness, loans or advances owed by any Loan Party to any other Loan Party or by any Subsidiary of any Loan Party to any Loan Party to be subordinated pursuant to the terms of the Subordination Agreement.

### 7.2 Negative Covenants.

The Borrower covenants and agrees that until payment in full of the Loans and Reimbursement Obligations and interest thereon, expiration or termination of all Letters of Credit, satisfaction of all of the Loan Parties' other Obligations hereunder and termination of the Commitments, the Borrower shall, and shall cause each of its Subsidiaries to, comply with the following negative covenants:

#### 7.2.1 Indebtedness.

The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness under the Loan Documents;

(ii) additional, unsecured Indebtedness of the Borrower incurred after the Restatement Effective Date, in an aggregate amount not to exceed \$250,000,000 outstanding at any time, so long as, both before and after giving effect to any proposed additional Indebtedness:

(y) the Borrower and its Subsidiaries shall be in compliance with Section 7.2.10 [Maximum Leverage Ratio], Section 7.2.11 [Minimum Fixed Charge Coverage Ratio], and Section 7.2.12 [Minimum Net Worth] determined on a pro forma basis (in the case of the Fixed Charge Coverage Ratio, the Minimum Net Worth test and the Leverage Ratio as of the end of the fiscal quarter most recently ended and as if such proposed additional Indebtedness was outstanding as of the first day of such fiscal quarter), and

(z) the covenants and defaults applicable in respect of such proposed additional Indebtedness are not, taken as a whole, materially more restrictive with respect to the Borrower and its Subsidiaries than the covenants and defaults under this Agreement;

(iii) Indebtedness of Arch Western payable to Borrower, subject to the limitations of Section 7.2.14(v);

(iv) Indebtedness of Arch Western and its Subsidiaries pursuant to the Arch Western Credit Facility;

(v) Indebtedness of any Subsidiary of the Borrower which is a member of the Arch Coal Group payable to the Borrower or to any other member of the Arch Coal Group, so long as such Indebtedness is subordinated to the obligations of the Loan Parties under the Loan Documents pursuant to the Subordination Agreement;

(vi) Indebtedness of the Borrower payable to Arch Western;

(vii) Indebtedness of the Borrower and its Subsidiaries reflected in the Historical Statements (other than Indebtedness refinanced with the proceeds of the Loans) and any refinancings thereof or amendments thereto that do not increase the amount of such Indebtedness beyond an amount otherwise permitted by this Agreement;

(viii) Indebtedness of the Securitization Subsidiary in a Permitted Receivables Financing; and

(ix) additional unsecured Indebtedness of the Borrower or any other Loan Party incurred after the Restatement Effective Date for the purpose of refinancing the indebtedness of Arch Western under the Arch Western Credit Facility, so long as, the terms and conditions thereof are reasonably satisfactory to the Agents and the Required Lenders.

#### 7.2.2 Liens.

The Borrower shall not, and shall not permit AWAC or any member of the Arch Coal Group to, 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, or agree or become liable to do so, except, in the case of the Borrower and the Arch Coal Group, Permitted Liens.

#### 7.2.3 Liquidations, Mergers, Consolidations, Acquisitions.

The Borrower shall not, and shall not permit any of its Subsidiaries to, dissolve, liquidate or wind-up its affairs, or become a party to 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:

(1) any Subsidiary of the Borrower may consolidate or merge into any other Subsidiary of the Borrower (except for the Excluded Subsidiaries), and

(2) any Loan Party may acquire, whether by purchase or by merger, (A) all of the ownership interests of another Person or (B) substantially all of assets of another Person or of a business or division of another Person (each a "Permitted Acquisition"), provided that each of the following requirements is met:

(i) the board of directors or other equivalent governing body of such Person shall have approved such Permitted Acquisition;

(ii) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be substantially the same as one or more line or lines of business conducted by the Loan Parties and shall comply with Section 7.2.7 [Continuation of or Change in Business], in

the case of any merger a Loan Party shall be the surviving entity after giving effect to such transaction, all of the equity interests of the business or Person acquired shall be pledged to the Administrative Agent for the benefit of the Lenders on a first priority perfected basis pursuant to the Pledge Agreements and such other Collateral Documents as are necessary to create a Prior Security Interest in such assets, 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 7.2.6 [Subsidiaries, Partnerships and Joint Ventures] and Section 10.18 [Joinder of Guarantors], and in connection with such acquisition and the granting of such Liens and security interests, the Borrower shall deliver to the Administrative Agent for the benefit of the Lenders such opinions of counsel, certificates and such other Loan Documents as the Administrative Agent may reasonably request;

(iii) no Potential Default or Event of Default shall exist immediately prior to and after giving effect to such Permitted Acquisition;

(iv) the Borrower and its Subsidiaries shall be in compliance with the covenants contained in Sections 7.2.10 [Maximum Leverage Ratio], 7.2.11 [Minimum Fixed Charge Coverage Ratio], and 7.2.12 [Minimum Net Worth] determined on a pro forma basis after giving effect to such Permitted Acquisition (including in such computation Indebtedness or other liabilities assumed or incurred in connection with such Permitted Acquisition as if such liabilities were incurred as of the first day of the applicable period of determination); and

(v) after giving effect to such Permitted Acquisition, the Revolving Credit Commitments shall exceed the Revolving Facility Usage by at least \$75,000,000.

#### 7.2.4 Dispositions of Assets or Subsidiaries.

The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, convey, assign, lease, abandon, securitize or enter into a securitization transaction, or otherwise transfer or dispose of, 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 Borrower), except:

(i) transactions involving the sale of inventory in the ordinary course of business;

(ii) subject to the first proviso of clause (v) below, any sale, transfer or lease of assets by any Subsidiary of the Borrower which is a member of the Arch Coal Group to any other member of the Arch Coal Group or any sale, transfer or lease of assets by any Subsidiary of Arch Western which is a member of the Arch Western Group to any other member of the Arch Western Group;

(iii) subject to the first proviso of clause (v) below, any sale of assets if and to the extent the Net Cash Proceeds thereof are applied within 180 days of the consummation of such sale to the purchase by the Borrower or a Subsidiary of substitute assets; provided that the Borrower shall have delivered to the Administrative Agent a certificate (a "Replacement Sales Certificate") of the chief financial officer or the treasurer of the Borrower, certifying as to (x) the amount of such Net Cash Proceeds and (y) the fact that the Borrower or a Subsidiary shall invest such Net Cash Proceeds in substitute assets within 180 days after the date of consummation of such sale; and provided further that if and to the extent such Net Cash Proceeds are not so applied to the purchase of substitute assets within such 180-day period, such sale shall be deemed to have been made on the last day of such period pursuant to clause (vi) below;

(iv) any sale of accounts receivable or contracts giving rise to accounts receivable in a Permitted Receivables Financing, provided that at the time of any such sale, no Event of Default shall exist or shall result from such sale after giving effect thereto;

(v) any sale, transfer or lease (including any lease transaction under Section 7.2.9 [Off-Balance Sheet Financing and Capital Leases]) of assets, other than those specifically excepted pursuant to clauses (i) through (iv) above, provided that any disposition of assets by Borrower after the consummation of the MLP Transaction to the master limited partnership or similar entity formed in connection with the MLP Transaction shall be subject to and governed by solely this clause (v), provided further that (a) at the time of any such disposition, no Event of Default shall exist or shall result from such disposition, (b) the Borrower and its Subsidiaries shall be in compliance with the covenants contained in Sections 7.2.10 [Maximum Leverage Ratio], 7.2.11 [Minimum Fixed Charge Coverage Ratio], and 7.2.12 [Minimum Net Worth] determined on a pro forma basis after giving effect to each such sale, transfer or lease of assets, and (c) the aggregate net book value, as determined in accordance with GAAP, of all assets so sold, transferred, or leased by the Borrower and its Subsidiaries shall not exceed in any calendar year \$40,000,000;

(vi) subject to the first proviso of clause (v) above, any sale, transfer or lease of assets, other than those specifically excepted pursuant to clauses (i) through (v) above or clause (vii), (viii), (ix), or (x) below, so long as a permanent reduction of the Revolving Credit Commitments with respect to the Net Cash Proceeds thereof is made in accordance with the provisions of Section 4.4.5;

(vii) any transfer of assets by the Borrower to Arch Western as contemplated by the Contribution Agreement;

(viii) any transfer of assets by any member of the Arch Western Group permitted by the Arch Western Credit Facility, as in effect on the Closing Date;

(ix) any disposition of assets by any member of the Arch Coal Group to consummate the MLP Transaction, provided that (a) at the time of any disposition, no Event of Default shall exist or shall result from such disposition after giving effect thereto, and (b) the Borrower and its Subsidiaries shall be in compliance with the covenants contained in Sections 7.2.10 [Maximum Leverage Ratio], 7.2.11 [Minimum Fixed Charge Coverage Ratio], and 7.2.12 [Minimum Net Worth] determined on a pro forma basis after giving effect to the MLP Transaction; or

(x) any disposition of partnership or other interests in a master limited partnership or similar entity or in any general partner of such master limited partnership, in any such case, received as part of the MLP Transaction permitted by Section 7.2.4 [Dispositions of Assets or Subsidiaries] hereof provided that at the time of any such disposition, no Event of Default shall exist or shall result from such disposition after giving effect thereto.

#### 7.2.5 Affiliate Transactions.

The Borrower shall not, and shall not permit any of its 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 Borrower unless such transaction is not otherwise prohibited by this Agreement and is entered into in the ordinary course of business upon fair and reasonable arm's length terms and conditions; provided, however, that the MLP Transaction and any other transaction permitted hereby involving the transfer of assets to the master limited partnership or similar entity established in connection with the MLP Transaction shall be deemed to be a transaction that is entered into in the ordinary course of business of the Borrower.

#### 7.2.6 Subsidiaries, Partnerships and Joint Ventures.

The Borrower shall not, and shall not permit any of its Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) Subsidiaries which are not Significant Subsidiaries, and (ii) any Significant Subsidiary which has joined the Guaranty Agreement as Guarantor, which has pledged the equity interests it owns in any other Significant Subsidiary to the Collateral Agent for the benefit of the Lenders on a first priority perfected basis pursuant to the Pledge Agreements, who has executed all other Loan Documents, who has also delivered to the Administrative Agent such opinions of counsel and other documents in connection therewith as the Administrative Agent may reasonably request, and who has caused all of the issued and outstanding capital stock, partnership interests, member interests or other equity interest of such Significant Subsidiary that are owned by the Borrower or another Subsidiary of the Borrower to be pledged on a first priority perfected basis to the Collateral Agent for the benefit of the Lenders pursuant to the Pledge Agreements, all in form and substance satisfactory to the Administrative Agent. Neither the Borrower nor any Subsidiary of the Borrower shall become or agree to become a general or limited partner in any general or limited partnership or become a member or manager of, or hold a limited liability company interest in, a limited liability company, except that (1) the Loan Parties may make an Investment in a Permitted Joint Venture; provided, however, that the aggregate permitted Investments in all Permitted Joint Ventures shall not at any time exceed, for all Loan Parties and their Subsidiaries, \$50,000,000, (2) the Loan Parties may hold limited partnership interests or limited liability company member interests in any general partner of the master limited partnership formed as part of the MLP Transaction, or (3) the Loan Parties may be general or limited partners in other Loan Parties or be members or managers of, or hold limited liability company interests in, other Loan Parties and except that the Borrower may hold a limited liability company interest in Arch Western and Arch Western may hold limited liability company interests in its Subsidiaries which are members of the Arch Western Group.

7.2.7 Continuation of or Change in Business.

The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business substantially as conducted and operated by the Borrower or such Subsidiary as of the Restatement Effective Date and any business substantially related thereto, and neither the Borrower nor any Subsidiary of the Borrower shall permit any material change in such business.

7.2.8 Plans and Benefit Arrangements.

The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in a Prohibited Transaction with any Plan, Benefit Arrangement or Multiemployer Plan which, alone or in conjunction with any other circumstances or set of circumstances results in liability under ERISA which could reasonably be expected to result in a Material Adverse Change.

7.2.9 Off-Balance Sheet Financing and Capital Leases.

The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any lease which would constitute a capital lease in accordance with GAAP or engage in any off-balance sheet transaction (i.e., the liabilities in respect of which do not appear on the liability side of the balance sheet) providing the functional equivalent of borrowed money (including sale/leasebacks or Synthetic Leases) (collectively, "Off-Balance Sheet and Capital Lease Transactions"), except Indebtedness or other obligations in respect of Off-Balance Sheet and Capital Lease Transactions, so long as the aggregate amount of Indebtedness or other obligations in respect of Off-Balance Sheet and Capital Lease Transactions does not at any time exceed \$100,000,000. For purposes of this Section 7.2.9, (a) "Synthetic Lease" shall mean any lease transaction under which the parties intend that (i) the lease will be treated as an "operating lease" by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended, and (ii) the lessee will be entitled to various tax benefits ordinarily available to owners (as opposed to lessees) of like property and (b) the amount of any lease which is not a capital lease in accordance with GAAP is the aggregate amount of minimum lease payments due pursuant to such lease for any noncancelable portion of its term.

7.2.10 Maximum Leverage Ratio.

The Borrower shall not at any time permit the Leverage Ratio to exceed the ratio set forth below for the periods specified below:

Period	Ratio
Restatement Effective Date through and including December 31, 2002	3.50 to 1.00
January 1, 2003 through and including December 31, 2003	3.25 to 1.00
January 1, 2004 and thereafter	3.00 to 1.00

7.2.11 Minimum Fixed Charge Coverage Ratio.

The Borrower shall not permit the Fixed Charge Coverage Ratio, to be less than the ratio set forth below for the periods specified below:

Period	Ratio
Restatement Effective Date through and including December 31, 2002	2.75 to 1.00
January 1, 2003 through and including December 31, 2003	3.25 to 1.00
January 1, 2004 and thereafter	4.00 to 1.00

7.2.12 Minimum Net Worth.

The Borrower shall not at any time permit Consolidated Tangible Net Worth (determined without regard to the valuation of derivatives as required by GAAP and as the effect thereof is reported in the "Other Comprehensive Income" category on the Borrower's consolidated balance sheet for each period from and after April 1, 2002) to be less than the Base Net Worth.

7.2.13 No Restriction on Dividends.

The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or be bound by any agreement which prohibits or restricts, in any manner, the payment of dividends (whether in cash, securities, property or otherwise), other than restrictions applicable to the Arch Western Group set forth in the Arch Western Credit Facility, other than restrictions applicable to Arch Western set forth in the Arch Western LLC Agreement and other than restrictions applicable to Canyon Fuel set forth in the Canyon Fuel LLC Agreement.

7.2.14 Loans and Investments.

The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time make or suffer to remain outstanding any loan or advance to, or purchase, acquire or own any stock, bonds (other than, in the ordinary course of business, royalty bonds or bonds securing performance by the Borrower or a Subsidiary of the Borrower under bonus bids), 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 (an "investment"), or agree, become or remain liable to do any of the foregoing, except:

(i) trade credit extended on usual and customary terms in the ordinary course of business;

(ii) investments by the Borrower in its Subsidiaries which are members of the Arch Coal Group;

(iii) Permitted Investments;

(iv) investments in Permitted Joint Ventures in accordance with Section 7.2.6 [Subsidiaries, Partnerships and Joint Ventures]; (v) investments by the Borrower in, or reimbursement obligations by the Borrower to an Issuing Bank with respect to any Letter of Credit issued for the direct or indirect benefit of, Arch Western (collectively the "Permitted Investments in Arch Western"); provided, however, that the Borrower shall not make any Permitted Investment in Arch Western if at the time such investment is proposed to be made and after giving effect thereto (x) the aggregate amount of the Permitted Investments in Arch Western would exceed \$100,000,000 and (y) the Leverage Ratio would be greater than 3.00 to 1.00;

(vi) loans and advances permitted by Section 7.2.1(v);

(vii) other Investments, in connection with or related to the operations of the Borrower and its Subsidiaries, not exceeding \$50,000,000 in the aggregate at any time;

(viii) Investments constituting capitalization of any Securitization Subsidiary consistent with normal practice for transactions of such type; and

(ix) limited partnership or other interests in a master limited partnership or similar entity received as part of the MLP Transaction permitted by Section 7.2.4 [Dispositions of Assets or Subsidiaries] hereof and limited partnership interests or limited liability company member interests in any general partner of the master limited partnership received as part of the MLP Transaction.

#### 7.2.15 No Amendments to Acquisition Documents.

The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any amendment or modification to or waiver or consent under (or solicit any such amendment, modification, waiver or consent) any of the Acquisition Documents or the Coastal Agreement which could reasonably be expected to be material and adverse to the Banks without the prior written consent of the Agents.

#### 7.2.16 Transactions With Respect to AWAC.

The Borrower shall not permit AWAC to: (i) incur any indebtedness or other obligation or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several); and (ii) own any asset other than its member interest in Arch Western.

### 7.3 Reporting Requirements.

The Borrower covenants and agrees that until payment in full of the Loans and Reimbursement Obligations, and interest thereon, expiration or termination of all Letters of Credit, satisfaction of all of the Loan Parties' other Obligations hereunder and under the other Loan Documents and termination of the Commitments, the Borrower will furnish or cause to be furnished to the Administrative Agent and each of the Banks:

#### 7.3.1 Quarterly Financial Statements.

As soon as available and in any event within forty-five (45) calendar days after the end of each of the first three fiscal quarters in each fiscal year, financial statements of the Borrower and its Subsidiaries, consisting of a consolidated and consolidating balance sheet as of the end of such fiscal quarter, related consolidated and consolidating 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 or Chief Financial Officer of the Borrower 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 Borrower will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 7.3.1 if within forty-five (45) days after the end of its fiscal quarter, the Borrower delivers to the Administrative Agent and each of the Banks a copy of the Borrower's Form 10-Q as filed with the SEC and the financial statements contained therein meet the requirements described in this Section.

#### 7.3.2 Annual Financial Statements.

As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Borrower, financial statements of the Borrower and its Subsidiaries consisting of a consolidated and consolidating balance sheet as of the end of such fiscal year, related consolidated and consolidating 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 satisfactory to the Administrative Agent. The certificate or report of accountants 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) 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 Borrower will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 7.3.2 if within ninety (90) days after the end of its fiscal year, the Borrower delivers to the Administrative Agent and each of the Banks a copy of the Borrower's Annual Report and Form 10-K as filed with the SEC and the financial statements and certification of public accountants contained therein meet the requirements described in this Section.

### 7.3.3 Certificate of the Borrower.

Concurrently with the financial statements of the Borrower furnished to the Administrative Agent and to the Banks pursuant to Sections 7.3.1 [Quarterly Financial Statements] and 7.3.2 [Annual Financial Statements], a certificate of the Borrower signed by the Chief Executive Officer, President or Chief Financial Officer of the Borrower, in the form of Exhibit 7.3.3, to the effect that, except as described pursuant to Section 7.3.4 [Notice of Default], (i) the representations and warranties of the Borrower contained in Section 5 and in the other Loan Documents are true on and as of the date of such certificate with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which expressly relate solely to an earlier date or time which shall be true and correct on and as of the specific dates or times referred to therein) and the Loan Parties have performed and complied with all covenants and conditions hereof, (ii) no Event of Default or Potential Default exists and is continuing on the date of such certificate, (iii) containing a list of each Significant Subsidiary, each Inactive Subsidiary, and each Special Subsidiary, other than those set forth on Schedule 5.1.2, and (iv) containing calculations in sufficient detail to demonstrate compliance as of the date of such financial statements with all financial covenants contained in Section 7.2 [Negative Covenants].

### 7.3.4 Notice of Default.

Promptly after any officer of the Borrower has learned of the occurrence of an Event of Default or Potential Default, a certificate signed by the Chief Executive Officer, President or Chief Financial Officer of the Borrower setting forth the details of such Event of Default or Potential Default and the action which the Borrower proposes to take with respect thereto.

### 7.3.5 Notice of Litigation.

Promptly after the commencement thereof or promptly after the determination thereof, notice of all actions, suits, proceedings or investigations before or by any Official Body or any other Person against any Loan Party or any Subsidiary of any Loan Party, which (x) involve or could be reasonably expected to involve assessments against any Loan Party or any Subsidiary of any Loan Party in excess of \$20,000,000, individually or in the aggregate, or (y) involve a claim or series of claims which if adversely determined could reasonably be expected to result in a Material Adverse Change.

### 7.3.6 Notice of Change in Debt Rating.

Within five (5) Business Days after Standard & Poor's or Moody's announces a change in the Borrower's Debt Rating, notice of such change. Borrower will deliver together with such notice a copy of any written notification which Borrower received from the applicable rating agency regarding such change of Debt Rating.

### 7.3.7 Notices Regarding Plans and Benefit Arrangements.

#### 7.3.7.1 Certain Events.

Promptly upon becoming aware of the occurrence thereof, notice (including the nature of the event and, when known, any action taken or threatened by the Internal Revenue Service or the PBGC with respect thereto) of:

(i) any Reportable Event with respect to the Borrower or any other member of the ERISA Group which has not been waived by the PBGC,

(ii) any Prohibited Transaction which could subject the Borrower or any other member of the ERISA Group to a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Internal Revenue Code in connection with any Plan, any Benefit Arrangement or any trust created thereunder but only if the assessment of such civil penalty or tax could reasonably be expected to result in a Material Adverse Change,

(iii) any assertion of material withdrawal liability with respect to any Multiemployer Plan,

(iv) any partial or complete withdrawal from a Multiemployer Plan by the Borrower or any other member of the ERISA Group under Title IV of ERISA (or assertion thereof), where such withdrawal is likely to result in material withdrawal liability,

(v) any cessation of operations (by the Borrower or any other member of the ERISA Group) at a facility in the circumstances described in Section 4062(e) of ERISA where such cessation of operations is likely to result in a material liability under ERISA Sections 4063 or 4064,

(vi) withdrawal by the Borrower or any other member of the ERISA Group from a Multiple Employer Plan where such withdrawal is likely to result in material withdrawal liability,

(vii) a failure by the Borrower or any other member of the ERISA Group to make a payment to a Plan required to avoid imposition of a Lien under Section 302(f) of ERISA,

(viii) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA, or

(ix) any change in the actuarial assumptions or funding methods used for any Plan, where the effect of such change is to materially increase the unfunded benefit liability or obligation to make periodic contributions.

#### 7.3.7.2 Notices of Involuntary Termination and Annual Reports.

As soon as available or within thirty (30) days after receipt thereof, copies of (a) all notices received by the Borrower or any other member of the

ERISA Group of the PBGC's intent to terminate any Plan administered or maintained by the Borrower or any member of the ERISA Group, or to have a trustee appointed to administer any such Plan; and (b) at the request of the Administrative Agent or any Lender, each annual report (IRS Form 5500 series) and all accompanying schedules, the most recent actuarial reports, the most recent financial information concerning the financial status of each Plan administered or maintained by the Borrower or any other member of the ERISA Group, and schedules showing the amounts contributed to each such Plan by or on behalf of the Borrower or any other member of the ERISA Group in which any of their personnel participate or from which such personnel may derive a benefit, and each Schedule B (Actuarial Information) to the annual report filed by the Borrower or any other member of the ERISA Group with the Internal Revenue Service with respect to each such Plan.

#### 7.3.7.3 Notice of Voluntary Termination.

Promptly upon the filing thereof, copies of any notice of standard or distressed termination with the PBGC, or any successor or equivalent form, filed with the PBGC in connection with the termination of any Plan.

#### 7.3.8 Other Information.

Promptly following request therefor, such other information as any Agent or Lender may reasonably request, including, without limitation, forecasts and projections.

### 8. DEFAULT

#### 8.1 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):

##### 8.1.1 Payments Under Loan Documents.

The Borrower shall fail to pay (i) any principal of any Loan (including scheduled installments, mandatory prepayments or the payment due at maturity) or Reimbursement Obligation when such principal is due hereunder or (ii) any interest on any Loan or Reimbursement Obligation or any other amount owing hereunder or under the other Loan Documents within three (3) Business Days after such interest or other amount becomes due in accordance with the terms hereof or thereof;

##### 8.1.2 Breach of Warranty.

Any representation or warranty made at any time by the 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 misleading in any material respect as of the time it was made or furnished;

8.1.3 Breach of Negative Covenants or Visitation Rights.

Any of the Loan Parties shall default in the observance or performance of any covenant contained in Section 7.1.5 [Visitation Rights], Section 7.2 [Negative Covenants] or 7.3.4 [Notice of Default];

8.1.4 Breach of Other Covenants.

(a) Any of the Loan Parties shall fail to timely perform the covenants set forth in Sections 7.3.1, 7.3.2 or 7.3.3 [Reporting Requirements] and such default shall continue unremedied for a period of thirty (30) Business Days after any officer of any Loan Party becomes aware of the occurrence thereof;

(b) Any of the Loan Parties shall default in the observance or performance of 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) Business Days after any officer of any Loan Party becomes aware of the occurrence thereof (such grace period to be applicable only in the event such default can be remedied by corrective action of the Loan Parties as determined by the Administrative Agent in its sole discretion);

8.1.5 Defaults in Other Agreements or Indebtedness.

(a) 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 other Indebtedness or any Derivatives Obligations under which any Loan Party or Subsidiary of any Loan Party (other than Excluded Subsidiaries) may be obligated as a borrower or guarantor in excess of \$20,000,000 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, whether waived or not) any indebtedness 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 or the passage of time or both would permit or cause) the acceleration of any indebtedness (whether or not such right shall have been waived) or the termination of any commitment to lend;

(b) A default or event of default shall occur at any time under the terms of any of the Lease Documents or under or with respect to any other Obligations (as such term is defined in the Collateral Sharing Agreement) and such default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not) any indebtedness or other obligation thereunder 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 or the passage of time or both would permit or cause) the acceleration of any indebtedness or other obligation thereunder (whether or not such right shall have been waived) or the termination of any of the Lease Documents or the termination of any other agreement or instrument evidencing any other Obligations (as such term is defined in the Collateral Sharing Agreement);

#### 8.1.6 Judgments or Orders.

Any judgments or orders for the payment of money in excess of \$20,000,000 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, which judgment 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 shall not be an Event of Default under this Section 8.1.6 if and for so long as (i) the amount of such judgment or order in excess of \$20,000,000 is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (ii) such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order;

#### 8.1.7 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 become or be declared ineffective or inoperative or shall in any way be challenged or contested or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby;

#### 8.1.8 Proceedings Against Assets.

Any of the Loan Parties' or any of their Subsidiaries' assets 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;

#### 8.1.9 Notice of Lien or Assessment.

A notice of Lien or assessment in excess of \$20,000,000 which is not a Permitted Lien is filed of record with respect to all or any part of any of the Loan Parties' or any of their Subsidiaries' assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes payable;

#### 8.1.10 Insolvency.

The Borrower and its Subsidiaries, taken as a whole, cease to be Solvent, or the Borrower and its Subsidiaries, taken as a whole, fail to pay their debts generally as they become due or admit their inability to pay their debts generally as they become due;

#### 8.1.11 Events Relating to Plans and Benefit Arrangements.

Any of the following occurs: (i) any Reportable Event, which the Administrative Agent determines in good faith constitutes 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; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) the PBGC shall give notice of its intent to institute proceedings to terminate any Plan or Plans or to appoint a trustee to administer or liquidate any Plan; and, in the case of the occurrence of (i), (ii), (iii) or (iv) above, the Administrative Agent determines in good faith that the amount of the Borrower's liability is likely to exceed 10% of its Consolidated Tangible Net Worth; (v) the Borrower or any member of the ERISA Group shall fail to make any contributions when due to a Plan or a Multiemployer Plan; (vi) the Borrower or any other member of the ERISA Group shall make any amendment to a Plan with respect to which security is required under Section 307 of ERISA; (vii) the Borrower or any other member of the ERISA Group shall withdraw completely or partially from a Multiemployer Plan; (viii) the Borrower or any other member of the ERISA Group shall withdraw (or shall be deemed under Section 4062(e) of ERISA to withdraw) from a Multiple Employer Plan; or (ix) any applicable Law is adopted, changed or interpreted by any Official Body with respect to or otherwise affecting one or more Plans, Multiemployer Plans or Benefit Arrangements and, with respect to any of the events specified in (v), (vi), (vii), (viii) or (ix), the Administrative Agent determines in good faith that any such occurrence would be reasonably likely to materially and adversely affect the total enterprise represented by the Borrower and the other members of the ERISA Group;

#### 8.1.12 Cessation of Business.

The Loan Parties, taken as a whole, cease to conduct their business as contemplated, except as expressly permitted under Section 7.2.3 [Liquidations, Mergers, etc.] or 7.2.4 [Dispositions of Assets and Subsidiaries], or are enjoined, restrained or in any way prevented by court order from conducting all or any material part of their business and such injunction, restraint or other preventive order is not dismissed within thirty (30) days after the entry thereof;

#### 8.1.13 Change of Control.

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 the Borrower; or (ii) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of the Borrower on the first day of such period, (2) were nominated for election by the Borrower, or (3) were appointed by the Board shall cease to constitute a majority of the board of directors of the Borrower;

#### 8.1.14 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 any Material Subsidiary of a Loan Party in an involuntary case under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Loan Party or any Material Subsidiary of a Loan Party for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undisguised or unseated and in effect for a period of thirty (30) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding; or

#### 8.1.15 Voluntary Proceedings.

Any Loan Party or any Material Subsidiary of a Loan Party shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or other similar 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.

### 8.2 Consequences of Event of Default.

#### 8.2.1 Events of Default Other Than Bankruptcy, Insolvency or Reorganization Proceedings.

If an Event of Default specified under Sections 8.1.1 through 8.1.13 shall occur and be continuing, the Banks, the Issuing Banks and the Administrative Agent shall be under no further obligation to make Revolving Credit Loans or Swing Loans or issue Letters of Credit, as the case may be (and the Administrative Agent shall not make any Swing Loans without the consent of the Required Banks nor shall any Issuing Bank issue any Letter of Credit without consent of the Required Banks), and the Administrative Agent may, and upon the request of the Required Banks shall, by written notice to the Borrower, take one or both of the following actions: (i) terminate the Commitments and thereupon the Commitments shall be terminated and of no further force and effect, or (ii) declare the unpaid principal amount of the Revolving Credit Loans and Swing Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Indebtedness of the Borrower to the Lenders hereunder and thereunder to be forthwith due and payable, and the same shall thereupon become and be immediately due and payable to the Administrative Agent for the benefit of each Bank without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, and (iii) require the Borrower to, and the Borrower shall thereupon, deposit in a non-interest-bearing account with the Administrative Agent, as cash collateral for its Obligations under the Loan Documents, an amount equal to the maximum amount currently or at any time thereafter available to be drawn on all outstanding Letters of Credit, and the Borrower hereby pledges to the Administrative Agent and the Banks, and grants to the Administrative Agent and the Banks a security interest in, all such cash as security for such Obligations. Upon the curing of all existing Events of Default to the satisfaction of the Required Banks, the Administrative Agent shall return such cash collateral to the Borrower; and

#### 8.2.2 Bankruptcy, Insolvency or Reorganization Proceedings.

If an Event of Default specified under Section 8.1.14 [Involuntary Proceedings] or 8.1.15 [Voluntary Proceedings] shall occur, the Commitments shall automatically terminate and be of no further force and effect, the Lenders shall be under no further obligation to make Revolving Credit Loans or Swing Loans hereunder or to issue Letters of Credit and the unpaid principal amount of the Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Indebtedness of the Borrower to the Lenders hereunder and thereunder shall be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived; and

#### 8.2.3 Set-off.

If an Event of Default shall occur and be continuing, any Lender to whom any Obligation is owed by any Loan Party hereunder or under any other Loan Document or any participant of such Lender which has agreed in writing to be bound by the provisions of Section 9.13 [Equalization of Lenders] and any branch, Subsidiary or Affiliate of such Lender or participant anywhere in the world shall have the right, in addition to all other rights and remedies available to it, without notice to such Loan Party, to set-off against and apply to the then unpaid balance of all the Loans and all other Obligations of the Borrower and the other Loan Parties hereunder or under any other Loan Document any debt owing to, and any other funds held in any manner for the account of, the Borrower or such other Loan Party by such Lender or participant or by such branch, Subsidiary or Affiliate, including all funds in all deposit accounts (whether time or demand, general or special, provisionally credited or finally credited, or otherwise) now or hereafter maintained by the Borrower or such other Loan Party for its own account (but not including funds held in custodian or trust accounts) with such Lender or participant or such branch, Subsidiary or Affiliate. Such right shall exist whether or not any Lender or the Administrative Agent shall have made any demand under this Agreement or any other Loan Document, whether or not such debt owing to or funds held for the account of the Borrower or such other Loan Party is or are matured or unmatured and regardless of the existence or adequacy of any Guaranty or any other security, right or remedy available to any Lender or the Administrative Agent; and

#### 8.2.4 Suits, Actions, Proceedings.

If an Event of Default shall occur and be continuing, and whether or not the Administrative Agent shall have accelerated the maturity of the Committed Loans pursuant to any of the foregoing provisions of this Section 8.2, the Agents or the Required Banks (or at the request of the Agents or the Required Banks, any Bank, and any such Bank that has received such a request shall thus be entitled to exercise the rights set forth in this Section ) if owed any amount with respect to the Loans, may, to the extent permitted by Law, proceed to protect and enforce its rights by suit in equity, action at law and/or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement or the other Loan Documents, including as permitted by applicable Law the obtaining of the ex parte appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any Agent or such Bank; and

#### 8.2.5 Application of Proceeds.

From and after the date on which the Administrative Agent or any Lender shall have taken any action pursuant to this Section 8.2 and until all Obligations of the Loan Parties have been paid in full, subject to the provisions of the Collateral Sharing Agreement, any and all proceeds received by the Administrative Agent or any Lender from the exercise of any remedy by the Administrative Agent or any Lender shall be applied as follows:

(i) first, to reimburse the Administrative Agent and the Lenders for out-of-pocket costs, expenses and disbursements, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by the Administrative Agent or the Lenders in connection with collection of any Obligations of any of the Loan Parties under any of the Loan Documents;

(ii) second, to the repayment of all Indebtedness then due and unpaid of the Loan Parties to the Lenders incurred under this Agreement or any of the other Loan Documents, whether of principal, interest, fees, expenses or otherwise, in such manner as the Administrative Agent may determine in its discretion; and

(iii) the balance, if any, as required by Law.

#### 8.2.6 Other Rights and Remedies.

In addition to all of the rights and remedies contained in this Agreement or in any of the other Loan Documents, the Administrative Agent shall have all of the rights and remedies under applicable Law, all of which rights and remedies shall be cumulative and non-exclusive, to the extent permitted by Law. The Administrative Agent may, and upon the request of the Required Banks shall, exercise all post-default rights granted to the Administrative Agent and the Lenders under the Loan Documents or applicable Law.

### 9. THE AGENTS

#### 9.1 Appointment.

Each Lender hereby designates, appoints and authorizes: (i) PNC Bank to act as Administrative Agent for such Lender under this Agreement and the other Loan Documents for such Lender under this Agreement and to execute and deliver or accept on behalf of each of the Lenders the other Loan Documents, and (ii) authorizes each of PNC Bank and JPMorgan Chase to act as Agent for such Lender under this Agreement. Each Lender hereby irrevocably authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and any other instruments and agreements referred to herein, and to exercise such powers and to perform such duties hereunder as are specifically delegated to or required of the Agents, the Administrative Agent or any of them by the terms hereof, together with such powers as are reasonably incidental thereto. PNC Bank agrees to act as the Administrative Agent on behalf of the Lenders to the extent provided in this Agreement, and each of PNC Bank and JPMorgan Chase agrees to act as Agent on behalf of the Banks to the extent provided in this Agreement.

## 9.2 Delegation of Duties.

The Agents and the Administrative Agent may perform any of their respective duties hereunder by or through agents or employees (provided such delegation does not constitute a relinquishment of their respective duties as Agents or the Administrative Agent, as the case may be) and, subject to Sections 9.5 [Reimbursement and Indemnification of Agents by the Borrower] and 9.6 [Exculpatory Provisions; Limitation of Liability], shall be entitled to engage and pay for the advice or services of any attorneys, accountants or other experts concerning all matters pertaining to its duties hereunder and to rely upon any advice so obtained. It is acknowledged and agreed that each of Citibank, Credit Lyonnais, and U.S. Bank has received the title of Documentation Agent under this Agreement, however, such designation is solely to give each of Citibank, Credit Lyonnais, and U.S. Bank such title and each of Citibank, Credit Lyonnais, and U.S. Bank has no duties, responsibilities, functions, obligations or liabilities implied or otherwise under the Loan Documents solely as a result of being so designated as Documentation Agent.

## 9.3 Nature of Duties; Independent Credit Investigation.

Neither the Agents nor the Administrative Agent shall have any duties or responsibilities except those expressly set forth in this Agreement and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or otherwise exist. The duties of the Administrative Agent and of the Agents shall be mechanical and administrative in nature; neither the Administrative Agent nor the Agents shall have by reason of this Agreement a fiduciary or trust relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent or any Agent any obligations in respect of this Agreement except as expressly set forth herein. Without limiting the generality of the foregoing, the use of the term "Agents" in this Agreement with reference to the Agents or Administrative Agent, as the case may be, 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Each Lender expressly acknowledges (i) that neither the Administrative Agent nor any Agent has made any representations or warranties to it and that no act by the Administrative Agent or any Agent hereafter taken, including any review of the affairs of any of the Loan Parties, shall be deemed to constitute any representation or warranty by the Administrative Agent or any Agent to any Lender; (ii) that it has made and will continue to make, without reliance upon the Administrative Agent or any Agent, its own independent investigation of the financial condition and affairs and its own appraisal of the creditworthiness of each of the Loan Parties in connection with this Agreement and the making and continuance of the Loans hereunder; and (iii) except as expressly provided herein, that neither the Administrative Agent nor any Agent shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of any Loan, the issuance of any Letter of Credit or at any time or times thereafter.

#### 9.4 Actions in Discretion of Agents; Instructions From the Banks.

The Administrative Agent and each Agent agrees, upon the written request of the Required Banks, to take or refrain from taking any action of the type specified as being within the Administrative Agent's or such Agent's rights, powers or discretion herein, provided that neither the Administrative Agent nor any Agent shall be required to take any action which exposes the Administrative Agent or any Agent to personal liability or which is contrary to this Agreement or any other Loan Document or applicable Law. In the absence of a request by the Required Banks, the Administrative Agent and each Agent shall have authority, in their sole discretion, to take or not to take any such action, unless this Agreement specifically requires the consent of the Required Banks or all of the Banks. Any action taken or failure to act pursuant to such instructions or discretion shall be binding on the Banks, subject to Section 9.6 [Exculpatory Provisions, etc.]. Subject to the provisions of Section 9.6, no Lender shall have any right of action whatsoever against the Administrative Agent or any Agent as a result of the Administrative Agent or any Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Banks, or in the absence of such instructions, in the absolute discretion of the Administrative Agent or the Agents, as the case may be.

#### 9.5 Reimbursement and Indemnification of Agents by the Borrower.

The Borrower unconditionally agrees to pay or reimburse the Administrative Agent and each Agent and hold the Administrative Agent and each Agent harmless against (a) liability for the payment of all reasonable out-of-pocket costs, expenses and disbursements, including fees and expenses of outside counsel, appraisers and environmental consultants, incurred by the Administrative Agent or any Agent (i) in connection with the development, negotiation, preparation, printing, execution, administration, syndication, interpretation and performance of this Agreement and the other Loan Documents, (ii) relating to any requested amendments, waivers or consents pursuant to the provisions hereof, (iii) in connection with the enforcement of this Agreement or any other Loan Document or collection of amounts due hereunder or thereunder or the proof and allowability of any claim arising under this Agreement or any other Loan Document, whether in bankruptcy or receivership proceedings or otherwise, and (iv) in any workout or restructuring or in connection with the protection, preservation, exercise or enforcement of any of the terms hereof or of any rights hereunder or under any other Loan Document or in connection with any foreclosure, collection or bankruptcy proceedings, and (b) all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent or any Agent, in its capacity as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by the Administrative Agent or any Agent hereunder or thereunder, provided that the Borrower shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements if the same results from the Administrative Agent's or any Agent's gross negligence or willful misconduct, or if the Borrower was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that the Borrower shall remain liable to the extent such failure to give notice does not result in a loss to the Borrower), or if the same results from a compromise or settlement agreement entered into without the consent of the Borrower, which shall not be unreasonably withheld.

#### 9.6 Exculpatory Provisions; Limitation of Liability.

Neither the Administrative Agent, any Agent nor any of their respective directors, officers, employees, agents, attorneys or Affiliates shall (a) be liable to any Lender for any action taken or omitted to be taken by it or them hereunder, or in connection herewith including pursuant to any Loan Document, unless caused by its or their own gross negligence or willful misconduct, (b) be responsible in any manner to any of the Lenders for the effectiveness, enforceability, genuineness, validity or the due execution of this Agreement or any other Loan Documents or for any recital, representation, warranty, document, certificate, report or statement herein or made or furnished under or in connection with this Agreement or any other Loan Documents, or (c) be under any obligation to any of the Lenders to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions hereof or thereof on the part of the Loan Parties, or the financial condition of the Loan Parties, or the existence or possible existence of any Event of Default or Potential Default. No claim may be made by any of the Loan Parties, any Lender, the Administrative Agent or any Agent or any of their respective Subsidiaries against the Administrative Agent, any Agent, any Lender or any of their respective directors, officers, employees, agents, attorneys or Affiliates, or any of them, for any special, indirect or consequential damages or, to the fullest extent permitted by Law, for any punitive damages in respect of any claim or cause of action (whether based on contract, tort, statutory liability, or any other ground) based on, arising out of or related to any Loan Document or the transactions contemplated hereby or any act, omission or event occurring in connection therewith, including the negotiation, documentation, administration or collection of the Loans, and the Borrower (for itself and on behalf of each of its Subsidiaries), the Administrative Agent, each Agent and each Lender hereby waives, releases and agrees never to sue upon any claim for any such damages, whether such claim now exists or hereafter arises and whether or not it is now known or suspected to exist in its favor. Each Lender agrees that, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent or any Agent hereunder or given to the Administrative Agent or any Agent for the account of or with copies for the Lenders, the Administrative Agent, each Agent and each of their respective directors, officers, employees, agents, attorneys or Affiliates shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Loan Parties which may come into the possession of the Administrative Agent, any Agent or any of their directors, officers, employees, agents, attorneys or Affiliates.

#### 9.7 Reimbursement and Indemnification of Agents by the Lenders.

Each Lender agrees to reimburse and indemnify the Administrative Agent and each Agent (to the extent not reimbursed by the Borrower and without limiting the Obligation of the Borrower to do so) in proportion to its Revolving Credit Ratable Share, from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable costs, expenses or disbursements, including attorneys' fees and disbursements, and costs of appraisers and environmental consultants, of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent, the

Agents, or any of them in their respective capacities as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by the Administrative Agent or any Agent hereunder or thereunder, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (a) if the same results from the Administrative Agent's or any Agent's gross negligence or willful misconduct, as the case may be, or (b) if such Lender was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that such Lender shall remain liable to the extent such failure to give notice does not result in a loss to the Lender), or (c) if the same results from a compromise and settlement agreement entered into without the consent of such Lender, which shall not be unreasonably withheld. In addition, each Lender agrees promptly upon demand to reimburse the Administrative Agent and each Agent (to the extent not reimbursed by the Borrower and without limiting the Obligation of the Borrower to do so) in proportion to its Revolving Credit Ratable Share, for all amounts due and payable by the Borrower to the Administrative Agent or the Agents, as the case may be in connection with the periodic audit of the Loan Parties' books, records and business properties by the Administrative Agent or the Agents.

#### 9.8 Reliance by Agents.

The Administrative Agent and each Agent shall be entitled to rely upon any writing, telegram, telex or teletype message, resolution, notice, consent, certificate, letter, cablegram, statement, order or other document or conversation by telephone or otherwise believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon the advice and opinions of counsel and other professional advisers selected by the Administrative Agent or any Agent. The Administrative Agent and each Agent shall be fully justified in failing or refusing to take any action hereunder unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

#### 9.9 Notice of Default.

Neither the Administrative Agent nor any Agent shall be deemed to have knowledge or notice of the occurrence of any Potential Default or Event of Default unless such person has received written notice from a Bank or the Borrower referring to this Agreement, describing such Potential Default or Event of Default and stating that such notice is a "notice of default."

#### 9.10 Notices.

Each of the Administrative Agent and each Agent agrees to promptly send to each Bank a copy of all notices received from the Borrower pursuant to the provisions of this Agreement or the other Loan Documents promptly upon receipt thereof. The Administrative Agent shall promptly notify the Borrower and the other Banks of each change in the Base Rate and the effective date thereof.

#### 9.11 Banks in Their Individual Capacities.

With respect to its Revolving Credit Commitment, the Revolving Credit Loans, the Swing Loans, the issuance of any Letter of Credit made by it and any other rights and powers given to it as a Bank hereunder or under any of the other Loan Documents, the Administrative Agent and each Agent shall have the same rights and powers hereunder as any other Bank and may exercise the same as though it were not the Administrative Agent or an Agent, as the case may be, and the term "Banks" shall, unless the context otherwise indicates, include the Administrative Agent and each Agent in its individual capacity. PNC Bank and its Affiliates, JPMorgan Chase and its Affiliates, each other Agent and its Affiliates, and each of the Lenders and their respective Affiliates may, without liability to account, except as prohibited herein, make loans to, accept deposits from, discount drafts for, act as trustee under indentures of, and generally engage in any kind of banking or trust business with the Loan Parties and their Affiliates, in the case of the Administrative Agent or any Agent, as though it were not acting as Administrative Agent or Agent, as the case may be, hereunder and in the case of each Lender, as though such Lender were not a Lender hereunder. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates or any Agent or its respective Affiliates may (i) receive information regarding the Loan Parties (including information that may be subject to confidentiality obligations in favor of the Loan Parties) and acknowledge that neither the Administrative Agent nor any Agent shall be under any obligation to provide such information to them, and (ii) accept fees and other consideration from the Loan Parties for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

#### 9.12 Holders of Notes.

The Administrative Agent and each Agent may deem and treat any payee of any Note as the owner thereof for all purposes hereof unless and until written notice of the assignment or transfer thereof shall have been filed with the Administrative Agent and the Agents. Any request, authority or consent of any Person who at the time of making such request or giving such authority or consent is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee or assignee of such Note or of any Note or Notes issued in exchange therefor.

#### 9.13 Equalization of Lenders.

The Lenders and the holders of any participations in any Commitments or Loans or other rights or obligations of a Lender hereunder agree among themselves that, with respect to all amounts received by any Lender or any such holder for application on any Obligation hereunder or under any such participation, whether received by voluntary payment, by realization upon security, by the exercise of the right of set-off or banker's lien, by counterclaim or by any other non-pro rata source, equitable adjustment will be made in the manner stated in the following sentence so that, in effect, all such excess amounts will be shared ratably among the Lenders and such holders in proportion to their interests in payments on the Loans, except as otherwise provided in Sections 3.4.3 [Administrative Agent's and Lender's Rights], 4.4.2 [Replacement of a Lender] or 4.5 [Additional Compensation in Certain Circumstances]. The Lenders or any such holder receiving any such amount shall purchase for cash from each of the other Lenders an interest in such Lender's

Loans in such amount as shall result in a ratable participation by the Lenders and each such holder in the aggregate unpaid amount of the Loans, provided that if all or any portion of such excess amount is thereafter recovered from the Lender or the holder making such purchase, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, together with interest or other amounts, if any, required by law (including court order) to be paid by the Lender or the holder making such purchase.

#### 9.14 Successor Agents.

Any Agent or the Administrative Agent (i) may resign as Agent or Administrative Agent, as the case may be or (ii) shall resign if such resignation is requested by the Required Banks (if the Agent or Administrative Agent is a Bank, such Agent's or Administrative Agent's Loans and Commitment shall be considered in determining whether the Required Banks have requested such resignation) or required by Section 4.4.2 [Replacement of a Lender], in either case of (i) or (ii) by giving not less than thirty (30) days' prior written notice to the Borrower. If any Agent or the Administrative Agent shall resign under this Agreement, then either (a) the Required Banks shall appoint from among the Banks a successor to such Agent or Administrative Agent, as the case may be, for the Banks, subject to the consent of the Borrower, such consent not to be unreasonably withheld (provided, that, no consent of the Borrower shall be required during any period when an Event of Default exists and is continuing), or (b) if a successor Agent or Administrative Agent shall not be so appointed and approved within the thirty (30) day period following an Agent's or the Administrative Agent's notice, as the case may be, to the Banks of its resignation, then the resigning Administrative Agent or resigning Agent, as the case may be, shall appoint, with the consent of the Borrower, such consent not to be unreasonably withheld (provided, that, no consent of the Borrower shall be required during any period when an Event of Default exists and is continuing), a successor who shall be a Bank shall serve as Administrative Agent or Agent, as the case may be, until such time as the Required Banks appoint and the Borrower consents to the appointment of a successor to such resigning Administrative Agent or Agent. Upon its appointment pursuant to either clause (a) or (b) above, such successor Administrative Agent or Agent shall succeed to the rights, powers and duties of the resigning Administrative Agent or Agent, as the case may be, and the terms "Agent" and "Administrative Agent" shall mean such successor Agent or Administrative Agent, as the case may be, effective upon its appointment, and the former Administrative Agent's or Agent's rights, powers and duties as an Agent or Administrative Agent shall be terminated without any other or further act or deed on the part of such former Agent or Administrative Agent or any of the parties to this Agreement. After the resignation of the Administrative Agent or any Agent hereunder, the provisions of this Section 9 shall inure to the benefit of such former Administrative Agent and each former Agent, and such former Administrative Agent and each former Agent shall not by reason of such resignation be deemed to be released from liability for any actions taken or not taken by it while it was Administrative Agent or an Agent under this Agreement.

#### 9.15 Administrative Agent's Fees.

The Borrower shall pay to the Administrative Agent a nonrefundable fee (the "Administrative Agent's Fee") for the Administrative Agent's services hereunder under the terms of a letter (the "Administrative Agent's Letter") between the Borrower and the Administrative Agent, as amended from time to time.

#### 9.16 Availability of Funds.

The Administrative Agent may assume that each Lender has made or will make the proceeds of a Loan available to the Administrative Agent unless the Administrative Agent shall have been notified by such Lender on or before the later of (1) the close of Business on the Business Day preceding the Borrowing Date with respect to such Loan or two (2) hours before the time on which the Administrative Agent actually funds the proceeds of such Loan to the Borrower (whether using its own funds pursuant to this Section 9.16 or using proceeds deposited with the Administrative Agent by the Lenders and whether such funding occurs before or after the time on which Lenders are required to deposit the proceeds of such Loan with the Administrative Agent). The Administrative Agent may, in reliance upon such assumption (but shall not be required to), make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such amount on demand from such Lender (or, if such Lender fails to pay such amount forthwith upon such demand from the Borrower) together with interest thereon, in respect of each day during the period commencing on the date such amount was made available to the Borrower and ending on the date the Administrative Agent recovers such amount, at a rate per annum equal to (i) the Federal Funds Effective Rate during the first three (3) days after such interest shall begin to accrue and (ii) the applicable interest rate in respect of such Loan after the end of such three-day period.

#### 9.17 Calculations.

In the absence of gross negligence or willful misconduct, the Administrative Agent shall not be liable for any error in computing the amount payable to any Lender whether in respect of the Loans, fees or any other amounts due to the Lenders under this Agreement. In the event an error in computing any amount payable to any Lender is made, the Administrative Agent, the Borrower and each affected Lender shall, forthwith upon discovery of such error, make such adjustments as shall be required to correct such error, and any compensation therefor will be calculated at the Federal Funds Effective Rate.

#### 9.18 Certain Releases of Guarantors and Collateral.

It is expressly agreed that, upon the written request of the Borrower (accompanied by such certificates and other documentation as the Administrative Agent may reasonably request) the Administrative Agent on behalf of the Lenders and without any consent or action by any Lender, may, so long as no Event of Default exists after giving effect thereto, release: (i) any Collateral or any Guarantor from a Guaranty Agreement, in either case, in connection with any sale, transfer, lease, disposition, merger or other transaction permitted by this Agreement, or (ii) any Subsidiary from the Guaranty Agreement if such Subsidiary is no longer a Significant Subsidiary.

#### 9.19 Beneficiaries.

Except as expressly provided herein, the provisions of this Section 9 are solely for the benefit of the Administrative Agent, each Agent and the Lenders, and the Loan Parties shall not have any rights to rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement, the Administrative Agent and each Agent shall act solely as the Administrative Agent or Agent, as the case may be, of the Lenders and do not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any of the Loan Parties.

## 10. MISCELLANEOUS

### 10.1 Modifications, Amendments or Waivers.

With the written consent of the Required Banks, the Administrative Agent, acting on behalf of all the Lenders, and the Borrower, on behalf of the Loan Parties, may from time to time enter into written agreements amending or changing any provision of this Agreement or any other Loan Document or the rights of the Lenders or the Loan Parties hereunder or thereunder, or may grant written waivers or consents to a departure from the due performance of the Obligations of the Loan Parties hereunder or thereunder. Any such agreement, waiver or consent made with such written consent shall be effective to bind all the Lenders and the Loan Parties; provided, that no such agreement, waiver or consent may be made which will:

#### 10.1.1 Increase of Revolving Credit Commitments; Extension of Expiration Date; Modification of Terms of Payment.

Without the written consent of all Banks, increase the amount of the Revolving Credit Commitment of any Bank hereunder, extend the Expiration Date, whether or not any Revolving Credit Loans are outstanding, extend the time for payment of principal or interest of any Revolving Credit Loan, the Commitment Fee or any other fee payable to any Bank which has a Revolving Credit Commitment, reduce the principal amount of or the rate of interest borne by any Revolving Credit Loan, reduce the rate of the Commitment Fee or any other fee payable to any Bank which has a Revolving Credit Commitment;

#### 10.1.2 Release of Guarantor.

Except as set forth in Section 9.18, without the written consent of all Banks, release any Guarantor from its Obligations under the Guaranty Agreement or any of the Collateral for any of the Loan Parties' Obligations; or

#### 10.1.3 Miscellaneous.

Without the written consent of all Banks, amend Sections 4.2 [Pro Rata Treatment of Banks], 9.6 [Exculpatory Provisions, etc.] or 9.13 [Equalization of Lenders] or this Section 10.1, alter any provision regarding the pro rata treatment of the Lenders, change the definition of Required Banks, or change any requirement providing for the Lenders, all the Lenders or the Required Banks to authorize the taking of any action hereunder; provided, further, that no agreement, waiver or consent which would modify the interests, rights or obligations of any Agent in its capacity shall be effective without the written consent of such Agent; no agreement, waiver or consent which would modify the interests, rights or obligations of the Administrative Agent in its capacity shall be effective without the written consent of the Administrative Agent; and no agreement, waiver or consent which would modify the interests, rights or obligations of any Issuing Bank as the issuer of Letters of Credit shall be effective without the written consent of such Issuing Bank.

10.2 No Implied Waivers; Cumulative Remedies; Writing Required.

No course of dealing and no delay or failure of the Administrative Agent, any Agent or any Lender in exercising any right, power, remedy or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or operate as a waiver thereof, nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power, remedy or privilege preclude any further exercise thereof or of any other right, power, remedy or privilege. The rights and remedies of the Administrative Agent, each Agent and the Lenders under this Agreement and any other Loan Documents are cumulative and not exclusive of any rights or remedies which they would otherwise have. Any waiver, permit, consent or approval of any kind or character on the part of any Lender of any breach or default under this Agreement or any such waiver of any provision or condition of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing.

10.3 Reimbursement and Indemnification of Lenders by the Borrower; Taxes.

The Borrower agrees unconditionally upon demand to pay or reimburse to each Lender (other than the Administrative Agent and the Agents, as to which the Borrower's Obligations are set forth in Section 9.5 [Reimbursement and Indemnification of Agents by the Borrower]) and to save such Lender harmless against (i) liability for the payment of all reasonable out-of-pocket costs, expenses and disbursements (including fees and expenses of outside counsel) for each Lender (except with respect to (A) and (B) below), incurred by such Lender (a) in connection with the administration and interpretation of this Agreement, and other instruments and documents to be delivered hereunder, (b) relating to any amendments, waivers or consents pursuant to the provisions hereof, (c) in connection with the enforcement of this Agreement or any other Loan Document, or collection of amounts due hereunder or thereunder or the proof and allowability of any claim arising under this Agreement or any other Loan Document, whether in bankruptcy or receivership proceedings or otherwise, and (d) in any workout or restructuring or in connection with the protection, preservation, exercise or enforcement of any of the terms hereof or of any rights hereunder or under any other Loan Document or in connection with any foreclosure, collection or bankruptcy proceedings, or (ii) all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Lender, in its capacity as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by such Lender hereunder or thereunder, provided that the Borrower shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (A) if the same results from such Lender's gross negligence or willful misconduct, or (B) if the Borrower was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that the Borrower shall remain liable to the extent such failure to give notice does not result in a loss to the Borrower), or (C) if the same results from a compromise or settlement agreement entered into without the consent of the Borrower, which shall not be unreasonably withheld. None of the Agents nor any Lender shall be liable for any damages arising from the use by unauthorized persons of information or other materials sent through electronic, telecommunications, or other information transmission systems that are intercepted by such persons. None of the Agents nor any Lender shall be liable

or responsible to the Borrower or other party hereto for any special, indirect, consequential or punitive damages in connection with the Loans or otherwise under or in connection with the Loan Documents, the transactions contemplated thereby or any of their respective obligations thereunder. The Lenders will attempt to minimize the fees and expenses of legal counsel for the Lenders which are subject to reimbursement by the Borrower hereunder by considering the use of one law firm to represent the Lenders, the Administrative Agent, and the Agents if appropriate under the circumstances. The Borrower agrees unconditionally to pay all stamp, document, transfer, recording or filing taxes or fees and similar impositions now or hereafter determined by the Administrative Agent, any Agent or any Lender to be payable in connection with this Agreement or any other Loan Document, and the Borrower agrees unconditionally to save the Administrative Agent, each Agent and the Lenders harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such taxes, fees or impositions.

#### 10.4 Holidays.

Whenever payment of a Loan to be made or taken hereunder shall be due on a day which is not a Business Day, such payment shall be due on the next Business Day and such extension of time shall be included in computing interest and fees, except that the Revolving Credit Loans and Swing Loans shall be due on the Business Day preceding the Expiration Date if the Expiration Date is not a Business Day. Whenever any payment or action to be made or taken hereunder (other than payment of the Loans) shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day (except as provided in Section 3.2 [Interest Periods] with respect to Interest Periods under the Euro-Rate Option), and such extension of time shall not be included in computing interest or fees, if any, in connection with such payment or action.

#### 10.5 Funding by Branch, Subsidiary or Affiliate.

##### 10.5.1 Notional Funding.

Each Lender shall have the right from time to time, without notice to the Borrower, to deem any branch, Subsidiary or Affiliate (which for the purposes of this Section 10.5 shall mean any corporation or association which is directly or indirectly controlled by or is under direct or indirect common control with any corporation or association which directly or indirectly controls such Lender) of such Lender to have made, maintained or funded any Loan to which the Euro-Rate Option applies at any time, provided that immediately following (on the assumption that a payment were then due from the Borrower to such other office), and as a result of such change, the Borrower would not be under any greater financial obligation pursuant to Section 4.5 [Additional Compensation in Certain Circumstances] than it would have been in the absence of such change. Notional funding offices may be selected by each Lender without regard to such Lender's actual methods of making, maintaining or funding the Loans or any sources of funding actually used by or available to such Lender.

#### 10.5.2 Actual Funding.

Each Lender shall have the right from time to time to make or maintain any Loan by arranging for a branch, Subsidiary or Affiliate of such Lender to make or maintain such Loan subject to the last sentence of this Section 10.5.2. If any Lender causes a branch, Subsidiary or Affiliate to make or maintain any part of the Loans hereunder, all terms and conditions of this Agreement shall, except where the context clearly requires otherwise, be applicable to such part of the Loans to the same extent as if such Loans were made or maintained by such Lender, but in no event shall any Lender's use of such a branch, Subsidiary or Affiliate to make or maintain any part of the Loans hereunder cause such Lender or such branch, Subsidiary or Affiliate to incur any cost or expenses payable by the Borrower hereunder or require the Borrower to pay any other compensation to any Lender (including any expenses incurred or payable pursuant to Section 4.5 [Additional Compensation in Certain Circumstances]) which would otherwise not be incurred.

#### 10.6 Notices.

All notices, requests, demands, directions and other communications (as used in this Section 10.6, collectively referred to as "notices") given to or made upon any party hereto under the provisions of this Agreement shall be by telephone or in writing (including telex or facsimile communication) unless otherwise expressly permitted hereunder and shall be delivered or sent by telex or facsimile to the respective parties at the addresses and numbers set forth under their respective names on Schedule 1.1(B) hereof or in accordance with any subsequent unrevoked written direction from any party to the others. All notices shall, except as otherwise expressly herein provided, be effective (a) in the case of telex or facsimile, when received, (b) in the case of hand-delivered notice, when hand-delivered, (c) in the case of telephone, when telephoned, provided, however, that in order to be effective, telephonic notices must be confirmed in writing no later than the next day by letter, facsimile or telex, (d) if given by mail, four (4) days after such communication is deposited in the mail with first-class postage prepaid, return receipt requested, and (e) if given by any other means (including by air courier), when delivered; provided, that notices to the Agents or to the Administrative Agent shall not be effective until received. Any Lender giving any notice to the Borrower shall simultaneously send a copy thereof to the Administrative Agent, and the Administrative Agent shall promptly notify the other Lenders of the receipt by it of any such notice. Any notice delivered to the Borrower shall be deemed to be notice to the Loan Parties and shall be binding upon all of the Loan Parties.

#### 10.7 Severability.

The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

10.8 Governing Law.

Each Letter of Credit and Section 2.9 [Letter of Credit Subfacility] shall be subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, as the same may be revised or amended from time to time, and to the extent not inconsistent therewith, the internal laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles, and the balance of this Agreement shall be deemed to be a contract under the Laws of the Commonwealth of Pennsylvania and for all purposes shall be governed by and construed and enforced in accordance with the internal laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

10.9 Prior Understanding.

This Agreement and the other Loan Documents supersede all prior understandings and agreements, whether written or oral, between the parties hereto and thereto relating to the transactions provided for herein and therein, including any prior confidentiality agreements and commitments.

10.10 Duration; Survival.

All representations and warranties of the Borrower contained herein or made by any Loan Party in connection herewith shall survive the making of Loans and issuance of Letters of Credit and shall not be waived by the execution and delivery of this Agreement, any investigation by the Administrative Agent, any Agent or the Lenders, the making of Loans, issuance of Letters of Credit, or payment in full of the Loans. All covenants and agreements of the Borrower contained in Sections 7.1 [Affirmative Covenants], 7.2 [Negative Covenants] and 7.3 [Reporting Requirements] herein shall continue in full force and effect from and after the date hereof so long as the Borrower may borrow or request Letters of Credit hereunder and until termination of the Commitments and payment in full of the Loans and expiration or termination of all Letters of Credit. All covenants and agreements of the Borrower contained herein relating to the payment of principal, interest, premiums, additional compensation or expenses and indemnification, including those set forth in Section 4 [Payments] and Sections 9.5 [Reimbursement and Indemnification of Agents by the Borrower], 9.7 [Reimbursement and Indemnification of Agents by Lenders] and 10.3 [Reimbursement and Indemnification of Lenders by the Borrower, etc.], shall survive payment in full of the Loans, expiration or termination of the Letters of Credit and termination of the Commitments.

10.11 Successors and Assigns.

10.11.1 Binding Effect; Assignments by Borrower.

This Agreement shall be binding upon and shall inure to the benefit of the Lenders, the Agents, the Administrative Agent, the Issuing Banks, the Borrower and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights and Obligations hereunder or any interest herein without the consent of all of the Banks.

#### 10.11.2 Assignments and Participations by Banks.

(a) This Section shall apply to any assignment or participation by a Lender of its Loans, Letters of Credit Outstanding or Commitments. Each Bank may, at its own cost, make assignments of all or any part of its Revolving Credit Commitment and Revolving Credit Loans, and its Revolving Credit Ratable Share of Letters of Credit Outstanding to one or more banks or other entities, subject to the consent of the Borrower (which consent shall not be required during any period in which an Event of Default exists), the applicable Issuing Banks, and the Administrative Agent with respect to any assignee, such consents not to be unreasonably withheld, provided, however, that consent of neither the Borrower, the Administrative Agent nor any Issuing Bank shall be required for any assignment by a Lender to an Affiliate of such Lender (so long as the assigning Lender provides notice of such assignment to the Administrative Agent and pays to the Administrative Agent the \$3,500 service fee as hereinafter provided in this Section 10.11.2(a)), and provided further, that assignments may not be made in amounts less than \$5,000,000 (unless such assignment is an assignment of all of a Bank's Loans or Commitments or unless such assignment is made by a Lender to an Affiliate of such Lender or to another Lender). Each Lender may, at its own cost, grant participations in all or any part of its Revolving Credit Commitment and the Revolving Credit Loans made by it and of its Revolving Credit Ratable Share of Letters of Credit Outstanding to one or more banks or other entities, without the consent of any party hereto. In the case of an assignment of all or any portion of a Revolving Credit Commitment, upon receipt by the Administrative Agent of the Assignment and Assumption Agreement, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights, benefits and obligations as it would have if it had been a signatory Bank hereunder, the Commitments in Section 2.1 shall be adjusted accordingly, and upon surrender of any Revolving Credit Note subject to such assignment, the Borrower shall execute and deliver a new Revolving Credit Note to the assignee in an amount equal to the amount of the Revolving Credit Commitment assumed by it and a new Revolving Credit Note to the assigning Bank in an amount equal to the Revolving Credit Commitment retained by it hereunder. Any assigning Lender shall pay to the Administrative Agent a service fee in the amount of \$3,500 for each assignment, which amount shall not be subject to reimbursement or indemnification by the Borrower. In the case of a participation, the participant shall have only the rights specified in Section 8.2.3 [Set-Off] (the participant's rights against the selling Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto and not to include any voting rights except with respect to changes of the type referenced in Sections 10.1.1, 10.1.2 and 10.1.3), all of such Lender's obligations under this Agreement or any other Loan Document shall remain unchanged, and all amounts payable by any Loan Party hereunder or thereunder shall be determined as if such Lender had not sold such participation.

#### (b) Designation.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "Designating Lender") may grant to one or more special purpose funding vehicles (each, an "SPV"), identified as such in writing from time to time by the Designated Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Revolving Credit Loan that such Designating Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (x) nothing herein shall constitute a commitment by any SPV to make any Revolving Credit Loan, (y) if an SPV elects

not to exercise such option or otherwise fails to provide all or any part of such Revolving Credit Loan, the Designating Lender shall be obligated to make such Revolving Credit Loan pursuant to the terms hereof and (z) the Designating Lender shall remain liable for any indemnity or other payment obligation with respect to its Commitment hereunder. The making of a Revolving Credit Loan by an SPV hereunder shall utilize the Commitment of the Designating Lender to the same extent, and as if, such Revolving Credit Loan were made by such Designating Lender.

(ii) As to any Revolving Credit Loans or portion thereof made by it, each SPV shall have all the rights that a Lender making such Revolving Credit Loans or portion thereof would have had under this Agreement; provided, however, that each SPV shall have granted to its Designating Lender an irrevocable power of attorney, to deliver and receive all communications and notices under this Agreement (and any Loan Documents) and to exercise, on such SPV's behalf, all of such SPV's voting rights under this Agreement. No additional Note shall be required to evidence the Revolving Credit Loans or portion thereof made by an SPV; and the related Designating Lender shall be deemed to hold its Note as agent for such SPV to the extent of the Revolving Credit Loans or portion thereof funded by such SPV. In addition, any payments for the account of any SPV shall be paid to its Designating Lender as agent for such SPV. Notwithstanding any term or condition hereof, no SPV, unless it shall have become a Lender hereunder in accordance with the terms of Section 10.11.2(a), shall be a party hereto or have any right to vote or give or withhold its consent under this Agreement. The Administrative Agent shall have no duty or obligation to give any notices required to be delivered hereunder to any SPV.

(iii) Each party hereto hereby agrees that no SPV shall be liable for any indemnity or payment under this Agreement for which a Lender would otherwise be liable. In furtherance of the foregoing, each party hereto hereby agrees (which agreements shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the later of (x) payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, (y) the payment in full of all Revolving Credit Loans, and (z) the termination of all Commitments, it will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof, provided that the Designating Lender for each SPV hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage and expense arising out of the inability to institute any such proceeding against such SPV.

(iv) In addition, notwithstanding anything to the contrary contained in this Section 10.11.2(b) or otherwise in this Agreement (other than the proviso set forth directly below in this Section 10.11.2(b)), any SPV may (y) with notice to, but without the prior written consent of the Borrower or the Administrative Agent, at any time and without paying any processing fee therefor, assign or participate all or a portion of its interest in any Revolving Credit Loans to the Designating Lender or to any financial institutions providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Revolving Credit Loans and (z) disclose on a confidential basis any non public information relating to its Revolving Credit Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or

credit or liquidity enhancements to such SPV; provided, however, that in no event may any non-public financial information provided by the Borrower under Section 7.3 [Reporting Requirements] be provided by any SPV to any other Person. In no event shall the Borrower be obligated to pay to any SPV that has made a Revolving Credit Loan any greater amount than the Borrower would have been obligated to pay under this Agreement if the Designating Lender had made such Revolving Credit Loan. This Section 10.11.2(b) may not be amended without the written consent of any Designating Lender affected thereby.

#### 10.11.3 Non-U.S. Assignees and Participants.

Any assignee or participant which is not incorporated under the Laws of the United States of America or a state thereof shall deliver to the Borrower and the Administrative Agent the form of certificate described in Section 10.17 relating to federal income tax withholding. Each Lender may furnish any publicly available information concerning any Loan Party or its Subsidiaries and any other information concerning any Loan Party or its Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees or participants), provided that such assignees and participants agree to be bound by the provisions of Section 10.12 [Confidentiality].

#### 10.11.4 Assignments by Lenders to Federal Reserve Banks.

Notwithstanding any other provision in this Agreement, any Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement, its Notes (if any) and the other Loan Documents to any Federal Reserve Bank without notice to or consent of the Borrower and the Administrative Agent. No such pledge or grant of a security interest shall release the transferor Lender of its obligations hereunder or under any other Loan Document.

#### 10.12 Confidentiality.

##### 10.12.1 General.

The Agents, the Administrative Agent and the Lenders each agree to keep confidential all information obtained from any Loan Party or its Subsidiaries which is nonpublic and confidential or proprietary in nature (including any information the Borrower specifically designates as confidential), except as provided below, and to use such information only in connection with their respective capacities under this Agreement and for the purposes contemplated hereby. The Agents, the Administrative Agent and the Lenders shall be permitted to disclose such information (i) to outside legal counsel, accountants and other professional advisors who need to know such information in connection with the execution, administration and enforcement of this Agreement, subject to the agreement of such Persons to maintain the confidentiality, (ii) to assignees and participants as contemplated by Section 10.11 [Successors and Assigns], (iii) to any direct or indirect contractual counterparty in any swap, hedge or similar agreement or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.12) (iv) to

the extent requested by any bank regulatory authority or, with notice to the Borrower as permitted by applicable Law, as otherwise required by applicable Law or by any subpoena or similar legal process, or in connection with any investigation or proceeding arising out of the transactions contemplated by this Agreement, (v) if it becomes publicly available other than as a result of a breach of this Agreement or becomes available from a source not known to be subject to confidentiality restrictions, (vi) any nationally recognized rating agency that requires access to information about the Lender's investment portfolio, (vii) in connection with the exercise, preservation or protection of any right or remedy hereunder or under the other Loan Documents, applicable law or in equity, or (viii) if the Borrower shall have consented to such disclosure.

#### 10.12.2 Sharing Information With Affiliates of the Lenders.

The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and the Borrower (on its own behalf and on behalf of its Subsidiaries) hereby authorizes each Lender to share any information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate of such Lender, it being understood that any such Subsidiary or Affiliate of any Lender receiving such information shall be bound by the provisions of Section 10.12.1 as if it were a Lender hereunder. Such authorization shall survive the repayment of the Loans and other Obligations and the termination of the Commitments.

#### 10.13 Counterparts.

This Agreement may be executed by different parties hereto on any number of separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument.

#### 10.14 Agent's or Lender's Consent.

Whenever the Administrative Agent's, any Agent's or any Lender's consent is required to be obtained under this Agreement or any of the other Loan Documents as a condition to any action, inaction, condition or event, the Administrative Agent, each Agent and each Lender shall be authorized to give or withhold such consent in its sole and absolute discretion and to condition its consent upon the giving of additional collateral, the payment of money or any other matter.

#### 10.15 Exceptions.

The representations, warranties and covenants contained herein shall be independent of each other, and no exception to any representation, warranty or covenant shall be deemed to be an exception to any other representation, warranty or covenant contained herein unless expressly provided, nor shall any such exceptions be deemed to permit any action or omission that would be in contravention of applicable Law.

10.16 CONSENT TO FORUM; WAIVER OF JURY TRIAL.

THE BORROWER HEREBY IRREVOCABLY CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA, AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY CERTIFIED OR REGISTERED MAIL DIRECTED TO THE BORROWER AT THE ADDRESS PROVIDED FOR IN SECTION 10.6 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT THEREOF. THE BORROWER WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED AGAINST IT AS PROVIDED HEREIN AND AGREES NOT TO ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE. THE BORROWER, THE AGENTS, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE COLLATERAL TO THE FULL EXTENT PERMITTED BY LAW.

10.17 Tax Withholding.

Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the U. S. or a state thereof (and, upon the written request of the Administrative Agent, each other Lender or assignee or participant of a Lender) agrees that it will deliver to each of the Borrower and the Administrative Agent two (2) duly completed appropriate valid Withholding Certificates (as defined under ss.1.1441-1(c)(16) of the Income Tax Regulations ("Regulations")) certifying its status (i.e., U.S. or foreign Person) and, if appropriate, making a claim of reduced, or exemption from, U.S. withholding tax on the basis of an income tax treaty or an exemption provided by the Internal Revenue Code. The term "Withholding Certificate" includes a Form W-9; Form W-8BEN; Form W-8ECI; or, Form W-8IMY, and the related statements and certifications as required under ss. 1.1441-1(c)(3) of the Regulations; a statement described in ss.1.871-14(c)(2)(v) of the Regulations; or, any other certificates under the Internal Revenue Code or Regulations that certify or establish the status of a payee or beneficial owner as a U.S. or foreign Person. Each Lender, assignee or participant required to deliver to the Borrower and the Administrative Agent a valid Withholding Certificate pursuant to the preceding sentence shall deliver such valid Withholding Certificate as follows: (A) each Lender which is a party hereto on the Restatement Effective Date shall deliver such valid Withholding Certificate at least five (5) Business Days prior to the first date on which any interest or fees are payable by the Borrower hereunder for the account of such Lender; (B) each assignee or participant shall deliver such valid Withholding Certificate at least five (5) Business Days before the effective date of such assignment or participation (unless the Administrative Agent in its sole discretion shall permit such assignee or participant to deliver such Withholding Certificate less than five (5) Business Days before such date in which case it shall be due on the date specified by the Administrative Agent). Each Lender, assignee or participant which so delivers a valid Withholding Certificate further undertakes to deliver to each of the Borrower and the Administrative Agent two (2) additional copies of such Withholding Certificate (or a successor form) on or before the date that such

Withholding Certificate expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent Withholding Certificate so delivered by it, and such amendments thereto or extensions or renewals thereof as may be reasonably requested by the Borrower or the Administrative Agent. Notwithstanding the submission of a Withholding Certificate claiming a reduced rate of, or exemption from U.S. withholding tax, the Administrative Agent shall be entitled to withhold U. S. federal income taxes at the full withholding rate, unless the Lender, assignee or participant establishes pursuant to the foregoing that it is entitled to an exemption or that it is subject to a reduced rate, or if in its reasonable judgment the Administrative Agent is not required to do so under the due diligence requirements imposed upon a withholding agent under ss.1.1441-7(b) of the Regulations. The Administrative Agent shall be indemnified under ss.1.1461-1(e) of the Regulations against any claims and demands of any Lender or assignee or participant of a Lender for the amount of any tax it deducts and withholds in accordance with regulations under ss.1441 of the Internal Revenue Code.

10.18 Joinder of Guarantors.

Any Significant Subsidiary of the Borrower which is required to become a Guarantor pursuant to Section 7.2.6. [Subsidiaries, Partnerships and Joint Ventures] shall execute and deliver to the Administrative Agent (i) a Guarantor Joinder in substantially the form attached hereto as Exhibit 1.1(G)(1) pursuant to which it shall join as a Guarantor each of the documents to which the Guarantors are parties; (ii) all of the other Loan Documents required by Section 7.2.6, and (iii) documents in the forms described in Section 6.1 [First Loans and Letters of Credit] modified as appropriate to relate to such Subsidiary.

10.19 Amendment and Restatement; No Novation.

This Agreement amends and restates in its entirety the Original Credit Agreement; and, Borrower confirms that the Original Credit Agreement, the Collateral Documents, the other Loan Documents and the Collateral for the Obligations thereunder (as all such capitalized terms are defined in the Original Credit Agreement) have at all times, since the date of the execution and delivery of such documents, remained in full force and effect and continued to secure such obligations which are continued as the Obligations hereunder as amended hereby; and, all such Collateral (as defined in the Original Credit Agreement), pursuant to the Collateral Documents hereunder shall continue to secure the Obligations hereunder. The Revolving Credit Loans and Swing Loans hereunder are a continuation of and refinance the Revolving Credit Loans and Swing Loans under (and as such terms are defined in) the Original Credit Agreement. Borrower and Administrative Agent acknowledge and agree that the amendment and restatement of the Original Credit Agreement by this Agreement is not intended to constitute, nor does it constitute, a novation, interruption, suspension of continuity, satisfaction, discharge or termination of the obligations, loans, liabilities, or indebtedness under the Original Credit Agreement and other Loan Documents thereunder or the collateral security therefor and this Agreement and the other Loan Documents are entitled to all rights and benefits originally pertaining to the Original Credit Agreement and the other Loan Documents (as such term is defined therein).

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed this Agreement as of the day and year first above written.

ATTEST: ARCH COAL, INC.

/s/ Janet L. Horgan  
Name: Janet L. Horgan  
Title: Assistant Secretary

By: /s/ Robert J. Messey  
Name: Robert J. Messey  
Title: Senior Vice President and  
Chief Financial Officer

[Seal]

PNC BANK, NATIONAL ASSOCIATION  
individually and as Administrative Agent

By: /s/ Richard C. Munsick  
Richard C. Munsick  
Managing Director

JP MORGAN CHASE BANK, individually and  
as Syndication Agent

By: /s/ Peter S. Predun  
Vice President

CITIBANK, N.A., individually and as  
Documentation Agent

By: /s/ Raymond G. Dunning  
Raymond G. Dunning  
Managing Director

CREDIT LYONNAIS NEW YORK BRANCH,  
individually and as Documentation  
Agent

By: /s/ Attila Koc  
Senior Vice President

U.S. BANK NATIONAL ASSOCIATION,  
individually and as Documentation Agent

By: /s/ Eric Hartman  
Eric Hartman  
Vice President

BANK LEUMI USA

By: /s/ Joung Hee Hong  
Joung Hee Hong  
Vice President

BNP PARIBAS

By: /s/ Evans R. Swann  
Evans R. Swann  
Director

/s/ Polly Schot  
Polly Schot  
Vice President

CREDIT INDUSTRIEL ET COMMERCIAL

By: /s/ Brian O'Leary  
Brian O'Leary  
Vice President

/s/ Anthony Rock  
Anthony Rock  
Vice President

FLEET NATIONAL BANK

By: /s/ Jeffrey H. Rathkamp  
Jeffrey H. Rathkamp  
Vice President

MIZUHO CORPORATE BANK LIMITED

By: /s/ Nobuyasu Fukatsu  
Nobuyasu Fukatsu  
Senior Vice President

THE BANK OF NEW YORK

By: /s/ Craig J. Anderson  
Craig J. Anderson  
Vice President

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ David L. Driggers  
David L. Driggers  
Managing Director



\$675,000,000 TERM LOAN FACILITIES  
 AMENDED AND RESTATED CREDIT AGREEMENT

by and among

ARCH WESTERN RESOURCES, LLC

and

THE LENDERS PARTY HERETO

and

PNC BANK, NATIONAL ASSOCIATION,

as Administrative Agent

and

JPMORGAN CHASE BANK,

as Syndication Agent

and

CITIBANK, N.A.,

CREDIT LYONNAIS NEW YORK BRANCH,

and

U.S. BANK NATIONAL ASSOCIATION

as Documentation Agents

Dated as of April 18, 2002

=====

J.P. MORGAN SECURITIES INC.

and

PNC CAPITAL MARKETS, INC.,

as Lead Arrangers and Joint Bookrunners

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT is dated as of April 18, 2002, and is made by and among ARCH WESTERN RESOURCES, LLC, a Delaware limited liability company (the "Borrower"), the LENDERS (as hereinafter defined), JPMORGAN CHASE BANK, in its capacity as syndication agent, CITIBANK, N.A., CREDIT LYONNAIS NEW YORK BRANCH, and U.S. BANK NATIONAL ASSOCIATION, each in its capacity as a documentation agent, and PNC BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent for the Lenders under this Agreement.

WITNESSETH:

WHEREAS, the Borrower, JPMorgan Chase Bank (successor in such capacity to Morgan Guaranty Trust Company of New York, as syndication agent), PNC Bank, National Association, as administrative agent, and certain lenders are parties to that Credit Agreement dated as of June 1, 1998 (the "Original Credit Agreement"), providing for a \$675,000,000 term loan facility to the Borrower; and

WHEREAS, the Borrower has requested certain amendments to the Original Credit Agreement and, subject to the terms and conditions hereof, the parties hereto agree that, effective as of the date hereof, the Original Credit Agreement shall hereby be amended and for the convenience of such parties restated in its entirety as set forth below, to provide that the term loan under the Original Credit Agreement shall be continued in like amount and amended to consist of Tranche A Term Loans and Tranche B Term Loans (hereinafter defined); and

WHEREAS, the pledge of equity interests of certain Subsidiaries of the Borrower and guaranties for the term loan facility under the Original Credit Agreement shall continue to secure such Tranche A Term Loans and Tranche B Term Loans and all other obligations hereunder.

NOW, THEREFORE, the parties hereto, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

1. CERTAIN DEFINITIONS

1.1 Certain Definitions.

In addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly requires otherwise:

ACC shall mean the U.S. operations of ARCO Coal Company, a division of ARCO.

Acquisition Documents shall mean collectively the Purchase Agreement, the Contribution Agreement, the Tax Sharing Agreement, and the LLC Agreements, as limited by their schedules and exhibits, as the same may be amended, restated, modified or supplemented from time to time after the Closing Date as permitted by Section 7.2.15 [No Amendments to Acquisition Documents].

Acquisition Transactions shall mean the transactions contemplated by the Purchase Agreement and the Contribution Agreement, as such documents may be amended, modified or supplemented after the Closing Date as permitted by Section 7.2.15 [No Amendments to Acquisition Documents].

Adjusted EBITDDA for any period of determination shall mean with respect to any Person the sum of income from operations and interest income all before the effect of changes in accounting principles, nonrecurring charges and extraordinary items, interest expense, income taxes, depreciation, depletion and amortization, in each case for such period determined in accordance with GAAP.

Administrative Agent shall mean PNC Bank, National Association, in its capacity as administrative agent for the Lenders under this Agreement and its successors in such capacity.

Administrative Agent's Fee shall have the meaning assigned to that term in Section 9.15 [Administrative Agent's Fee].

Administrative Agent's Letter shall have the meaning assigned to that term in Section 9.15 [Administrative Agent's Fee].

Affiliate as to any Person shall mean 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 5% or more of any class of the voting or other equity interests of such Person, or (iii) 5% 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. Notwithstanding the foregoing, a Subsidiary of the Borrower shall not be deemed an Affiliate of the Borrower.

Agents shall mean collectively the Administrative Agent and the Syndication Agent, and Agent shall mean any one of the Agents, individually.

Agreement shall mean the Original Credit Agreement (including all schedules and exhibits) as hereby amended and restated by this Amended and Restated Credit Agreement (including all schedules and exhibits), as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith.

Appropriate Percentage shall mean, with respect to each Special Subsidiary, the percentage of the equity of such Person owned by the Borrower or any Subsidiary of the Borrower.

Approved Fund shall mean with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

Arch Credit Facility shall mean that certain Credit Agreement by and among Parent, PNC Bank as administrative agent, JPMorgan Chase Bank (successor to Morgan Guaranty Trust Company of New York) as syndication agent and Wachovia Corporation (as successor in such capacity to First Union National Bank) as documentation agent, and the lenders party thereto dated as of June 1, 1998, as amended by Amendment No. 1 thereto dated as of January 21, 2000, as amended and restated as of the date hereof, providing for certain credit facilities to Parent, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance therewith .

Arch of Wyoming LLC shall mean Arch of Wyoming, LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Arch of Wyoming LLC Agreement shall mean that certain Limited Liability Agreement, dated as of April 15, 1998, of Arch of Wyoming LLC.

Arch Western LLC Agreement shall mean that certain Limited Liability Company Agreement by and between AWAC and Delta Housing, dated as of June 1, 1998, with AWAC and Delta Housing as members and creating the Borrower.

ARCO shall mean Atlantic Richfield Company, a corporation organized and existing under the laws of the State of Delaware.

ARCO Member shall have the meaning assigned to such term in the Arch Western LLC Agreement.

Arrangers shall mean PNC Bank and Morgan.

Assigned Reserves shall mean Recoverable Reserves that have been designated for mining by a specific operation of the Borrower or any of its Subsidiaries, all as disclosed in the Parent's statements most recently filed with the SEC identifying the Assigned Reserves.

Assignment and Assumption Agreement shall mean an Assignment and Assumption Agreement by and among a Purchasing Lender, a Transferor Lender and the Administrative Agent, as agent and on behalf of the remaining Lenders, substantially in the form of Exhibit 1.1(A)(1).

AU Sub LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of April 8, 1998, as amended, of AU Sub LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Authorized Officer shall mean those individuals, designated by written notice to the Administrative Agent from the Borrower, authorized to execute notices, reports and other documents on behalf of the Loan Parties required hereunder. The Borrower may amend such list of individuals from time to time by giving written notice of such amendment to the Administrative Agent.

Average Balance of the Eligible Note Receivable shall mean, for any period of determination, the average daily outstanding principal amount of the Eligible Note Receivable during such period.

Average Pledged Account Balance shall mean, for any period of determination, the average daily balance in the "Escrow Account" (as such term is defined in the Pledge Agreement (Investment Property)) pledged on a first priority perfected basis to the Administrative Agent for the benefit of the Lenders pursuant to the Pledge Agreement (Investment Property) during such period.

AWAC shall mean Arch Western Acquisition Corporation, a corporation organized and existing under the laws of the State of Delaware.

Base Net Worth shall mean the sum of \$389,194,000, plus 50% of consolidated net income of the Borrower and its Subsidiaries (before the after-tax effect of changes in accounting principles) for each fiscal quarter in which net income was earned, for the period from April 1, 2002 through the date of determination. In no event shall Base Net Worth be reduced on account of a consolidated net loss for any fiscal period.

Base Rate shall mean the greater of (i) the interest rate per annum announced from time to time by the Administrative Agent at its Principal Office as its then prime rate, which rate may not be the lowest rate then being charged commercial borrowers by the Administrative Agent, or (ii) the Federal Funds Effective Rate plus 1/2% per annum.

Base Rate Option shall mean the option of the Borrower to have Term Loans bear interest at the rate and under the terms and conditions set forth in Section 3.1.1(a) [Base Rate Option].

Benefit Arrangement shall mean at any time 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 otherwise contributed to by any member of the ERISA Group.

Borrower shall mean Arch Western Resources, LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Borrower LLC Interests shall have the meaning set forth in Section 5.1.2 [LLC Interests of Borrower; Subsidiaries; and Subsidiary Shares].

Borrowing Date shall mean, with respect to any Term Loan, the date for the making thereof or the renewal or conversion thereof at or to the same or a different Interest Rate Option, which shall be a Business Day.

Borrowing Tranche shall mean specified portions of outstanding Tranche A Term Loans or Tranche B Term Loans as follows: (i) any Tranche A Term Loans to which a Euro-Rate Option applies which become subject to the same Interest Rate Option under the same Rate Request by the Borrower and which have the same Interest Period shall constitute one Borrowing Tranche; (ii) any Tranche B Term Loans to which a Euro-Rate Option applies which become subject to the same Interest Rate Option under the same Rate Request by the Borrower and which have the same Interest Period shall constitute one Borrowing Tranche; (iii) all Tranche A Term Loans to which a Base Rate applies shall constitute one Borrowing Tranche; and (iv) all Tranche B Term Loans to which a Base Rate applies shall constitute one Borrowing Tranche.

Business shall mean the business of owning and operating the U.S. domestic coal properties of ACC, substantially as operated by ACC at the time of the closing of the Acquisition Transactions.

Business Day shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in Pittsburgh, Pennsylvania and New York, New York; and if the applicable Business Day relates to a Term Loan to which the Euro-Rate Option applies, such day must also be a day on which dealings are carried on in the London interbank market.

Canyon Fuel shall mean Canyon Fuel Company, LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Canyon Fuel LLC Agreement shall mean that certain Limited Liability Company agreement by and between the Borrower (or a Subsidiary of the Borrower) and Itochu Coal International, Inc., a Delaware corporation, dated as of January 1, 1997, as amended, with the Borrower and Itochu Coal International, Inc. as members of the Canyon Fuel Company, LLC, a Delaware limited liability company.

Carbon Basin Reserves shall mean those certain reserves controlled by Borrower or any of its Subsidiaries located within the following townships and ranges: T. 20 N., R. 79 W.; T 20 N., R. 80 W.; T 21 N., R. 79 W.; T. 21 N., R. 80 W., Carbon County, Wyoming containing approximately 186.7 million tons of recoverable coal.

Citibank shall mean Citibank, N.A., its successors and assigns.

Closing Date shall mean June 1, 1998.

Coastal Agreement shall mean that certain Purchase and Sale Agreement among The Coastal Corporation, a Delaware corporation, Coastal Coal, Inc., a Delaware corporation, ARCO and Itochu Corporation, a Japanese corporation, dated as of October 23, 1996.

Collateral shall mean collectively the property of the Borrower in which security interests are or have been granted or purported to be granted to the Administrative Agent for the benefit of the Lenders under the Collateral Documents.

Collateral Documents shall mean collectively, the Pledge Agreement (Subsidiary Equity Interests), the Pledge Agreement (Investment Property), the Pledge Agreement (Pledged Collateral Account), the Collateral Sharing Agreement, and the Note Pledge Agreement, and Collateral Document shall mean any of the Collateral Documents.

Collateral Sharing Agreement shall mean the Amended and Restated Collateral Agency and Sharing Agreement among the Borrower, the Guarantors, the Lenders party thereto, the Swap Parties (as defined therein) and the Collateral Agent (as defined therein), substantially in the form of Exhibit 1.1(C)(1) hereto, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

Commitment shall mean as to any Lender the aggregate of its Tranche A Commitments and Tranche B Commitments and Commitments shall mean the aggregate of the Tranche A Commitments and Tranche B Commitments of all of the Lenders.

Commodity Price Protection Agreement shall mean a crude oil or heating oil price protection agreement, for the purpose of hedging the purchase price of diesel fuel used by the Loan Parties in the ordinary course operations of their business, in a standard International Swap Dealer Association Agreement, including, without limitation, providing for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner.

Consolidated Tangible Net Worth shall mean as of any date of determination, total equity less intangible assets of the Borrower and its Subsidiaries as of such date determined and consolidated in accordance with GAAP, and adjusted to exclude the after tax effect of any changes in accounting principles subsequent to the Restatement Effective Date.

Contamination shall mean the presence or Release or threat of Release of Regulated Substances in, on, under or emanating to or from the Property, which pursuant to Environmental Laws requires notification or reporting to an Official Body, or which pursuant to Environmental Laws requires the investigation, cleanup, removal, remediation, containment, abatement of or other response action or which otherwise constitutes a violation of Environmental Laws.

Contribution Agreement shall mean that certain Contribution Agreement among the Borrower, AWAC, ARCO, Delta Housing and the Parent.

Credit Lyonnais shall mean Credit Lyonnais New York Branch, its successors and assigns.

Debt shall mean for any Person as of any date of determination, the difference between the following (a) and (b): (a) the sum, without duplication, of the following for such Person, as of such date, determined in accordance with GAAP: (i) all indebtedness for borrowed money (including 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 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, (iv) reimbursement obligations (contingent or otherwise) under any letter of credit (v) 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 Guarantees of indebtedness for borrowed money, minus (b) the sum of (1) the Permitted Reduction Amount, if any, and (2) the principal amount, expressly excluding any interest income earned thereon, held on deposit in the Pledged Collateral Account, as of the date of determination.

Debt Rating shall mean the rating of the Parent's indebtedness under the Arch Credit Facility by either of Standard & Poor's or Moody's.

Delta Housing shall mean Delta Housing Inc., a corporation organized and existing under the laws of the State of Delaware.

Delta Housing Guaranty shall mean that certain Master Guaranty of Collection dated as of June 1, 1998, executed by Delta Housing in favor of the judgment creditors referred to therein.

Derivatives Obligations shall mean for any Person obligations of such Person in respect of 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 (including any option with respect to any of the foregoing transactions) or any combination of the foregoing transactions, including, without limitation obligations in respect of any Interest Rate Protection Agreement.

Documentation Agent shall mean each of Citibank, N.A., Credit Lyonnais, and U.S. Bank in its capacity as documentation agent under this Agreement, and its successors in such capacity.

Dollar, Dollars, U.S. Dollars and the symbol \$ shall mean lawful money of the United States of America.

EBITDDA for any period of determination shall mean, with respect to any Person, income from operations before the effect of changes in accounting principles, nonrecurring charges and extraordinary items, interest expense, income taxes, depreciation, depletion and amortization, in each case for such period determined in accordance with GAAP.

Eligible Note Receivable shall mean that certain note payable by the Parent to the Borrower, satisfactory in form and substance to the Agents (including the providing of and terms and conditions of all collateral and guarantees provided as security therefor), and pledged, on a first priority perfected basis, to the Administrative Agent for the benefit of the Lenders pursuant to the Note Pledge Agreement, as such note may hereafter be modified, amended, restated, supplemented, refinanced, replaced, extended or renewed from time to time with the prior written consent of the Agents.

Eligible Reserves shall mean the sum of all Assigned Reserves plus 80% of the Unassigned Reserves, minus (a) the sum of (i) the amount of divestitures of Assigned Reserves and Unassigned Reserves by the Borrower or any of its Subsidiaries since the date of the most recent statement filed by the Parent with the SEC identifying the Assigned Reserves and the Unassigned Reserves, and (ii) the amount of Assigned Reserves and Unassigned Reserves mined since the date of the most recent statement filed by the Parent with the SEC identifying the Assigned Reserves and the Unassigned Reserves, plus (b) the amount of any acquisitions or leases of Assigned Reserves and Unassigned Reserves by the Borrower or any of its Subsidiaries since the date of the most recent statement filed by the Parent with the SEC identifying the Assigned Reserves and the Unassigned Reserves, provided that, if Assigned Reserves or Unassigned Reserves have been acquired or leased from an Affiliate, the terms and conditions of the acquisition or lease shall be reasonably satisfactory to the Agents.

Environmental Claim shall mean any administrative, regulatory or judicial action, suit, claim, notice of noncompliance or violation, notice of liability or potential liability, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit, Regulated Substances or Contamination or arising from alleged injury or threat of injury to the environment.

Environmental Complaint shall mean any written notice or complaint setting forth allegations relating to or a cause of action for personal injury or property damage, natural resource damage, contribution or indemnity for response costs, civil penalties, criminal penalties, or declaratory or equitable relief arising under any Environmental Law or any order, notice of violation, citation, subpoena, request for information or other written notice of any type issued by an Official Body pursuant to any Environmental Law.

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

and Health Act, 30 U.S.C. ss.ss. 801 et seq., the Surface Mining Control and Reclamation Act 30 U.S.C.ss.ss. 1201 et seq., each as amended, or any equivalent state or local statute, and any amendments thereto), code, consent decree, settlement agreement, directive, judicial or agency interpretation, policy or guidance regulating: (i) pollution or pollution control; (ii) protection of human health from exposure to Regulated Substances; (iii) protection of natural resources or the environment; (iv) employee 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); (v) the presence, use, management, generation, manufacture, processing, extraction, treatment, recycling, refining, reclamation, labeling, transport, storage, sale, collection, distribution, disposal or Release or threat of Release of Regulated Substances; (vi) the presence of Contamination; (vi) the protection of endangered or threatened species; and (vii) the protection of Environmentally Sensitive Areas.

Environmental Permit shall mean any permit, approval, license, consent, bond or other authorization required under any Environmental Law.

Environmentally Sensitive Area shall mean (i) any wetland as defined by applicable Environmental Laws; (ii) any area designated as a coastal zone pursuant to applicable Laws, including Environmental Laws; (iii) any area of historic or archeological significance or scenic area as defined or designated by applicable Laws, including Environmental Laws; (iv) habitats of endangered species or threatened species as designated by applicable Laws, including Environmental Laws; or (v) a floodplain or other flood hazard area as defined pursuant to any applicable Laws.

ERISA shall mean 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 shall mean, at any time, the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under Section 414 of the Internal Revenue Code.

Euro-Rate shall mean, with respect to the Term Loans comprising any Borrowing Tranche to which the Euro-Rate Option applies for any Interest Period, the interest rate per annum determined by the Administrative Agent by dividing (the resulting quotient rounded upward to the nearest 1/100 of 1% per annum) (i) the rate of interest determined by the Administrative Agent (which determination shall be conclusive absent manifest error) to be the average of the London interbank offered rates of interest per annum for U.S. Dollars set forth on Dow Jones Market Service display page 3750 or such other display page on the Dow Jones Market Service System as may replace such page to evidence the average of rates quoted by banks designated by the British Bankers' Association (or appropriate successor or, if the British Bankers' Association or its successor ceases to provide such quotes, a comparable replacement determined by the Administrative Agent) at 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period for an amount comparable to such Borrowing Tranche and having a borrowing date and a maturity comparable to such Interest 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:

Dow Jones Market Service page 3750 quoted by British Bankers'  
Euro-Rate = Association or appropriate successor  
1.00 - Euro-Rate Reserve Percentage

The Euro-Rate shall be adjusted with respect to any Euro-Rate Option outstanding on the effective date of any change in the Euro-Rate Reserve Percentage as of such effective date. The Administrative Agent shall give prompt notice to the Borrower and the Lenders of the Euro-Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

Euro-Rate Option shall mean the option of the Borrower to have the Term Loans bear interest at the rate and on the terms and conditions set forth in Section 3.1.1(b) [Euro-Rate Option].

Euro-Rate Reserve Percentage shall mean the maximum percentage (expressed as a decimal rounded upward to the nearest 1/100 of 1%) as determined by the Administrative Agent which is in effect during any relevant period, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities") of a member bank in such System.

Event of Default shall mean any of the events described in Section 8.1 [Events of Default] and referred to therein as an "Event of Default."

Federal Funds Effective Rate for any day shall mean the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

Financial Projections shall have the meaning assigned to that term in Section 5.1.7(iii) [Financial Projections].

Fixed Charge Coverage Ratio shall mean the ratio of (a) the sum of Adjusted EBITDDA of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's Adjusted EBITDDA, each on a

consolidated basis in accordance with GAAP, plus operating lease expense of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's operating lease expense, each on a consolidated basis in accordance with GAAP, to (b) the sum of interest expense (other than Permitted Loan Origination Expense) of the Borrower and its Subsidiaries plus, without duplication, the Appropriate Percentage of interest expense of each Special Subsidiary, each on a consolidated basis in accordance with GAAP, plus operating lease expense of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of operating lease expense of each Special Subsidiary, each on a consolidated basis in accordance with GAAP, all calculated as of the last day of each fiscal quarter for the four fiscal quarters of the Borrower then ended.

GAAP shall mean Generally Accepted Accounting Principles as are in effect from time to time, subject to the provisions of Section 1.3 [Accounting Principles], and applied on a consistent basis both as to classification of items and amounts.

Guarantors shall mean at any time collectively each of the Significant Subsidiaries of the Borrower, other than Canyon Fuel.

Guarantor Joinder shall mean a joinder by a Person as a Guarantor under the Guarantor Joinder and Assumption Agreement in the form of Exhibit 1.1(G)(1).

Guaranty of any Person shall mean any obligation of such Person guaranteeing or in effect guaranteeing 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.

Guaranty Agreement shall mean the Amended and Restated Continuing Guaranty and Suretyship Agreement in substantially the form of Exhibit 1.1(G)(2) executed and delivered by each of the Guarantors to the Administrative Agent for the benefit of the Lenders, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

Historical Statements shall have the meaning assigned to that term in Section 5.1.7(i) [Borrower Historical Statements].

Hypothetical Income Tax Amount shall have the meaning assigned to that term in the Arch Western LLC Agreement.

Inactive Subsidiaries shall mean, at any time, collectively, the Subsidiaries of the Borrower which: (i) do not actively conduct any business or operations, and (ii) have total assets, in the case of any such Subsidiary, with a book value, as of any date of determination, not in excess of \$250,000.

Indebtedness shall mean, 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 note purchase or acceptance credit facility, (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 and which are not more than thirty (30) days past due), or (v) any Guaranty of any such Indebtedness. It is understood that Derivatives Obligations shall not be deemed to be Indebtedness.

Insolvency Proceeding shall mean, 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.

Intercompany Subordination Agreement shall mean the Intercompany Subordination Agreement substantially in the form of Exhibit 1.1(I) executed and delivered by the Borrower and its Subsidiaries to the Administrative Agent for the benefit of the Lenders, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

Interest Period shall have the meaning set forth in Section 3.2.

Interest Rate Option shall mean any Euro-Rate Option or Base Rate Option.

Interest Rate Protection Agreement shall mean an interest rate protection agreement in a standard International Swap Dealer Association Agreement, including, without limitation, providing for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner.

Internal Revenue Code shall mean the Internal Revenue Code of 1986, 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.

Investments shall mean collectively all of the following with respect to any person: (i) investments or contributions by any of the Loan Parties or their Subsidiaries directly or indirectly in or to the capital of or other payments to (except in connection with transactions for the sale of goods or services for fair value in the ordinary course of business) such Person, (ii) loans by any of

the Loan Parties or their Subsidiaries to such Person, (iii) guaranties by any Loan Party or any Subsidiary of any Loan Party directly or indirectly of the obligations of such Person, or (iv) other obligations, contingent or otherwise, of any Loan Party or any Subsidiary 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 satisfactory to the Administrative Agent, in its sole discretion.

JPMorgan Chase shall mean JPMorgan Chase Bank, its successors and assigns.

Labor Contracts shall mean all employment agreements, employment contracts, collective bargaining agreements and other agreements among any Loan Party or Subsidiary of a Loan Party and its employees.

Law shall mean any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, judgment, lien or award of or settlement agreement with any Official Body.

Lenders shall mean the financial institutions and other parties named on Schedule 1.1(B) and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a Lender.

Leverage Ratio shall mean the ratio of the sum of Debt of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of Debt of each Special Subsidiary, each on a consolidated basis in accordance with GAAP (as the numerator) to EBITDDA of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's EBITDDA, each on a consolidated basis in accordance with GAAP (as the denominator). For purposes of calculating the Leverage Ratio, Debt shall be determined as of the end of each fiscal quarter of the Borrower and EBITDDA shall be determined as of the end of each fiscal quarter of the Borrower for the four fiscal quarters then ended.

Lien shall mean 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).

LLC Agreements shall mean collectively the Arch Western LLC Agreement, the Canyon Fuel LLC Agreement, the Mountain Coal LLC Agreement, the Arch of Wyoming LLC Agreement, the AU Sub LLC Agreement, the State Leases LLC Agreement and the Thunder Basin LLC Agreement.

LLC Interests shall have the meaning given to such term in Section 5.1.2 [LLC Interests of Borrower; Subsidiaries; and Subsidiary Shares].

Loan Documents shall mean this Agreement, the Administrative Agent's Letter, the Collateral Sharing Agreement, the Guaranty Agreement, the Intercompany Subordination Agreement, the Pledge Agreement (Subsidiary Equity Interests), the Pledge Agreement (Investment Property), the Pledge Agreement (Pledged Collateral Account), the Note Pledge Agreement, the Term Notes and any other instruments, certificates or documents delivered or contemplated to be delivered hereunder or thereunder or in connection herewith or therewith, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith, and Loan Document shall mean any of the Loan Documents.

Loan Parties shall mean the Borrower and the Guarantors.

Material Adverse Change shall mean 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 Loan Document, (b) is or could reasonably be expected to be materially adverse to the business, financial condition or results of operations of the Borrower and its Subsidiaries taken as a whole, or (c) impairs materially or could reasonably be expected to impair materially the ability of any Agent or any of the Lenders, to the extent permitted, to enforce their legal remedies pursuant to this Agreement or any other Loan Document.

Material Contracts shall mean collectively all contracts, agreements or other instruments described in Regulation S-K, Item 601(b)(10) promulgated pursuant to the Securities Exchange Act of 1934, as amended, 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 Securities Exchange Act of 1934, as amended.

Month, with respect to an Interest Period under the Euro-Rate Option, shall mean the interval between the days in consecutive calendar months numerically corresponding to the first day of such Interest Period. If any Interest Period for any Term Loan subject to a Euro-Rate Option begins on a day of a calendar month for which there is no numerically corresponding day in the month in which such Interest Period is to end, the final month of such Interest Period shall be deemed to end on the last Business Day of such final month.

Moody's shall mean Moody's Investors Service, Inc., and its successors.

Morgan shall mean J.P. Morgan Securities Inc.

Mountain Coal LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of March 6, 1998, as amended, of Mountain Coal Company, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware.

Multiemployer Plan shall mean any employee benefit plan which is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which the 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.

Multiple Employer Plan shall mean a Plan which has two or more contributing sponsors (including the Borrower 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.

Net Cash Proceeds shall mean, with respect to any transaction, an amount equal to the cash proceeds received by the Borrower or any of its Subsidiaries from or in respect of such transaction (including, when received, any cash proceeds received as income or other cash proceeds of any non-cash proceeds of such transaction), less (x) any expenses or charges (including commissions, fees and taxes paid or payable) reasonably incurred by such Person in respect of such transaction, (y) any amounts considered appropriate by the chief financial officer of the Borrower to provide reserves in accordance with GAAP for payment of indemnities or liabilities that may be incurred in connection with such sale or disposition, and (z) in the case of any asset sale permitted by Section 7.2.4 (iii), the amount of any debt secured by a Lien on the related asset and discharged as part of such asset sale. For purposes of this definition, if taxes or other expenses payable in connection with the sale or other disposition of any asset are not known as of the date of such sale or other disposition, then such fees, commissions, expenses or taxes shall be estimated in good faith by the chief financial officer of the Borrower and such estimated amounts shall be deducted.

Note Pledge Agreement shall mean the Amended and Restated Note Pledge Agreement substantially in the form of Exhibit 1.1(N) executed and delivered by the Borrower to the Administrative Agent for the benefit of the Lenders, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

notices shall have the meaning assigned to that term in Section 10.6 [Notices].

Obligation shall mean any obligation, Indebtedness or liability of any of the Loan Parties to any Agent or any of the Lenders, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, under or in connection with this Agreement, any Term Notes, the Administrative Agent's Letter or any other Loan Document.

Official Body shall mean any national, federal, state, local or other government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic, including, without limitation, the National Association of Insurance Commissioners or similar body.

Original Credit Agreement shall have the meaning assigned to such term in the preamble hereto.

Parent shall mean Arch Coal, Inc., a corporation organized and existing under the laws of the State of Delaware.

Partnership Interests shall have the meaning given to such term in Section 5.1.2 [LLC Interests of Borrower; Subsidiaries; and Subsidiary Shares].

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

Permitted Acquisitions shall have the meaning assigned to such term in Section 7.2.3 [Liquidations, Mergers, Consolidations, Acquisitions].

Permitted Investments shall mean

(i) direct obligations of the U.S. or any agency or instrumentality thereof or obligations backed by the full faith and credit of the U.S. maturing in twelve (12) months or less from the date of acquisition;

(ii) commercial paper maturing in 180 days or less rated in the highest categories by Standard & Poor's or Moody's on the date of acquisition; and

(iii) demand deposits, time deposits or certificates of deposit maturing within one year in a commercial bank whose obligations are rated A-1, A or the equivalent or better by Standard & Poor's on the date of determination.

Permitted Liens shall mean:

(i) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business and which are not yet due and payable;

(ii) 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, old-age pensions or other social security programs;

(iii) 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 securing obligations to pay lease payments that are not yet due and payable or in default;

(iv) 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 to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business (it being understood that any appeal or similar bond (other than such a bond required pursuant to applicable Law to secure in the ordinary course payment of worker's compensation, reclamation liabilities or royalty bonds) in an amount exceeding \$50,000,000 shall not be in the ordinary course of business);

(v) 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;

(vi) Liens granted in the Collateral, subject to the Collateral Sharing Agreement, to any Lender providing any Interest Rate Protection Agreement or any Commodity Price Protection Agreement;

(vii) Liens securing Indebtedness of not more than \$25,000,000 at any time;

(viii) 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 they do not adversely affect the value of the Collateral or the first priority perfected Lien and security interest of the Administrative Agent for the benefit of the Lenders in 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:

(1) 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;

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

(3) Claims or Liens of mechanics, materialmen, warehousemen, carriers, or other statutory nonconsensual Liens; or

(4) Liens resulting from judgments or orders described in Section 8.1.6 [Judgments or Orders];

(ix) Liens granted in the Collateral under the Collateral Documents to the Administrative Agent for the benefit of the Lenders;

(x) Liens in favor of Bank of Montreal granted in the Collateral, subject to the Collateral Sharing Agreement, to secure Swap Obligations (as such term is defined in the Collateral Sharing Agreement) of the Borrower under the International Swap Dealers Association Master Agreement (including the schedule thereto) dated as of August 6, 1998 between the Borrower and Bank of Montreal; and

(xi) Any Lien or restriction resulting from ownership, by an entity other than an Affiliate of the Borrower, of a minority interest in Canyon Fuel.

Permitted Loan Origination Expense shall mean the aggregate amount of all fees and expenses incurred by the Borrower in connection with the closing on the Closing Date of the transactions under the Original Credit Agreement and on the Restatement Effective Date of the transactions under this Agreement which the Borrower is required to capitalize in accordance with GAAP.

Permitted Reduction Amount shall mean the sum of:

(i) for any period of determination, if throughout such period either (i) the Debt Rating is BB or better by Standard & Poor's and Ba2 or better by Moody's, or (ii) the Leverage Ratio (as defined in the Arch Credit Facility) is less than or equal to 3.5 to 1.0, the amount of the Average Balance of the Eligible Note Receivable for such period; and

(ii) for any period of determination, the amount of the Average Pledged Account Balance for such period.

The applicable period of determination for purposes of clauses (i) and (ii) above shall be the period identical to the period for which EBITDDA is being measured for purposes of calculating the Leverage Ratio.

Person shall mean 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 shall mean 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 Internal Revenue Code and either (i) is 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 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.

Pledge Agreement (Investment Property) shall mean the Amended and Restated Pledge Agreement (Investment Property) substantially in the form of Exhibit 1.1(P)(1) executed and delivered by the Borrower and each of its Subsidiaries to the Administrative Agent for the benefit of the Lenders, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

Pledge Agreement (Pledged Collateral Account) shall mean the Pledge Agreement (Pledged Collateral Account) substantially in the form of Exhibit 1.1(P)(2) executed and delivered by the Borrower to the Administrative Agent for the benefit of the Lenders, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

Pledge Agreement (Subsidiary Equity Interests) shall mean the Pledge Agreement (Subsidiary Equity Interests) substantially in the form of Exhibit 1.1(P)(3) executed and delivered by the Borrower and each of its Subsidiaries pledging equity interests which it owns in any other Subsidiary of the Borrower to the Administrative Agent for the benefit of the Lenders, as the same may hereafter be modified, amended, restated, supplemented, refinanced or replaced from time to time in accordance herewith or therewith.

Pledged Collateral Account shall have the meaning given to such term in Section 7.1.14 [Pledged Collateral Account].

PNC Bank shall mean PNC Bank, National Association, its successors and assigns.

Potential Default shall mean any event or condition which with notice, passage of time or a determination by the Administrative Agent or the Required Lenders, or any combination of the foregoing, would constitute an Event of Default.

Principal Office shall mean the main banking office of the Administrative Agent in Pittsburgh, Pennsylvania.

Prior Security Interest shall mean a valid and enforceable perfected first-priority security interest under the Uniform Commercial Code or other applicable Law in the Collateral.

Probable Reserves shall mean coal reserves for which (a) quantity and/or quality are computed from information similar to that used for Proven Reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced, and (b) a degree of assurance, although lower than that for proved reserves, is high enough to assume continuity between points of observation.

Prohibited Transaction shall mean any prohibited transaction as defined in Section 4975 of the Internal Revenue 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.

Property shall mean all real property, both owned and leased, of any Loan Party or Subsidiary of a Loan Party.

Proven Reserves shall mean coal reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling, and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth, and mineral content of coal reserves are well-established.

Purchase Agreement shall mean that certain Purchase and Sale Agreement among ARCO, ARCO Uinta Coal Company, a Delaware corporation, the Parent and AWAC, dated as of March 22, 1998, together with all schedules and exhibits thereto.

Purchasing Lender shall mean a Lender which becomes a party to this Agreement by executing an Assignment and Assumption Agreement.

Ratable Share shall mean, as the context requires: (a) in the case of Commitments, the proportion that a Lender's Commitment bears to the Commitments of all of the Lenders, (b) in the case of Term Loans, the proportion that a Lender's Term Loans bears to the Term Loans of all Lenders, (c) in the case of Tranche A Term Loans or Tranche A Commitments, the proportion that a Lender's Tranche A Commitment bears to the Tranche A Commitments of all Lenders, and (d) in the case of Tranche B Term Loans or Tranche B Commitments, the proportion that a Lender's Tranche B Commitment bears to the Tranche B Commitments of all Lenders.

Rate Request shall mean a request to select, convert to or renew a Base Rate Option or Euro-Rate Option with respect to the Term Loans in accordance with Section 2.5 [Request to Select Interest Rate Options].

Recoverable Reserves shall mean the amount of Proven Reserves and Probable Reserves of the Borrower and its Subsidiaries that can actually be recovered from the reserve base taking into account all mining and preparation losses involved in producing a saleable product using existing methods and under current law, provided that the amount of Recoverable Reserves held by Canyon Fuel shall be included only to the extent of the Appropriate Percentage.

Register shall have the meaning set forth in Section 10.19 [Register] hereof.

Regulated Substances shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental 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," "municipal waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste," or "regulated substance" or any other material, substance or waste, regardless of its form or nature, which is regulated by the Environmental Laws due to its radioactive, ignitable, corrosive, reactive, explosive, toxic, carcinogenic or infectious properties or nature, or which otherwise is regulated by any applicable Environmental Law including, without limitation, petroleum and petroleum products (including crude oil and any fractions thereof), natural gas, synthetic gas and any mixtures thereof, asbestos, urea formaldehyde, polychlorinated biphenyls, mercury and radioactive substances.

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

Regulation shall mean anything defined as a "release" under CERCLA or RCRA.

Reportable Event shall mean a reportable event described in Section 4043 of ERISA and regulations thereunder with respect to a Plan or Multiemployer Plan.

Required Lenders shall mean

(i) if there are no Term Loans outstanding, Lenders whose Commitments aggregate more than 50% of the Commitments of all of the Lenders, or

(ii) if there are Term Loans outstanding, Lenders whose outstanding Term Loans aggregate more than 50% of the total principal amount of all of the Term Loans then outstanding.

Restatement Effective Date shall mean April 18, 2002.

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

Significant Subsidiary shall mean any Subsidiary of Borrower other than the Inactive Subsidiaries.

Solvent shall mean, with respect to any Person on a particular date, that on such date (i) 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, (ii) 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, (iii) 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, (iv) 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 (v) 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 as 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.

Special Subsidiary shall mean Canyon Fuel and each other Person (i) with respect to which the ownership of equity interests thereof by the Borrower or any Subsidiary of the Borrower is accounted for in accordance with the "equity method" in accordance with GAAP; (ii) engaged in a line of business permitted by Section 7.2.7 [Continuation of or Change in Business]; (iii) with respect to which the equity interests thereof were acquired by the Borrower or Subsidiary of the Borrower in an arms-length transaction; (iv) the operations of which the Borrower has management control over; and (v) a majority of the economic equity interests of which are owned directly or indirectly by the Borrower.

Standard & Poor's shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

Subsidiary of any Person at any time shall mean (i) any corporation or trust of which more than 50% (by number of shares or number of votes) of the outstanding capital stock or shares of beneficial interest normally entitled to vote for the election of one or more directors or trustees (regardless of any contingency which does or may suspend or dilute the voting rights) is at such time owned directly or indirectly by such Person or one or more of such Person's Subsidiaries, (ii) any partnership of which such Person is a general partner or of which more than 50% of the partnership interests is at the time directly or indirectly owned by such Person or one or more of such Person's Subsidiaries, (iii) any limited liability company of which such Person is a member or of which more than 50% of the limited liability company interests is at the time directly or indirectly owned by such Person or one or more of such Person's Subsidiaries or (iv) any corporation, trust, partnership, limited liability company or other entity which is controlled or capable of being controlled by such Person or one or more of such Person's Subsidiaries. As of the Closing Date, the Borrower owns 65% of the member interests of Canyon Fuel. It is expressly agreed that each Special Subsidiary shall be deemed to be a Subsidiary of the Borrower for purposes of this Agreement. Nonetheless, the Appropriate Percentage of the assets, income, expenses, liabilities and other items with respect to each Special Subsidiary shall be included, without duplication, for purposes of calculating the Leverage Ratio and the Fixed Charge Coverage Ratio as described more fully in the definitions of "Leverage Ratio" and "Fixed Charge Coverage Ratio" and for purposes of calculating EBITDDA for purposes of Section 7.2.12 [Minimum EBITDDA].

State Leases LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of April 8, 1998, as amended, of State Leases LLC, a limited liability company organized and existing under the laws of the State of Delaware.

Subsidiary Shares shall have the meaning assigned to that term in Section 5.1.2 [LLC Interests of Borrower; Subsidiaries; and Subsidiary Shares].

Syndication Agent shall mean JPMorgan Chase in its capacity as syndication agent for the Lenders under this Agreement and its successors in such capacity.

Tax Sharing Agreement shall mean that certain Tax Sharing Agreement dated as June 1, 1998 by and among the Borrower, AWAC, the Parent and Delta Housing.

Term Loan shall mean separately any Tranche A Term Loan or Tranche B Term Loan, and Term Loans shall mean collectively all of the Tranche A Term Loans and Tranche B Term Loans.

Term Notes shall mean collectively all of the Tranche A Term Notes and Tranche B Term Notes of the Borrower, and Term Note shall mean separately any of the Term Notes.

Thunder Basin LLC Agreement shall mean that certain Limited Liability Company Agreement, dated as of July 10, 1997, as amended, of Thunder Basin Coal Company, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware.

Tranche A Commitment shall mean, as to any Lender at any time, the amount initially set forth opposite its name on Schedule 1.1(B) in the column labeled "Amount of Tranche A Commitment" and thereafter on Schedule 1.1(B) to the most recent Assignment and Assumption Agreement, and Tranche A Commitments shall mean the aggregate Tranche A Commitments of all the Lenders.

Tranche A Expiration Date shall mean April 18, 2007.

Tranche A Term Loan shall have the meaning given to such term in Section 2.1.1 [Tranche A Commitment]; Tranche A Term Loans shall mean collectively all of the Tranche A Term Loans.

Tranche A Term Notes shall mean collectively all of the Tranche A Term Notes of the Borrower in the form of Exhibit 1.1(T)(1) evidencing the Tranche A Term Loans, as the same may hereafter be modified, amended, restated, supplemented, refinanced, replaced, extended or renewed from time to time in accordance herewith or therewith in whole or in part, and Tranche A Term Note shall mean separately any of the Tranche A Term Notes.

Tranche B Commitment shall mean, as to any Lender at any time, the amount initially set forth opposite its name on Schedule 1.1(B) in the column labeled "Amount of Tranche B Commitment" and thereafter on Schedule 1.1(B) to the most recent Assignment and Assumption Agreement, and Tranche B Commitments shall mean the aggregate Tranche B Commitments of all the Lenders.

Tranche B Expiration Date shall mean April 18, 2008.

Tranche B Term Loan shall have the meaning given to such term in Section 2.1.2 [Tranche B Commitment]; Tranche B Term Loans shall mean collectively all of the Tranche B Term Loans.

Tranche B Term Notes shall mean collectively all of the Tranche B Term Notes of the Borrower in the form of Exhibit 1.1(T)(2) evidencing the Tranche B Term Loans, as the same may hereafter be modified, amended, restated, supplemented, refinanced, replaced, extended or renewed from time to time in accordance herewith or therewith in whole or in part, and Tranche B Term Note shall mean separately any of the Tranche B Term Notes.

Transferor Lender shall mean the selling Lender pursuant to an Assignment and Assumption Agreement.

Unassigned Reserves shall mean all Recoverable Reserves that have not yet been designated for mining by a specific operation of the Borrower or any of its Subsidiaries, all as disclosed in the Parent's statements most recently filed with the SEC identifying the Unassigned Reserves, excluding the Carbon Basin Reserves.

Uniform Commercial Code shall have the meaning assigned to that term in Section 5.1.21 [Security Interests].

U.S. shall mean the United States of America.

U.S. Bank shall mean U.S. Bank National Association, its successors and assigns.

## 1.2 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:

### 1.2.1 Number; Inclusion.

references to the plural include the singular, the plural, the part and the whole; "or" has the inclusive meaning represented by the phrase "and/or"; and "including" has the meaning represented by the phrase "including without limitation";

### 1.2.2 Determination.

references to "determination" of or by the Administrative Agent or the Lenders shall be deemed to include good-faith estimates by the Administrative Agent or the Lenders (in the case of quantitative determinations) and good-faith beliefs by the Administrative Agent or the Lenders (in the case of qualitative determinations) and such determination shall be conclusive absent manifest error;

### 1.2.3 Administrative Agent's Discretion and Consent.

whenever the Administrative Agent or the Lenders are granted the right herein to act in its or their sole discretion or to grant or withhold consent such right shall be exercised in good faith;

### 1.2.4 Documents Taken as a Whole.

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 to any particular provision of this Agreement or such other Loan Document;

### 1.2.5 Headings.

the section and other headings contained in this Agreement or such other Loan Document and the Table of Contents (if any), preceding this Agreement or such other Loan Document are for reference purposes only and shall not control or affect the construction of this Agreement or such other Loan Document or the interpretation thereof in any respect;

#### 1.2.6 Implied References to This Agreement.

article, section, subsection, clause, schedule and exhibit references are to this Agreement or other Loan Document, as the case may be, unless otherwise specified;

#### 1.2.7 Persons.

reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement or such other Loan Document, as the case may be, and reference to a Person in a particular capacity excludes such Person in any other capacity;

#### 1.2.8 Modifications to Documents.

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 in accordance with the applicable provisions thereof and hereof;

#### 1.2.9 From, To and Through.

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"; and

#### 1.2.10 Shall; Will.

references to "shall" and "will" are intended to have the same meaning.

#### 1.3 Accounting Principles.

Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters and all financial statements to be delivered pursuant to this Agreement shall be made and prepared in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP; provided, however, that all accounting terms used in Section 7.2 [Negative Covenants] (and all defined terms used in the definition of any accounting term used in Section 7.2), as applied to the Borrower and its Subsidiaries shall have the meaning given to such terms (and defined terms) under GAAP as in effect on the Restatement Effective Date applied on a basis consistent with those used in preparing the Historical Statements referred to in Section 5.1.7(i) [Borrower Historical Statements]. In the event of any change after the Restatement Effective Date in GAAP, and if such change would result in the inability to determine compliance with the financial covenants set forth in Section 7.2 based upon the Borrower's regularly prepared financial statements by reason of the preceding sentence, then the parties hereto agree to endeavor, in good faith, to agree upon an amendment to this Agreement that would adjust such financial covenants in a manner that would not affect the substance thereof, but would allow compliance therewith to be determined in accordance with the Borrower's financial statements at that time.

## 2. TERM LOAN FACILITY

### 2.1 Commitments.

The Term Loans under and as defined in the Original Credit Agreement shall on the Restatement Effective Date be refinanced by the Tranche A Term Loans and the Tranche B Term Loans hereunder as set forth below.

#### 2.1.1 Tranche A Commitment.

Subject to the terms and conditions hereof, and relying upon the representations and warranties herein set forth, each Lender with a Tranche A Commitment severally agrees to make a term loan (the "Tranche A Term Loan") to the Borrower on the Restatement Effective Date in such principal amount as the Borrower shall request up to, but not exceeding, such Lender's Tranche A Commitment.

#### 2.1.2 Tranche B Commitment.

Subject to the terms and conditions hereof, and relying upon the representations and warranties herein set forth, each Lender with a Tranche B Commitment severally agrees to make a term loan (the "Tranche B Term Loan") to the Borrower on the Restatement Effective Date in such principal amount as the Borrower shall request up to, but not exceeding, such Lender's Tranche B Commitment.

### 2.2 Nature of Lenders' Obligations with Respect to Term Loans.

The obligations of each Lender with a Tranche A Commitment to make a Tranche A Term Loan to the Borrower shall be in the proportion that such Lender's Tranche A Commitment bears to the Tranche A Commitments of all Lenders, provided, however, that each Lender's Tranche A Term Loan to the Borrower shall never exceed its Tranche A Commitment. The obligations of each Lender with a Tranche B Commitment to make a Tranche B Term Loan to the Borrower shall be in the proportion that such Lender's Tranche B Commitment bears to the Tranche B Commitments of all Lenders, provided, however, that each Lender's Tranche B Term Loan to the Borrower shall never exceed its Tranche B Commitment. The failure of any Lender to make a Term Loan shall not relieve any other Lender of its obligations to make a Term Loan nor shall it impose any additional liability on any other Lender hereunder. The Lenders shall have no obligation to make Term Loans hereunder after the Restatement Effective Date. The Commitments are not revolving credit commitments, and the Borrower shall not have the right to borrow, repay and reborrow the Term Loans. The Lenders shall have no obligation hereunder to make Term Loans after the Restatement Effective Date.

### 2.3 Noteless Agreement; Evidence of Indebtedness.

Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Obligation of the Borrower to such Lender resulting from each Term Loan made by such Lender, including the amount of principal and interest payable and paid to such Lender from time to time hereunder. The Administrative Agent shall also maintain accounts in which it will record (a) the amount of each Term Loan made hereunder, the Interest Rate Option applicable thereto, and the Interest Period applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, and (c) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof. The entries maintained in the accounts maintained pursuant to this Section 2.3 shall be prima facie evidence of the existence and amounts of the Obligation therein recorded; provided, however, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligation in accordance with its terms.

Any Lender may request that its Term Loans be evidenced by a promissory note substantially in the form of Exhibit 1.1(T)(1) or Exhibit 1.1(T)(2), as applicable. In such event, the Borrower shall execute and deliver to such Lender, as applicable, a Tranche A Term Note or Tranche B Term Note, dated the Restatement Effective Date, payable to the order of such Lender in a face amount equal to the Tranche A Commitment or Tranche B Commitment, as the case may be, of such Lender, and thereafter the Term Loans evidenced by each such Term Note and interest thereon shall at all times (including after any assignment pursuant to Section 10.11) be represented by one or more Term Notes payable to the order of the payee named therein or any assignee pursuant to Section 10.11, except to the extent that any such Lender or assignee subsequently returns any such Term Note for cancellation and requests that such Term Loans once again be evidenced as described in the immediately prior paragraph of this Section 2.3. The principal amount of each Tranche A Term Note as provided therein shall be due and payable on the Tranche A Expiration Date. The principal amount of each Tranche B Term Note as provided therein shall be due and payable on the Tranche B Expiration Date.

### 2.4 Use of Proceeds.

On and after the Restatement Effective Date, the proceeds of the Term Loans shall be used to continue and refinance the term loan under the Original Credit Agreement and in accordance with Section 7.1.9 [Use of Proceeds].

### 2.5 Request to Select Interest Rate Options.

Except as otherwise provided herein, the Borrower may on the Restatement Effective Date select the initial Interest Rate Options applicable to the Term Loans and thereafter from time to time prior to the Tranche A Expiration Date in the case of the Tranche A Term Loans and the Tranche B Expiration Date in the case of the Tranche B Term Loans request the Lenders to renew or convert the Interest Rate Option applicable to existing Term Loans pursuant to Section 3.2

[Interest Periods], by delivering to the Administrative Agent, not later than 10:00 a.m., Pittsburgh time, (i) three (3) Business Days prior to the proposed Borrowing Date with respect to the making of the Term Loans on the Restatement Effective Date or the conversion to or the renewal of the Euro-Rate Option for any Term Loans, and (ii) one (1) Business Day prior to the making of the Term Loans on the Restatement Effective Date to which the Base Rate Option applies or the last day of the preceding Interest Period with respect to the conversion to the Base Rate Option for any Term Loan, of a duly completed request therefor substantially in the form of Exhibit 2.5 (each a "Rate Request") or a request therefor by telephone immediately confirmed in writing by letter, facsimile or telex in the form of such Exhibit, it being understood that the Administrative Agent may rely on the authority of any individual making such a telephonic request without the necessity of receipt of such written confirmation. Each Rate Request shall be irrevocable and shall specify (i) the proposed Borrowing Date; (ii) the aggregate amount of the Tranche A Term Loans and Tranche B Term Loans comprising each Borrowing Tranche, which shall be in integral multiples of \$25,000,000 and not less than \$25,000,000 for each Borrowing Tranche to which the Euro-Rate Option applies and in integral multiples of \$500,000 and not less than the lesser of \$25,000,000 or the maximum amount available for Borrowing Tranches to which the Base Rate Option applies; (iii) whether the Euro-Rate Option or Base Rate Option shall apply to the applicable Borrowing Tranche; and (iv) in the case of a Borrowing Tranche to which the Euro-Rate Option applies, an appropriate Interest Period for the Term Loans comprising such Borrowing Tranche. The Administrative Agent shall, promptly after receipt by it of a Rate Request pursuant to Section 2.5 [Request to Select Interest Rate Options], notify the Lenders of its receipt of such Rate Request and provide each Lender with a copy thereof.

## 2.6 Required Payments.

The principal amount of the Tranche A Term Loans, together with accrued interest, fees and all other Obligations payable thereon shall be due and payable on the Tranche A Expiration Date. The principal amount of the Tranche B Term Loans, together with accrued interest, fees and all other Obligations payable thereon shall be due and payable on the Tranche B Expiration Date.

## 3. INTEREST RATES

### 3.1 Interest Rate Options.

The Borrower shall pay interest in respect of the outstanding unpaid principal amount of the Term Loans as selected by it from the Base Rate Option or Euro-Rate Option set forth below, it being understood that, subject to the provisions of this Agreement, the Borrower may select different Interest Rate Options and different Interest Periods to apply simultaneously to the Term Loans comprising different Borrowing Tranches and may convert to or renew one or more Interest Rate Options with respect to all or any portion of the Term Loans comprising any Borrowing Tranche, provided that there shall not be at any one time outstanding more than eight (8) Borrowing Tranches in the aggregate among all of the Term Loans accruing interest at a Euro-Rate Option. If at any time the designated rate applicable to any Term Loan exceeds such Lender's highest lawful rate, the rate of interest on such Term Loan shall be limited to such Lender's highest lawful rate.

### 3.1.1 Interest Rate Options.

The Borrower shall have the right to select from the following Interest Rate Options applicable to the Term Loans:

(i) Base Rate Option: A fluctuating rate per annum (computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed) equal to the Base Rate plus 1.00% in the case of Tranche A Term Loans, and equal to the Base Rate plus 1.50% in the case of Tranche B Term Loans, such interest rate to change automatically from time to time effective as of the effective date of each change in the Base Rate; or

(ii) Euro-Rate Option: A rate per annum (computed on the basis of a year of 360 days and actual days elapsed) equal to the Euro-Rate plus 2.50% in the case of Tranche A Term Loans, and equal to the Euro-Rate plus 3.00% in the case of Tranche B Term Loans.

### 3.1.2 Rate Quotations.

The Borrower may call the Administrative Agent on or before the date on which a Rate Request is to be delivered to receive an indication of the rates then in effect as to Term Loans, but it is acknowledged that such projection shall not be binding on the Administrative Agent or the Lenders nor affect the rate of interest which thereafter is actually in effect when the election is made.

### 3.2 Interest Periods.

At any time when the Borrower shall select, convert to or renew a Euro-Rate Option, the Borrower shall notify the Administrative Agent thereof at least three (3) Business Days prior to the effective date of such Euro-Rate Option by delivering a Rate Request. The notice shall specify an interest period (the "Interest Period") during which the Euro-Rate Option shall apply, such Interest Period to be one, two, three or six Months. Notwithstanding the preceding sentence, the following provisions shall apply to any selection of, renewal of, or conversion to a Euro-Rate Option:

#### 3.2.1 Ending Date and Business Day.

any Interest Period which would otherwise end on a date which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day;

### 3.2.2 Amount of Borrowing Tranche.

each Borrowing Tranche of Term Loans to which the Euro-Rate Option applies shall be in integral multiples of \$25,000,000 and not less than \$25,000,000;

### 3.2.3 Termination Before Expiration Date.

the Borrower shall not select, convert to or renew an Interest Period for any portion of the Term Loans that would end, in the case of Tranche A Term Loans, after the Tranche A Expiration Date, or in the case of Tranche B Term Loans, after the Tranche B Expiration Date; and

### 3.2.4 Renewals.

in the case of the renewal of a Euro-Rate Option at the end of an Interest Period, the first day of the new Interest Period shall be the last day of the preceding Interest Period, without duplication in payment of interest for such day.

## 3.3 Interest After Default.

To the extent permitted by Law, upon the occurrence of an Event of Default and until such time such Event of Default shall have been cured or waived:

### 3.3.1 Interest Rate.

the rate of interest for each Term Loan otherwise applicable pursuant to Section 3.1.1 [Interest Rate Options] shall be increased by 2.0% per annum; and

### 3.3.2 Other Obligations.

each other Obligation hereunder if not paid when due shall bear interest at a rate per annum equal to the sum of the rate of interest applicable under the Base Rate Option plus an additional 2.0% per annum from the time such Obligation becomes due and payable until it is paid in full.

### 3.3.3 Acknowledgment.

The Borrower acknowledges that the increase in rates referred to in this Section 3.3 reflects, among other things, the fact that such Term Loans or other amounts have become a substantially greater risk given their default status and that the Lenders are entitled to additional compensation for such risk and all such interest shall be payable by Borrower upon demand by Administrative Agent. Upon the occurrence of an Event of Default, no Term Loan may be converted to or renewed under the Euro-Rate Option.

3.4 Euro-Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available.

3.4.1 Unascertainable.

If, on any date on which a Euro-Rate would otherwise be determined with respect to Term Loans, the Administrative Agent shall have determined that:

(i) adequate and reasonable means do not exist for ascertaining such Euro-Rate, or

(ii) a contingency has occurred which materially and adversely affects the London interbank eurodollar market relating to the Euro-Rate,

then the Administrative Agent shall have the rights specified in Section 3.4.3 [Administrative Agent's and Lender's Rights].

3.4.2 Illegality; Increased Costs; Deposits Not Available.

If at any time any Lender shall have determined that:

(i) the making, maintenance or funding of any Term Loan to which a Euro-Rate Option applies has been made impracticable or unlawful by compliance by such Lender in good faith with any Law or any interpretation or application thereof by any Official Body or with any request or directive of any such Official Body (whether or not having the force of Law), or

(ii) such Euro-Rate Option will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any such Term Loan, or

(iii) after making all reasonable efforts, deposits of the relevant amount in Dollars for the relevant Interest Period for a Term Loan to which a Euro-Rate Option applies are not available to such Lender with respect to such Term Loan in the London interbank market,

then the Administrative Agent and the Lenders shall have the rights specified in Section 3.4.3 [Administrative Agent's and Lender's Rights].

3.4.3 Administrative Agent's and Lender's Rights.

In the case of any event specified in Section 3.4.1 [Unascertainable] above, the Administrative Agent shall promptly so notify the Lenders and the Borrower thereof, and in the case of an event specified in Section 3.4.2 [Illegality; Increased Costs; Deposits Not Available] above, such Lender shall promptly so notify the Administrative Agent and endorse a certificate to such notice as to the specific circumstances of such notice, and the Administrative Agent shall promptly send copies of such notice and certificate to the other Lenders and the Borrower. Upon such date as shall be specified in such notice (which shall not be earlier than the date such notice is given), the obligation

of (A) the Lenders, in the case of such notice given by the Administrative Agent, or (B) such Lender, in the case of such notice given by such Lender, to allow the Borrower to convert to or renew a Euro-Rate Option shall be suspended until the Administrative Agent shall have later notified the Borrower, or such Lender shall have later notified the Administrative Agent, of the Administrative Agent's or such Lender's, as the case may be, determination that the circumstances giving rise to such previous determination no longer exist. If at any time the Administrative Agent makes a determination under Section 3.4.1 and the Borrower has previously notified the Administrative Agent of its selection of, conversion to or renewal of a Euro-Rate Option and such Interest Rate Option has not yet gone into effect, such notification shall be deemed to provide for the selection of, conversion to or renewal of the Base Rate Option otherwise available with respect to such Term Loans. If any Lender notifies the Administrative Agent of a determination under Section 3.4.2, the Borrower shall, subject to the Borrower's indemnification Obligations under Section 4.5.2 [Indemnity] as to any Term Loan of the Lender to which a Euro-Rate Option applies, on the date specified in such notice either convert such Term Loan to the Base Rate Option otherwise available with respect to such Term Loan or prepay such Term Loan in accordance with Section 4.4 [Prepayments]. Absent due notice from the Borrower of conversion or prepayment, such Term Loan shall automatically be converted to the Base Rate Option otherwise available with respect to such Term Loan upon such specified date.

### 3.5 Selection of Interest Rate Options.

If the Borrower fails to select a new Interest Period to apply to any Borrowing Tranche of Term Loans under the Euro-Rate Option at the expiration of an existing Interest Period applicable to such Borrowing Tranche in accordance with the provisions of Section 3.2 [Interest Periods], the Borrower shall be deemed to have converted such Borrowing Tranche to the Base Rate Option commencing upon the last day of the existing Interest Period.

## 4. PAYMENTS

### 4.1 Payments.

All payments and prepayments to be made in respect of principal, interest, Administrative Agent's Fee or other fees or amounts due from the Borrower hereunder shall be payable prior to 11:00 a.m., Pittsburgh time, on the date when due without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower, and without set-off, counterclaim or other deduction of any nature, and an action therefor shall immediately accrue. Such payments shall be made to the Administrative Agent at the Principal Office for the ratable accounts of the Lenders with respect to the Term Loans, in U.S. Dollars and in immediately available funds, and the Administrative Agent shall promptly distribute such amounts to the Lenders in immediately available funds, provided that in the event payments are received by 11:00 a.m., Pittsburgh time, by the Administrative Agent and such payments are not distributed to the Lenders on the same day received by the Administrative Agent, the Administrative Agent shall pay the Lenders the Federal Funds Effective Rate with respect to the amount of such payments for each day held by the Administrative Agent and not distributed to the Lenders. The Administrative Agent's and each Lender's statement of account, ledger or other relevant record shall, in the absence of manifest error, be conclusive as the statement of the amount of principal of and interest on the Term Loans and other amounts owing under this Agreement and shall be deemed an "account stated."

#### 4.2 Pro Rata Treatment of Lenders.

The Tranche A Term Loans shall be allocated to each Lender according to its Ratable Share, as such Ratable Share relates specifically to the Tranche A Commitments of all Lenders having Tranche A Commitments. The Tranche B Term Loans shall be allocated to each Lender according to its Ratable Share, as such Ratable Share relates specifically to the Tranche B Commitments of all Lenders having Tranche B Commitments. Each selection of, conversion to or renewal of any Interest Rate Option applicable to Tranche A Term Loans and each payment or prepayment by the Borrower with respect to principal or interest on the Tranche A Term Loans or other fees related thereto (except for the Administrative Agent's Fee) or amounts due from the Borrower hereunder to the Lenders with respect to the Tranche A Term Loans, shall (except as provided in Section 3.4.3 [Administrative Agent's and Lender's Rights] in the case of an event specified in Sections 3.4 [Euro-Rate Unascertainable, etc.], 4.4.2 [Replacement of a Lender] or 4.5 [Additional Compensation in Certain Circumstances]) be made in proportion to the Ratable Share of Tranche A Term Loans outstanding from each Lender and, if no Tranche A Term Loans are then outstanding, in proportion to the Ratable Share with respect to Tranche A Commitments of each Lender. Each selection of, conversion to or renewal of any Interest Rate Option applicable to Tranche B Term Loans and each payment or prepayment by the Borrower with respect to principal or interest on the Tranche B Term Loans or other fees related thereto (except for the Administrative Agent's Fee) or amounts due from the Borrower hereunder to the Lenders with respect to the Tranche B Term Loans, shall (except as provided in Section 3.4.3 [Administrative Agent's and Lender's Rights] in the case of an event specified in Sections 3.4 [Euro-Rate Unascertainable, etc.], 4.4.2 [Replacement of a Lender] or 4.5 [Additional Compensation in Certain Circumstances]) be made in proportion to the Ratable Share of Tranche B Term Loans outstanding from each Lender and, if no Tranche B Term Loans are then outstanding, in proportion to the Ratable Share with respect to Tranche B Commitments of each Lender. Amounts due from the Borrower hereunder which are not otherwise related to the Tranche A Term Loans or the Tranche B Term Loans shall be made in proportion to each Lender's Ratable Share with respect to the Term Loans outstanding and, if no Term Loans are then outstanding, in proportion to each Lender's Ratable Share with respect to the Commitments.

#### 4.3 Interest Payment Dates.

Interest on Term Loans to which the Base Rate Option applies shall be due and payable in arrears on the first Business Day of each July, October, January and April after the date hereof, in the case of the Tranche A Term Loans, on the Tranche A Expiration Date, in the case of the Tranche B Term Loans, on the Tranche B Expiration Date or upon acceleration of the Term Loans. Interest on Term Loans to which the Euro-Rate Option applies shall be due and payable on the last day of each Interest Period for those Term Loans and, if such Interest Period is longer than three (3) Months, also on the date that is three (3) Months after the commencement of such Interest Period (and if applicable, the date that is six (6) Months after the commencement of such Interest Period) of

such Interest Period, in the case of the Tranche A Term Loans, on the Tranche A Expiration Date, in the case of the Tranche B Term Loans, on the Tranche B Expiration Date or, in each case, upon acceleration of the Term Loans. Interest on the principal amount of the Term Loans or other monetary Obligation shall be due and payable on demand after such principal amount or other monetary Obligation becomes due and payable (whether on the stated maturity date, upon acceleration or otherwise).

#### 4.4 Prepayments.

##### 4.4.1 Voluntary Prepayments.

The Borrower shall have the right at its option from time to time to prepay the Term Loans in whole or part without premium or penalty (except as provided in Section 4.4.2 [Replacement of a Lender] below or in Section 4.5 [Additional Compensation in Certain Circumstances]):

(i) at any time with respect to Term Loans to which the Base Rate Option applies,

(ii) on the last day of the applicable Interest Period with respect to Term Loans to which a Euro-Rate Option applies,

(iii) on the date specified in a notice by any Lender pursuant to Section 3.4 [Euro-Rate Unascertainable, etc.] with respect to any Term Loan to which a Euro-Rate Option applies.

Whenever the Borrower desires to prepay any part of the Term Loans, it shall provide a prepayment notice to the Administrative Agent by 1:00 p.m., Pittsburgh time, at least three (3) Business Days prior to the date of prepayment of the Term Loans, setting forth the following information:

(x) the date, which shall be a Business Day, on which the proposed prepayment is to be made (the "Prepayment Date");

(y) a statement indicating whether the prepayment is of Tranche A Term Loans or Tranche B Term Loans; and

(z) the total principal amount of such prepayment, which shall not be less than \$5,000,000 and in increments of \$1,000,000 above \$5,000,000.

All prepayment notices shall be irrevocable. The principal amount of the Term Loans for which a prepayment notice is given, together with interest on such principal amount, shall be due and payable on the date specified in such prepayment notice as the date on which the proposed prepayment is to be made.

During any period prior to the repayment in full of the Tranche A Term Loans, in accordance with the provision hereinafter set forth in this paragraph, in the event of any proposed prepayment of any portion of the Tranche B Loans, a Lender with outstanding Tranche B Term Loans may elect not to receive its Ratable Share of such proposed prepayment. Upon its receipt of any notice of prepayment of Tranche B Term Loans pursuant to this Section 4.4.1, the Administrative Agent shall promptly give the Lenders with outstanding Tranche B Term Loans notice of the amount of prepayment specified in such notice. Prior to the repayment in full the Tranche A Term Loans, in the event that any Lender with outstanding Tranche B Term Loans elects not to receive its Ratable Share of such prepayment, such Lender shall, on or before the first Business Day (the "Cutoff Date") prior to the Prepayment Date, provide written notice to the Administrative Agent of the amount, if any, it elects not to receive in prepayment of its Tranche B Term Loan (it being understood that any Lender which does not notify the Administrative Agent of its election not to receive all or part of any prepayment on or before the Cutoff Date shall be deemed to have elected, as of the Cutoff Date, not to make such election). All amounts that Lenders with Tranche B Term Loans have elected not to receive pursuant to this paragraph shall be applied in the following manner: (i) first, to prepay the Tranche B Term Loans of the Lenders that have not elected not to receive such prepayments according to the Ratable Share with respect to the outstanding Tranche B Term Loans of each such Lender, (ii) second, to prepay the Tranche A Term Loans according to the Ratable Share with respect to the outstanding Tranche A Term Loans of each Lender; and (iii) third, the excess, if any, shall be returned to the Borrower.

After the date of repayment in full of the Tranche A Term Loans, a Lender with Tranche B Term Loans outstanding shall no longer have the option, as provided in the immediately prior paragraph, to elect not to receive its Ratable Share of any prepayment of Tranche B Term Loans. Without limiting the foregoing, from and after the date of repayment in full of the Tranche A Term Loans, each voluntary prepayment of Tranche B Term Loans made pursuant to this Section shall be applied to prepay the Tranche B Term Loans of the Lenders according to the Ratable Share with respect to the outstanding Tranche B Term Loans of each such Lender.

Except as provided in Section 3.4.3 [Administrative Agent's and Lender's Rights], if the Borrower prepays Term Loans but fails to specify the applicable Borrowing Tranche which the Borrower is prepaying, the prepayment shall be applied (i) first to Term Loans to which the Base Rate Option applies, and (ii) then to Term Loans to which the Euro-Rate Option applies. Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Lenders under Section 4.5.2 [Indemnity].

#### 4.4.2 Replacement of a Lender.

In the event any Lender (i) gives notice under Section 3.4 [Euro-Rate Unascertainable, etc.] or Section 4.5.1 [Increased Costs, etc.], or (ii) becomes subject to the control of an Official Body (other than normal and customary supervision), then the Borrower shall have the right at its option, with the consent of the Administrative Agent, which shall not be unreasonably withheld (except that during any period when an Event of Default exists and is continuing, the Administrative Agent may withhold such consent in its sole discretion), to prepay the Term Loans of such Lender in whole, together with all interest and fees accrued thereon and all other amounts due and payable to such

Lender under the Loan Documents, and terminate such Lender's Commitment within ninety (90) days after (y) receipt of such Lender's notice under Section 3.4 [Euro-Rate Unascertainable, etc.] or 4.5.1 [Increased Costs, etc.], or (z) the date such Lender became subject to the control of an Official Body, as applicable; provided that the Borrower shall also pay to such Lender at the time of such prepayment any amounts required under Section 4.5 [Additional Compensation in Certain Circumstances] (except that the Borrower shall not be required to indemnify such Lender for liabilities, losses or expenses under Section 4.5.2(i) sustained by such Lender as a consequence of the prepayment of the Term Loans of such Lender in accordance with this Section 4.4.2 on a day other than the last day of an Interest Period with respect to Term Loans to which a Euro-Rate Option applies if the Term Loans of such Lender are being prepaid because such Lender has determined that the making, maintenance or funding of such Term Loans by such Lender under the Euro-Rate Option has been made unlawful or because such Lender has become subject to the control of an Official Body) and any accrued interest due on such amount and any related fees; provided, however, that the Commitment and any Term Loan of such Lender shall be provided by one or more of the remaining Lenders at its sole discretion or a replacement lender acceptable to the Administrative Agent. Notwithstanding the foregoing, the Administrative Agent may only be replaced subject to the requirements of Section 9.14 [Successor Agents].

#### 4.4.3 Change of Lending Office.

Each Lender agrees that upon the occurrence of any event giving rise to increased costs or other special payments under Section 3.4.2 [Illegality, etc.] or 4.5.1 [Increased Costs, etc.] with respect to such Lender, it will if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loan affected by such event, provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, in such Lender's good faith determination, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 4.4.3 shall affect or postpone any of the Obligations of the Borrower or any other Loan Party or the rights of any Agent or any Lender provided in this Agreement.

#### 4.5 Additional Compensation in Certain Circumstances.

##### 4.5.1 Increased Costs or Reduced Return Resulting From Taxes, Reserves, Capital Adequacy Requirements, Expenses, Etc.

If any Law, guideline or interpretation or any change in any Law, guideline or interpretation or application thereof by any Official Body charged with the interpretation or administration thereof or compliance with any request or directive (whether or not having the force of Law) of any central bank or other Official Body:

(i) subjects any Lender to any tax or changes the basis of taxation with respect to this Agreement or the Term Loans or payments by the Borrower of principal, interest or other amounts due from the Borrower hereunder (except for taxes on the overall net income of such Lender),

(ii) imposes, modifies or deems applicable any capital adequacy or similar requirement (A) against assets (funded or contingent) of, or other credits or commitments to extend credit extended by, any Lender, or (B) otherwise applicable to the obligations of any Lender under this Agreement,

(iii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, or assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds by, any Lender, or

and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon any Lender with respect to this Agreement, or the making, maintenance or funding of any part of the Term Loans (or, in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on any Lender's capital, taking into consideration such Lender's customary policies with respect to capital adequacy) by an amount which such Lender in its sole discretion deems to be material, such Lender shall from time to time notify the Borrower and the Administrative Agent of the amount determined in good faith (using any averaging and attribution methods employed in good faith) by such Lender to be necessary to compensate such Lender for such increase in cost, reduction of income, additional expense or reduced rate of return. Such notice shall set forth in reasonable detail the basis for such determination. Such amount shall be due and payable by the Borrower to such Lender ten (10) Business Days after such notice is given.

#### 4.5.2 Indemnity.

In addition to the compensation required by Section 4.5.1 [Increased Costs, etc.], the Borrower shall indemnify each Lender against all liabilities, losses or expenses (including loss of margin, any loss or expense incurred in liquidating or employing deposits from third parties and any loss or expense incurred in connection with funds acquired by a Lender to fund or maintain Term Loans subject to a Euro-Rate Option) which such Lender sustains or incurs as a consequence of any

(i) payment, prepayment, conversion or renewal of the Term Loans to which a Euro-Rate Option applies on a day other than the last day of the corresponding Interest Period (whether or not such payment or prepayment is mandatory, voluntary or automatic and whether or not such payment or prepayment is then due),

(ii) attempt by the Borrower to revoke (expressly, by later inconsistent notices or otherwise) in whole or part any Rate Request under Section 2.5 [Request to Select Interest Rate Options] or Section 3.2 [Interest Periods] or notice relating to prepayments under Section 4.4 [Prepayments], or

(iii) default by the Borrower in the performance or observance of any covenant or condition contained in this Agreement or any other Loan Document, including any failure of the Borrower to pay when due (by acceleration or otherwise) any principal of or interest on the Term Loans or any other amount due hereunder.

If any Lender sustains or incurs any such loss or expense, it shall from time to time notify the Borrower of the amount determined in good faith by such Lender (which determination may include such assumptions, allocations of costs and expenses and averaging or attribution methods as such Lender shall deem reasonable) to be necessary to indemnify such Lender for such loss or expense. Such notice shall set forth in reasonable detail the basis for such determination. Such amount shall be due and payable by the Borrower to such Lender ten (10) Business Days after such notice is given.

4.6 [Intentionally Omitted]

4.7 Taxes.

4.7.1 No Deductions.

All payments made by the Borrower hereunder shall be made free and clear of and without deduction for any present or future taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the net income of the Lenders and all income and franchise taxes of the United States applicable to the Lenders (all such non-excluded taxes, levies, imposts deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable under the Credit Agreement, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this subsection), the Administrative Agent receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant tax authority or other authority in accordance with applicable law.

4.7.2 Stamp Taxes.

In addition, the Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges, or similar levies which arise from any payment made hereunder or from the execution, delivery, or registration or otherwise with respect to, the Credit Agreement (hereinafter referred to as "Other Taxes").

4.7.3 Indemnification for Taxes Paid by Lenders.

The Borrower shall indemnify the Lenders for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this subsection) paid by such Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date such Lender makes written demand therefor.

#### 4.7.4 Certificate.

Within 30 days after the date of any payment of any Taxes by the Borrower, the Borrower shall furnish to the Administrative Agent for the benefit of the Lenders the original or a certified copy of a receipt evidencing payment thereof. If no Taxes are payable in respect of any payment by the Borrower, the Borrower shall, if so requested by any Lender, provide a certificate of an officer of the Borrower to that effect.

#### 4.7.5 Survival.

Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in subsections 4.7.1 [No Deductions] through 4.7.4 [Certificate] shall survive the payment in full of the Term Loan made to Borrower by any Lender under the Agreement.

#### 4.7.6 Refund and Contest.

If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes or Other Taxes with respect to which the Borrower was required to take the actions specified in the second sentence of subsection 4.7.1 [No Deductions], the relevant Lender (to the extent such Lender reasonably determines in good faith that it will not suffer any adverse effect as a result thereof) shall cooperate with the Borrower in challenging the imposition of such Taxes or Other Taxes at the Borrower's expense if so requested by the Borrower in writing. If such Lender receives a refund of Taxes or Other Taxes for which the payment has been made by the Borrower pursuant to this Agreement, which refund in the good faith judgment of such Lender is attributable to the Borrower, then such Lender shall reimburse the Borrower for such amount as such Lender determines to be the proportion of the refund as will leave it, after such reimbursement, in no better or worse position than it would have been in if the payment had not been required. No Lender nor any Agent shall be obliged to disclose information regarding its tax affairs or computations to Borrower in connection with this Section 4.7.6 or any other provision of Section 4.7 [Taxes].

### 5. REPRESENTATIONS AND WARRANTIES

#### 5.1 Representations and Warranties.

The Borrower represents and warrants to the Agents and each of the Lenders as follows:

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

#### 5.1.2 LLC Interests of Borrower; Subsidiaries; and Subsidiary Shares.

Schedule 5.1.2 states the name of each of the Borrower's Subsidiaries, whether such Subsidiary is a Significant Subsidiary, Inactive Subsidiary or a Special Subsidiary, its jurisdiction of organization, 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") if it is a partnership and its outstanding limited liability company interests, interests assigned to managers thereof and the voting rights associated therewith (the "LLC Interests") if it is a limited liability company. Schedule 5.1.2 also sets forth the jurisdiction of organization of the Borrower, its outstanding limited liability company interests, interests assigned to managers thereof and the voting rights associated therewith (the "Borrower LLC Interests"). The Borrower and each Subsidiary of the Borrower has good and marketable 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 liens in favor of the Administrative Agent for the benefit of the Lenders under the Loan Documents. AWAC has good and marketable title to all of the Borrower LLC Interests it purports to own, free and clear in each case of any Lien. All Borrower LLC Interests, Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, 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, LLC Interests and Borrower LLC Interests have been made or paid, as the case may be. There are no options, warrants or other rights outstanding to purchase any such Borrower LLC Interests, Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on Schedule 5.1.2.

#### 5.1.3 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 Indebtedness 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. The Borrower and each Subsidiary of the Borrower party to the Acquisition Documents has full power to enter into, execute, deliver and perform the Acquisition Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its respective part.

#### 5.1.4 Validity and Binding Effect.

This Agreement has been duly and validly executed and delivered by each Loan Party, 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. The Acquisition Documents have been duly and validly executed and delivered by the Borrower and each Subsidiary of the Borrower party thereto. The Acquisition Documents constitute the legal, valid and binding obligation of the Borrower and each Subsidiary of the Borrower party thereto, enforceable against each such Person in accordance with the terms thereof, except to the extent that enforceability of the Acquisition Documents may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar law, affecting the enforceability of creditors' rights generally or limiting the right of specific performance. A complete copy of the Acquisition Documents has been delivered to the Administrative Agent.

#### 5.1.5 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 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 (ii) any Law or any material 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 of the foregoing Persons is bound or to which any of the foregoing Persons is subject, or 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 Liens granted under the Loan Documents).

#### 5.1.6 Litigation.

There are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against such Loan Party or any Subsidiary of such Loan Party at law or equity before any Official Body which individually or in the aggregate could reasonably be expected to result in a Material Adverse Change. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of any order, writ, injunction or any decree of any Official Body which could reasonably be expected to result in a Material Adverse Change.

#### 5.1.7 Financial Statements.

(i) Borrower Historical Statements. The Borrower has delivered to the Administrative Agent copies of its audited consolidated year-end financial statements for and as of the end of the fiscal year ended December 31, 2001 (the "Historical Statements"). The Historical Statements were compiled from the books and records maintained by the Borrower's management, are correct and complete and fairly represent the consolidated financial condition of the Borrower 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.

(ii) Accuracy of Financial Statements. Neither the Borrower nor any Subsidiary of the Borrower has on the Restatement Effective Date any liabilities, contingent or otherwise, or forward or long-term commitments that are not disclosed in the Historical Statements or in the notes thereto, and except as disclosed therein there are no unrealized or anticipated losses from any commitments of the Borrower or any Subsidiary of the Borrower which could reasonably be expected to result in a Material Adverse Change. Since December 31, 2001, no Material Adverse Change has occurred, except as set forth on Schedule 5.1.7.

(iii) Financial Projections. The Borrower has delivered to the Agents financial projections of the Borrower and its Subsidiaries, on a consolidated and consolidating basis, for the period January 1, 2002, through and including December 31, 2007, derived from various assumptions of the Borrower's management (the "Financial Projections"). The Financial Projections represent a reasonable range of possible results in light of the history of the business, present and foreseeable conditions and the intentions of the Borrower's management. The Financial Projections accurately reflect, in all material respects on a consolidated basis, the liabilities of the Borrower and its Subsidiaries upon consummation of the transactions contemplated hereby as of the Restatement Effective Date.

#### 5.1.8 Use of Proceeds; Margin Stock.

##### (i) General.

The Loan Parties shall use the proceeds of the Term Loans in accordance with Sections 2.4 [Use of Proceeds] and 7.1.9 [Use of Proceeds].

##### (ii) 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 Term Loan has been or will be used, immediately, incidentally or ultimately, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or to refund Indebtedness originally incurred for such purpose, or for any purpose which entails a violation of or which is inconsistent with the provisions of the regulations of the Board of Governors of the Federal Reserve System. None of the Loan Parties nor any Subsidiary of any Loan Party holds or intends to hold margin stock in such amounts that more than 25% of the reasonable value of the assets of any Loan Party or Subsidiary of any Loan Party are or will be represented by margin stock.

#### 5.1.9 Full Disclosure.

Neither this Agreement nor any other Loan Document, nor the Acquisition Documents, nor any certificate, statement, agreement or other documents furnished to the Administrative Agent or any Lender in connection herewith or therewith, contains with respect to the Borrower 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 misleading. There is no fact known to any Loan Party which materially adversely affects the business, financial condition or results of operations of the Borrower and its Subsidiaries taken as a whole which has not been set forth in this Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Administrative Agent and the Lenders prior to or at the date hereof in connection with the transactions contemplated hereby.

#### 5.1.10 Taxes.

All federal, state, local and other tax returns required to have been filed with respect to each Loan Party and each Subsidiary of each Loan Party have been filed, and payment or adequate provision has been made for the payment of all taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that such taxes, fees, assessments and other charges 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. 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 for any period.

#### 5.1.11 Consents and Approvals.

No consent, approval, exemption, order or authorization of, or a registration or filing with, any Official Body or any other Person is required by any Law or any agreement in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents by any Loan Party, except as listed on Schedule 5.1.11, all of which shall have been obtained or made on or prior to the Restatement Effective Date except as otherwise indicated on Schedule 5.1.11.

#### 5.1.12 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 or other extensions of credit to be made on the Restatement Effective Date under or pursuant to the Loan Documents which constitutes an Event of Default or Potential Default. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of (i) 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 (ii) any material 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 could reasonably be expected to result in a Material Adverse Change. All Material Contracts described in the definition of "Material Contracts" to which any Loan Party or any Subsidiary of any Loan Party is a party or by 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 Borrower upon each of the other parties thereto in accordance with their respective terms and there is no default by any Loan Party or any Subsidiary of any Loan Party under any Material Contract nor, to the Loan Parties' knowledge, any default thereunder with respect to parties thereto other than any Loan Party or Subsidiary of a Loan Party 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 organization document, or any requirement of Law which could reasonably be expected to result in a Material Adverse Change.

#### 5.1.13 Insurance.

No notice has been given or claim made and no grounds exist to cancel or avoid any insurance policies or bonds to which the Loan Parties are subject or to reduce the coverage provided thereby. The Loan Parties are subject to insurance policies and bonds providing 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.

#### 5.1.14 Compliance With Laws.

The Loan Parties and their Subsidiaries are in compliance in all material respects with all applicable Laws (other than Environmental Laws which are specifically addressed in Section 5.1.18 [Environmental Matters]) in all jurisdictions in which any Loan Party or Subsidiary of any Loan Party is doing business except where the failure to do so could not reasonably be expected to result in a Material Adverse Change.

#### 5.1.15 Investment Companies; Regulated Entities.

None of the Loan Parties or any Subsidiaries of any Loan Party is an "investment company" registered or required to be registered under the Investment Company Act of 1940 or under the "control" of an "investment company" as such terms are defined in the Investment Company Act of 1940 and shall not become such an "investment company" or under such "control." None of the Loan Parties or any Subsidiary of any Loan Party is subject to any other Federal or state statute or regulation limiting its ability to incur Indebtedness for borrowed money.

#### 5.1.16 Plans and Benefit Arrangements.

(i) The Borrower and each other member of the ERISA Group are in compliance in all material respects 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 best knowledge of the Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any material liability of the Borrower or any other member of the ERISA Group. The Borrower 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 Borrower and each other member of the ERISA Group (i) have fulfilled in all material respects their obligations under the minimum funding standards of ERISA, (ii) have not incurred any liability to the PBGC, and (iii) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA. All Plans, Benefit Arrangements and Multiemployer Plans have been administered in accordance with their terms and applicable Law.

(ii) No event requiring notice to the PBGC under Section 302(f)(4)(A) of ERISA 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 307 of ERISA has been made or is reasonably expected to be made to any Plan.

(iii) Neither the Borrower nor any other member of the ERISA Group has incurred or reasonably expects to incur any material withdrawal liability under ERISA to any Multiemployer Plan or Multiple Employer Plan. Neither the Borrower nor any other member of the ERISA Group has been notified by any Multiemployer Plan or Multiple Employer Plan that such Multiemployer Plan or Multiple Employer Plan has been terminated within the meaning of Title IV of ERISA and, to the best knowledge of the Borrower, no Multiemployer Plan or Multiple Employer Plan is reasonably expected to be reorganized or terminated, within the meaning of Title IV of ERISA.

#### 5.1.17 Employment Matters.

Each of the Loan Parties and each of their Subsidiaries is in substantial compliance with the Labor Contracts and all applicable federal, state and local labor and employment Laws including those related to 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, where the failure to comply could reasonably be expected to result in a Material Adverse Change. There are no outstanding 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.

5.1.18 Environmental Matters.

Except as set forth on Schedule 5.1.18:

(a) the Loan Parties and their Subsidiaries are and have been in substantial compliance with all Environmental Laws, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change;

(b) the Loan Parties and their Subsidiaries hold and are operating in substantial compliance with Environmental Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change;

(c) neither any property of any Loan Party or any Subsidiary of any Loan Party nor their respective operations conducted thereon violates any order of any court governmental authority made pursuant to Environmental Laws except for noncompliance with respect thereto which could not reasonably be expected to result in a Material Adverse Change;

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

(d) there are no pending or, to the knowledge of any Loan Party, threatened Environmental Complaints against any Loan Party or any Subsidiary of any Loan Party which could reasonably be expected to result in a Material Adverse Change.

5.1.19 Senior Debt Status.

The Obligations of each Loan Party under this Agreement, the Guaranty Agreement and each of the other Loan Documents to which it is a party do rank and will rank at least pari passu in priority of payment with all other Indebtedness of such Loan Party except Indebtedness of such Loan Party to the extent secured by Permitted Liens. There is no Lien upon or with respect to any of the properties or income of any Loan Party or Subsidiary of any Loan Party which secures indebtedness or other obligations of any Person except for Permitted Liens.

5.1.20 Title to Properties.

Each Loan Party and each Subsidiary of each Loan Party has good and marketable title to or valid leasehold interest in all material properties, assets and other rights which it purports to own or lease or which are reflected as owned or leased on its books and records, free and clear of all Liens and encumbrances except Permitted Liens, and subject to the terms and conditions of the applicable leases.

5.1.21 Security Interests.

The Liens and security interests continued on the Restatement Effective Date or thereafter granted to the Administrative Agent for the benefit of itself and the Lenders pursuant to the Collateral Documents constitute and will continue to constitute Prior Security Interests under the Uniform Commercial Code as in effect in each applicable jurisdiction (the "Uniform Commercial Code") or other applicable Law, entitled to all the rights, benefits and

priorities provided by the Uniform Commercial Code or such Law. Financing statements relating to said security interests have been filed in each office and, in each jurisdiction where required in order to perfect the security interests described above, possession has been taken of all certificates or instruments evidencing the Collateral, and all such action as is necessary or advisable to establish such rights of the Administrative Agent for the benefit of itself and the Lenders has been taken, and there is no necessity for any further action in order to preserve, protect and continue such rights, except the filing of continuation statements with respect to such financing statements within six months prior to each five-year anniversary of the filing of such financing statements. All filing fees and other expenses in connection with each such action have been or will be paid by the Borrower.

#### 5.1.22 Status of the Pledged Collateral.

All the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral to be pledged pursuant to the Pledge Agreement (Subsidiary Equity Interests) are or will be upon issuance validly issued and nonassessable and owned beneficially and of record by the pledgor free and clear of any Lien or restriction on transfer, except as otherwise provided by the Pledge Agreement (Subsidiary Equity Interests) and except as the right of the Lenders 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 SEC thereunder and by applicable state securities laws and the Canyon Fuel LLC Agreement. 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 5.1.22. The Loan Parties have delivered true and correct copies of such partnership agreements and limited liability company agreements to the Administrative Agent.

#### 5.1.23 Coastal Agreement.

Canyon Fuel is a "Buyer Indemnitee" under the Coastal Agreement and, as such, has the rights of an "Indemnified Party" under the Coastal Agreement. Consummation of the Acquisition Transactions did not alter the rights of Canyon Fuel under the Coastal Agreement.

#### 5.1.24 Solvency.

On the Restatement Effective Date and at the time of the borrowing of the Term Loans, both the Borrower and the Borrower and its Subsidiaries on a consolidated basis are Solvent after giving effect to the transactions contemplated by the Loan Documents and any incurrence of Indebtedness and all other Obligations.

#### 5.2 Continuation of Representations.

Except as to those representations and warranties limited by their terms to the Closing Date or the Restatement Effective Date, as the case may be, the Borrower makes the representations and warranties in this Section 5 on the Restatement Effective Date.

## 6. CONDITIONS OF LENDING

The obligation of each Lender to amend and restate the Original Credit Agreement and make the Term Loans hereunder is subject to the performance by the Borrower of its Obligations to be performed hereunder at or prior to the making of the Term Loans and to the satisfaction of the following further conditions:

### 6.1 Conditions to Amendment and Restatement of the Credit Agreement.

On the Restatement Effective Date:

#### 6.1.1 Officer's Certificate.

The representations and warranties of the Borrower contained in Section 5 [Representations and Warranties] and of each Loan Party in each of the other Loan Documents shall be true and accurate on and as of the Restatement Effective Date with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which relate solely to an earlier date or time, which representations and warranties shall be true and correct on and as of the specific dates or times referred to therein), and each of the Loan Parties shall have performed and complied with all covenants and conditions hereof and thereof, no Event of Default or Potential Default shall have occurred and be continuing or shall exist; and there shall be delivered to the Administrative Agent for the benefit of each Lender a certificate of the Borrower dated the Restatement Effective Date and signed by the Chief Executive Officer, President, Chief Financial Officer, other authorized officer or Managing Member of the Borrower to each such effect.

#### 6.1.2 Secretary's Certificate.

There shall be delivered to the Administrative Agent for the benefit of each Lender a certificate dated the Restatement Effective Date and signed by the Secretary or an Assistant Secretary of each of the Loan Parties, certifying as appropriate as to:

(i) all action taken by each Loan Party in connection with this Agreement and the other Loan Documents;

(ii) the names of the officer or officers authorized to sign this Agreement and the other Loan Documents and the true signatures of such officer or officers and specifying the Authorized Officers permitted to act on behalf of each Loan Party for purposes of this Agreement and the true signatures of such officers, on which the Administrative Agent and each Lender may conclusively rely; and

(iii) a copy of each Loan Party's organizational documents, including its certificate of incorporation and bylaws, certificate of limited partnership and partnership agreement, or limited liability company certificate and agreement, as the case may be, as in effect on the Restatement Effective Date and, in the case of the certificate of incorporation, limited partnership certificate or limited liability company certificate, certified by the appropriate state official where such documents are filed in a state office, together with certificates from the appropriate state officials as to the continued existence and good standing of each Loan Party in the state of its formation and each jurisdiction where it conducts business.

#### 6.1.3 Delivery of Loan Documents; Filing Receipts.

This Agreement, the Guaranty Agreement, the Collateral Sharing Agreement, the Collateral Documents, the Term Notes, the Intercompany Subordination Agreement, and the other Loan Documents shall have been duly executed and delivered to the Administrative Agent and shall continue the Obligations and the liens and security interests in the Collateral for the benefit of the Lenders, together with all appropriate financing statements and appropriate stock powers and certificates evidencing the Subsidiary Shares, the Partnership Interests and the LLC Interests, and all other instruments and Collateral required to be delivered to the Administrative Agent for the benefit of the Lenders under the Collateral Documents. The Administrative Agent shall have received copies of all filing receipts and acknowledgments issued by any governmental authority to evidence any recordation or filing necessary to continue the perfection of the Lien of the Lenders on the Collateral or other satisfactory evidence of such recordation and filing.

#### 6.1.4 Opinion of Counsel.

There shall be delivered to the Administrative Agent for the benefit of each Lender a written opinion of Kirkpatrick & Lockhart LLP and of Robert G. Jones, General Counsel for the Loan Parties (who may rely on the opinions of such other counsel as may be acceptable to the Administrative Agent), dated the Restatement Effective Date and in form and substance satisfactory to the Administrative Agent and its counsel:

(i) as to the matters set forth in Exhibit 6.1.4; and

(ii) as to such other matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

#### 6.1.5 Legal Details.

All legal details and proceedings in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be in form and substance satisfactory to the Administrative Agent and counsel for the Administrative Agent, and the Administrative Agent shall have received all such other counterpart originals or certified or other copies of such documents and proceedings in connection with such transactions, in form and substance satisfactory to the Administrative Agent and said counsel, as the Administrative Agent or said counsel may reasonably request.

#### 6.1.6 Payment of Fees.

The Borrower shall have paid or caused to be paid to the Arrangers all fees required to be paid by the Borrower to the Arrangers for their own account or for the account of each Lender, and all other fees accrued through the Restatement Effective Date and the costs and expenses for which the Arrangers and the Lenders are entitled to be reimbursed.

6.1.7 Consents.

All material consents required to effectuate the transactions contemplated by the Loan Documents shall have been obtained.

6.1.8 Officer's Certificate Regarding No Material Adverse Change.

Since December 31, 2001, no event shall have occurred with respect to the Borrower and its Subsidiaries which could reasonably be expected to result in a Material Adverse Change; since December 31, 2001, there shall have been no material change in the management of the Borrower; and there shall have been delivered to the Administrative Agent for the benefit of each Lender a certificate dated the Restatement Effective Date, in form and substance satisfactory to the Agents, and signed by the President, other executive financial officer or Managing Member of the Borrower to each such effect and further certifying that the Borrower and its Subsidiaries on a consolidated basis are Solvent after giving effect to the transactions contemplated hereby, the accuracy of all representations and warranties by the Loan Parties under the Loan Documents, the compliance with all covenants under the Loan Documents and the absence of any Event of Default or Potential Default.

6.1.9 No Violation of Laws.

The making of the Term Loans, and the consummation of the transactions contemplated hereby shall not contravene any Law applicable to any Loan Party or any of the Lenders.

6.1.10 No Actions or Proceedings.

No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain or prohibit, or to obtain damages in respect of, this Agreement or the other Loan Documents, or the consummation of the transactions contemplated hereby or thereby or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or any of the other Loan Documents .

6.1.11 Insurance.

The Borrower shall have delivered to the Agents evidence of the insurance required under the Loan Documents.

6.1.12 Report of Independent Engineer.

The Borrower shall have delivered to the Agents the report of Weir International, independent engineers, with respect to the coal reserves of Borrower and its Subsidiaries and such other matters as are contained in such report.

#### 6.1.13 Credit Facility for the Parent.

All conditions to the effectiveness of the amendment and restatement on the Restatement Effective Date of the Arch Credit Facility shall have been satisfied.

#### 6.1.14 Satisfactory Environmental Review.

The environmental condition of the Loan Parties' and their Subsidiaries' assets shall be satisfactory to the Agents in all respects.

#### 6.1.15 Refinancing.

(a) To permit the refinancing by the Lenders of the term loans outstanding under the Original Credit Agreement, Borrower shall have (i) delivered to the Administrative Agent not later than 10:00 a.m., Pittsburgh time, three (3) Business Days prior to the first Borrowing Date hereunder an appropriately completed irrevocable Rate Request pursuant to which Term Loans in an amount sufficient to refinance the term loans under the Original Credit Agreement shall be requested, and (ii) made appropriate arrangements with respect to all amounts outstanding under the Original Credit Agreement in order to accomplish the amendment and restatement thereof on such first Borrowing Date.

(b) In the event Borrower requests that the first Borrowing Date hereunder occur on the Restatement Effective Date, Borrower shall provide to the Administrative Agent, in addition to the Rate Request required by Clause (a) directly above, its agreement in the form of Exhibit 6.1.15 pursuant to which Borrower shall be bound by the terms of Section 4.5.2 [Indemnity] with respect to such proposed borrowing notwithstanding that this Agreement shall not be effective at the time of such request and may not become effective on the date such borrowing is contemplated.

### 7. COVENANTS

#### 7.1 Affirmative Covenants.

The Borrower covenants and agrees that until payment in full of the Term Loans and interest thereon, satisfaction of all of the Loan Parties' other Obligations under the Loan Documents and termination of the Commitments, the Borrower shall, and shall cause each of its Subsidiaries to, comply at all times with the following affirmative covenants:

##### 7.1.1 Preservation of Existence, Etc.

The Borrower shall maintain its legal existence as a limited liability company. The 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 be corrected without a material adverse effect on the Borrower. The Borrower shall cause each of its 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 7.2.3 [Liquidations, Mergers, etc.]. The Borrower shall cause each of its 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 could not reasonably be expected to result in a Material Adverse Change.

#### 7.1.2 Payment of Liabilities, Including Taxes, Etc.

The Borrower shall, and shall cause each of its Subsidiaries to, duly pay and discharge all taxes, assessments and governmental charges or levies 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 Borrower or any Subsidiary of the Borrower, provided that neither the Borrower nor any Subsidiary of the Borrower shall be required to pay any such tax, assessment, charge, levy 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, but only to the extent that failure to discharge any such liabilities would not adversely affect the value of the Collateral.

#### 7.1.3 Maintenance of Insurance.

The Borrower shall, and shall cause each of its Subsidiaries to, be subject to insurance policies which insure their respective 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.

#### 7.1.4 Maintenance of Properties and Leases.

The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its respective material properties, necessary or useful in the proper conduct of the business of the Borrower or such Subsidiary of the Borrower, in good working order and condition, ordinary wear and tear excepted.

#### 7.1.5 Visitation Rights.

The Borrower shall, and shall cause each of its Subsidiaries to, permit any of the officers or authorized employees or representatives of the Administrative Agent or any of the Lenders to visit and inspect during normal business hours any of its properties and to examine and make excerpts from its books and records and discuss its business affairs, finances and accounts with its officers, all in such detail and at such times and as often as any of the Lenders may reasonably request, provided that each Lender shall provide the Borrower and the Administrative Agent with reasonable notice prior to any visit or inspection. In the event any Lender desires to conduct an audit of the Borrower or any Subsidiary of the Borrower, such Lender shall make a reasonable effort to conduct such audit contemporaneously with any audit to be performed by the Administrative Agent.

#### 7.1.6 Keeping of Records and Books of Account.

The Borrower shall, and shall cause each Subsidiary of the Borrower to, maintain and keep proper books of record and account which enable the 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 the Borrower or any Subsidiary of the 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.

#### 7.1.7 Plans and Benefit Arrangements.

The Borrower shall, and shall cause each other member of the ERISA Group to, comply with ERISA, the Internal Revenue Code and other applicable Laws applicable to Plans and Benefit Arrangements except where such failure, alone or in conjunction with any other failure, could not reasonably be expected to result in a Material Adverse Change. Without limiting the generality of the foregoing, the Borrower shall cause all of its Plans and all Plans maintained by any member of the ERISA Group to be funded in accordance with the minimum funding requirements of ERISA and shall make, and cause each member of the ERISA Group to make, in a timely manner, all contributions due to Plans, Benefit Arrangements and Multiemployer Plans.

#### 7.1.8 Compliance With Laws.

The Borrower shall, and shall cause each of its Subsidiaries to, comply with all applicable Laws, including all Environmental Laws, in all respects, provided that it shall not be deemed to be a violation of this Section 7.1.8 if any failure to comply with any Law would not result in fines, penalties, remediation costs, other similar liabilities or injunctive relief which in the aggregate could reasonably be expected to result in a Material Adverse Change. Without limiting the generality of the foregoing, the Borrower shall and shall cause each of its Subsidiaries to comply with all Environmental Permits applicable to their respective operations and properties; obtain, maintain, comply with and renew all Environmental Permits necessary for their respective operations and properties; and manage, use and handle all Regulated Substances in compliance with all applicable Environmental Laws, in each case, except for such non-compliance which would not or could not reasonably be expected to result in a Material Adverse Change.

#### 7.1.9 Use of Proceeds.

On and after the Restatement Effective Date, the Borrower will use the proceeds of the Term Loans only to continue and refinance the term loans under the Original Credit Agreement. The Borrower's use of the proceeds of the Term Loans shall not be for any purpose which contravenes any applicable Law or any provision hereof.

7.1.10 Operation of Mines.

The Borrower shall, and shall cause each of its Subsidiaries to, operate their mines in all material respects in accordance with sound coal mining practices.

7.1.11 Maintenance of Material Contracts.

The Borrower shall, and shall cause each of its Subsidiaries to, comply with the provisions of and to maintain in full force and effect all material licenses and material permits required for the lawful operation of the Borrower and each of its Subsidiaries (other than Environmental Permits which are addressed in Section 7.1.8 [Compliance With Laws] above) and all Material Contracts to which any such Person is a party, except where the failure to so maintain in full force and effect a material license, material permit or Material Contract could not be reasonably expected to result in a Material Adverse Change.

7.1.12 Further Assurances.

Each Loan Party shall, from time to time, at its expense, faithfully preserve and protect the Administrative Agent's Lien on and Prior Security Interest in the Collateral as a continuing first priority perfected Lien and shall do such other acts and things as the Administrative Agent in its sole discretion may deem necessary or advisable from time to time in order to preserve, perfect and protect the Liens granted under the Loan Documents and to exercise and enforce its rights and remedies thereunder with respect to the Collateral.

7.1.13 Subordination of Intercompany Loans.

Each Loan Party shall cause any intercompany Indebtedness, loans or advances owed by any Loan Party to any other Loan Party or by any Subsidiary of any Loan Party to any Loan Party to be subordinated pursuant to the terms of the Intercompany Subordination Agreement.

7.1.14 Pledged Collateral Account.

The Borrower shall deposit in an account (the "Pledged Collateral Account") at the end of each fiscal quarter the amount specified below:

For Each Fiscal Quarter Ending	Deposit Amount
June 30, 2002	\$0
September 30, 2002	\$0
December 31, 2002	\$0
March 31, 2003	\$0
June 30, 2003	\$0
September 30, 2003	\$0
December 31, 2003	\$0
March 31, 2004	\$7,500,000
June 30, 2004	\$7,500,000
September 30, 2004	\$7,500,000
December 31, 2004	\$7,500,000
March 31, 2005	\$17,500,000
June 30, 2005	\$17,500,000
September 30, 2005	\$17,500,000
December 31, 2005	\$17,500,000
March 31, 2006	\$56,250,000
June 30, 2006	\$56,250,000
September 30, 2006	\$56,250,000
December 31, 2006	\$56,250,000
March 31, 2007	\$70,000,000
June 30, 2007	\$70,000,000
September 30, 2007	\$70,000,000
December 31, 2007	\$70,000,000
March 31, 2008	\$70,000,000

It is acknowledged that the amount deposited in the Pledged Collateral Account shall be held as collateral security for the Loans in accordance with the Pledge Agreement (Pledged Collateral Account).

## 7.2 Negative Covenants.

The Borrower covenants and agrees that until payment in full of the Term Loans and interest thereon, satisfaction of all of the Loan Parties' other Obligations hereunder and termination of the Commitments, the Borrower shall and shall, cause each of its Subsidiaries to, comply with the following negative covenants:

### 7.2.1 Indebtedness.

The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time create, incur, assume or suffer to exist any Indebtedness, except:

- (i) Indebtedness under the Loan Documents;
- (ii) unsecured Indebtedness of the Borrower payable to the Parent;

(iii) other Indebtedness, not to exceed in the aggregate at any time outstanding for the Borrower and its Subsidiaries, \$50,000,000; and

(iv) Indebtedness of any Subsidiary of the Borrower payable to the Borrower, so long as such Indebtedness is subordinated to the obligations of the Loan Parties under the Loan Documents pursuant to the Intercompany Subordination Agreement.

#### 7.2.2 Liens.

The Borrower shall not, and shall not permit any of its Subsidiaries to, 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, or agree or become liable to do so, except Permitted Liens.

#### 7.2.3 Liquidations, Mergers, Consolidations, Acquisitions.

The Borrower shall not, and shall not permit any of its Subsidiaries to, dissolve, liquidate or wind-up its affairs, or become a party to 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:

(1) any Subsidiary of the Borrower may consolidate or merge into any other Subsidiary of the Borrower (except for Canyon Fuel);

(2) any Loan Party may acquire, whether by purchase or by merger, (A) all of the ownership interests of another Person, (B) substantially all of assets of another Person or of a business or division of another Person, or (C) any additional ownership interest in Canyon Fuel (each a "Permitted Acquisition"), provided that each of the following requirements is met:

(i) the board of directors or other equivalent governing body of such Person shall have approved such Permitted Acquisition;

(ii) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be substantially the same as one or more line or lines of business conducted by the Loan Parties and shall comply with Section 7.2.7 [Continuation of or Change in Business], and in the case of any merger a Loan Party shall be the surviving entity after giving effect to such transaction;

(iii) no Potential Default or Event of Default shall exist immediately prior to and after giving effect to such Permitted Acquisition; and

(iv) the Borrower and its Subsidiaries shall be in compliance with the covenants contained in Sections 7.2.10 [Maximum Leverage Ratio], 7.2.11 [Minimum Fixed Charge Coverage Ratio], 7.2.12 [Minimum EBITDDA], and 7.2.13 [Minimum Net Worth] determined on a pro forma basis after giving effect to such Permitted Acquisition (including in such computation Indebtedness or other liabilities assumed or incurred in connection with such Permitted Acquisition as if such Indebtedness were incurred as of the first day of the applicable period of determination).

#### 7.2.4 Dispositions of Assets or Subsidiaries.

The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, convey, assign, lease, abandon, securitize or enter into a securitization transaction or otherwise transfer or dispose of, 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 Borrower), except:

(i) transactions involving the sale of inventory or equipment in the ordinary course of business;

(ii) any sale, transfer or lease of assets by any wholly-owned Significant Subsidiary of the Borrower to the Borrower or to any other wholly-owned Significant Subsidiary of the Borrower;

(iii) any sale of assets if and to the extent the Net Cash Proceeds thereof are applied within 180 days of the consummation of such sale to the purchase by the Borrower or a Subsidiary of substitute assets; provided that the Borrower shall have delivered to the Administrative Agent a certificate (a "Replacement Sales Certificate") of the chief financial officer or the treasurer of the Borrower, certifying as to (x) the amount of such Net Cash Proceeds and (y) the fact that the Borrower or a Subsidiary shall invest such Net Cash Proceeds in substitute assets within 180 days of the date of consummation of such sale;

(iv) any other sale, transfer or lease of assets so long as after giving effect thereto the Borrower and its Subsidiaries shall be in compliance with the covenants contained in Sections 7.2.10 [Maximum Leverage Ratio], 7.2.11 [Minimum Fixed Charge Coverage Ratio], 7.2.12 [Minimum EBITDDA], and 7.2.13 [Minimum Net Worth] determined on a pro forma basis, and prior to consummating any such sale, transfer or lease of assets, the Borrower shall have provided written notice thereof to the Administrative Agent together with a certification of the Borrower of the compliance of the Borrower and its Subsidiaries with such covenants, setting forth in such certification a detailed calculation of such pro forma compliance; or

(v) any sale, transfer, lease or other disposition of assets in the ordinary course of business which are obsolete or are no longer necessary or required in the conduct of such Loan Party's or such Subsidiary's business.

Notwithstanding the provisions of this Section 7.2.4, it is expressly agreed that the Borrower shall not, and shall not permit any of its Subsidiaries to, sell, convey, assign, lease, abandon or otherwise transfer or dispose of, voluntarily or involuntarily, any of the properties or assets, tangible or intangible, or any of the limited liability interests of Thunder Basin Coal Company LLC, a Delaware limited liability company, other than transactions permitted by clauses (i), (iii) or (v) above.

#### 7.2.5 Affiliate Transactions.

The Borrower shall not, and shall not permit any of its 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 Borrower unless such transaction is not otherwise prohibited by this Agreement and is entered into in the ordinary course of business upon fair and reasonable arm's length terms and conditions.

#### 7.2.6 Subsidiaries, Partnerships and Joint Ventures.

The Borrower shall not, and shall not permit any of its Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) any Significant Subsidiary (other than Canyon Fuel) which has joined the Guaranty Agreement as Guarantor on the Closing Date; (ii) any Subsidiary which after the Closing Date becomes a Significant Subsidiary and which upon becoming a Significant Subsidiary becomes a Guarantor in accordance with Section 10.18 [Joinder of Guarantors] and whose equity interests are pledged to the Administrative Agent for the benefit of the Lenders in accordance with Section 10.18; and (iii) any Subsidiary which is not a Significant Subsidiary. The Borrower shall cause any of its Subsidiaries which at any time becomes a Significant Subsidiary to become a Guarantor in accordance with Section 10.18 and shall cause each owner of the equity interests thereof to pledge such equity interests to the Administrative Agent for the benefit of the Lenders in accordance with Section 10.18. Except as shown on Schedule 7.2.6, neither the Borrower nor any Subsidiary of the Borrower shall become or agree to become (1) a general or limited partner in any general or limited partnership, except that the Loan Parties may be general or limited partners in other Loan Parties, or (2) a member or manager of, or hold a limited liability company interest in, a limited liability company, except that the Loan Parties may be members or managers of, or hold limited liability company interests in, other Loan Parties.

#### 7.2.7 Continuation of or Change in Business.

The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business substantially as conducted and operated by the Borrower or such Subsidiary as of the date of consummation of the transactions contemplated by the Contribution Agreement and any business substantially related thereto, and neither the Borrower nor any Subsidiary of the Borrower shall permit any material change in such business.

#### 7.2.8 Plans and Benefit Arrangements.

The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in a Prohibited Transaction with any Plan, Benefit Arrangement or Multiemployer Plan which, alone or in conjunction with any other circumstances or set of circumstances, results in liability under ERISA or which could reasonably be expected to result in a Material Adverse Change.

7.2.9 No Restriction on Dividends.

The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or be bound by any agreement which prohibits or restricts, in any manner, the payment of dividends or other distributions (whether in cash, securities, property or otherwise), the incurrence of Indebtedness by the Borrower or any Subsidiary of the Borrower which is payable to Parent or the making of any loan to the Parent by the Borrower or any Subsidiary of the Borrower other than this Agreement, the restrictions applicable to Canyon Fuel set forth in the Canyon Fuel LLC Agreement and the restrictions applicable to the Borrower set forth in the Arch Western LLC Agreement.

7.2.10 Maximum Leverage Ratio.

The Borrower shall not at any time permit the Leverage Ratio to exceed the ratio set forth below for the periods specified below:

Period	Ratio
Restatement Effective Date through and including December 31, 2002	3.25 to 1.00
January 1, 2003 through and including December 31, 2003	2.75 to 1.00
January 1, 2004 and thereafter	2.25 to 1.00

7.2.11 Minimum Fixed Charge Coverage Ratio.

The Borrower shall not permit the Fixed Charge Coverage Ratio to be less than the ratio specified below for the periods specified below:

Period	Ratio
Restatement Effective Date through and including December 31, 2003	2.75 to 1.00
January 1, 2004 and thereafter	3.75 to 1.00

7.2.12 Minimum EBITDDA.

The Borrower shall not permit the sum of EBITDDA of the Borrower and its Subsidiaries, plus, without duplication, the Appropriate Percentage of each Special Subsidiary's EBITDDA, each on a consolidated basis in accordance with GAAP, calculated as of the end of each fiscal quarter for the four (4) fiscal quarters then ended, to be less than the amount specified below during the following periods:

Period	Minimum EBITDDA
Restatement Effective Date through and including December 31, 2002	\$140,000,000
January 1, 2003 through June 30, 2003	\$150,000,000
July 1, 2003 through December 31, 2003	\$175,000,000
January 1, 2004 through June 30, 2005	\$200,000,000
July 1, 2005 and thereafter	\$225,000,000

7.2.13 Minimum Net Worth.

The Borrower shall not at any time permit Consolidated Tangible Net Worth (determined without regard to the valuation of derivatives as required by GAAP and as the effect thereof is reported in the "Other Comprehensive Income" category on the Borrower's consolidated balance sheet for each period from and after April 1, 2002) to be less than the Base Net Worth.

7.2.14 Loans and Investments.

The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time make or suffer to remain outstanding any loan or advance to, or purchase, acquire or own any stock, bonds (other than, in the ordinary course of business, royalty bonds or bonds securing performance by the Borrower or a Subsidiary of the Borrower under bonus bids), 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:

(i) trade credit extended on usual and customary terms in the ordinary course of business;

(ii) Permitted Investments;

(iii) loans by the Borrower to the Parent so long as each such loan is evidenced by the Eligible Note Receivable which is pledged to the Administrative Agent for the benefit of the Lenders pursuant to the Note Pledge Agreement; provided, however, that no such loans shall be made at any time that (x) an Event of Default has occurred and is continuing and the Required Lenders have requested the Administrative Agent to prohibit loans to the Parent by the Borrower as provided in Section 8.2.1 or such loans have automatically been prohibited by the operation of Section 8.2.2, or (y) the Eligible Reserves, as measured as of the end of each fiscal quarter, are less than 1,350,000,000 tons;

(iv) the investment by the Borrower in its Subsidiaries; and

(v) other Investments, in connection with or related to the operations of the Borrower and its Subsidiaries, not exceeding \$25,000,000 in the aggregate at any time.

It is expressly agreed that no loans, investments, advances, dividends, distributions, dispositions or other transfers of cash of any nature by the Borrower to the Parent shall be made unless made pursuant to the Eligible Note Receivable in accordance with clause (iii) of this Section 7.2.14, other than, so long as no Event of Default exists after giving effect thereto, any distribution, in an amount equal to the Hypothetical Income Tax Amount pursuant to Section 4.3 of the Arch Western LLC Agreement, to Parent concurrent with the making of such distribution to the ARCO Member.

#### 7.2.15 No Amendments to Acquisition Documents.

The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any amendment or modification to or waiver or consent under (or solicit any such amendment, modification, waiver or consent) any of the Acquisition Documents or the Coastal Agreement which could reasonably be expected to be material and adverse to the Lenders without the prior written consent of the Agents.

#### 7.2.16 Limitation on Capital Expenditures.

The Borrower shall not, and shall not permit any of its Subsidiaries to, make any payments exceeding \$150,000,000 in the aggregate in any fiscal year on account of the purchase or lease of any assets which if purchased would constitute fixed assets or which if leased would constitute a capitalized lease.

#### 7.3 Reporting Requirements.

The Borrower covenants and agrees that until payment in full of the Term Loans and interest thereon, satisfaction of all of the Loan Parties' other Obligations hereunder and under the other Loan Documents and termination of the Commitments, the Borrower will furnish or cause to be furnished to the Administrative Agent and each of the Lenders:

##### 7.3.1 Quarterly Financial Statements.

As soon as available and in any event within forty-five (45) calendar days after the end of each of the first three fiscal quarters in each fiscal year, financial statements of the Borrower and its Subsidiaries consisting of a consolidated and consolidating balance sheet as of the end of such fiscal quarter, related consolidated and consolidating statements of income and 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 Borrower 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.

### 7.3.2 Annual Financial Statements.

As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Borrower, financial statements of the Borrower and its Subsidiaries consisting of a consolidated and consolidating balance sheet as of the end of such fiscal year, related consolidated and consolidating statements of income and 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 with respect to the consolidated financial statements certified by independent certified public accountants of nationally recognized standing satisfactory to the Administrative Agent. The certificate or report of accountants 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) 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.

### 7.3.3 Certificate of the Borrower.

Concurrently with the financial statements of the Borrower furnished to the Administrative Agent and to the Lenders pursuant to Sections 7.3.1 [Quarterly Financial Statements] and 7.3.2 [Annual Financial Statements], a certificate of the Borrower signed by the Chief Executive Officer, President, Treasurer or Chief Financial Officer of the Borrower, in the form of Exhibit 7.3.3, to the effect that, except as described pursuant to Section 7.3.4 [Notice of Default], (i) the representations and warranties of the Borrower contained in Section 5 [Representations and Warranties] and in the other Loan Documents are true on and as of the date of such certificate with the same effect as though such representations and warranties had been made on and as of such date (except representations and warranties which expressly relate solely to an earlier date or time which shall be true and correct on and as of the specific dates or times referred to therein) and the Loan Parties have performed and complied with all covenants and conditions hereof, (ii) no Event of Default or Potential Default exists and is continuing on the date of such certificate, (iii) containing a list of each Significant Subsidiary, each Inactive Subsidiary and each Special Subsidiary, other than those set forth on Schedule 5.1.2, (iv) containing calculations in sufficient detail to demonstrate compliance as of the date of such financial statements with all financial covenants contained in Section 7.2 [Negative Covenants], and (v) certifying the amount of the Eligible Reserves as required by clause (iii) of Section 7.2.14 hereof, including setting forth for the period applicable to such certificate the Eligible Reserves mined during such period, the Eligible Reserves acquired during such period, and the Eligible Reserves divested during such period, all in form and substance reasonably satisfactory to the Agents.

#### 7.3.4 Notice of Default.

Promptly after any officer of the Borrower has learned of the occurrence of an Event of Default or Potential Default, a certificate signed by the Chief Executive Officer, President or Chief Financial Officer of the Borrower setting forth the details of such Event of Default or Potential Default and the action which the Borrower proposes to take with respect thereto.

#### 7.3.5 Notice of Litigation.

Promptly after the commencement thereof or promptly after the determination thereof, notice of all actions, suits, proceedings or investigations before or by any Official Body or any other Person against any Loan Party or any Subsidiary of any Loan Party, which (x) involve or could be reasonably expected to involve assessments against any Loan Party or any Subsidiary of any Loan Party in excess of \$10,000,000, individually or in the aggregate, or (y) involve a claim or series of claims which if adversely determined could reasonably be expected to result in a Material Adverse Change or (z) adversely affect the value of the Collateral.

#### 7.3.6 Notice of Change in Debt Rating.

Within five (5) Business Days after Standard & Poor's or Moody's announces a change in the Debt Rating, notice of such change. Borrower will deliver together with such notice a copy of any written notification which Borrower received from the applicable rating agency regarding such change of the Debt Rating.

#### 7.3.7 Notices Regarding Plans and Benefit Arrangements.

#### 7.3.8 Certain Events.

Promptly upon becoming aware of the occurrence thereof, notice (including the nature of the event and, when known, any action taken or threatened by the Internal Revenue Service or the PBGC with respect thereto) of:

(i) any Reportable Event with respect to the Borrower or any other member of the ERISA Group (regardless of whether the obligation to report said Reportable Event to the PBGC has been waived),

(ii) any Prohibited Transaction which could subject the Borrower or any other member of the ERISA Group to a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Internal Revenue Code in connection with any Plan, any Benefit Arrangement or any trust created thereunder,

(iii) any assertion of material withdrawal liability with respect to any Multiemployer Plan,

(iv) any partial or complete withdrawal from a Multiemployer Plan by the Borrower or any other member of the ERISA Group under Title IV of ERISA (or assertion thereof), where such withdrawal is likely to result in material withdrawal liability,

(v) any cessation of operations (by the Borrower or any other member of the ERISA Group) at a facility in the circumstances described in Section 4062(e) of ERISA,

(vi) withdrawal by the Borrower or any other member of the ERISA Group from a Multiple Employer Plan,

(vii) a failure by the Borrower or any other member of the ERISA Group to make a payment to a Plan required to avoid imposition of a Lien under Section 302(f) of ERISA,

(viii) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA, or

(ix) any change in the actuarial assumptions or funding methods used for any Plan, where the effect of such change is to materially increase or materially reduce the unfunded benefit liability or obligation to make periodic contributions.

#### 7.3.9 Notices of Involuntary Termination and Annual Reports.

As soon as available or within thirty (30) days after receipt thereof, copies of (a) all notices received by the Borrower or any other member of the ERISA Group of the PBGC's intent to terminate any Plan administered or maintained by the Borrower or any member of the ERISA Group, or to have a trustee appointed to administer any such Plan; and (b) at the request of the Administrative Agent or any Lender each annual report (IRS Form 5500 series) and all accompanying schedules, the most recent actuarial reports, the most recent financial information concerning the financial status of each Plan administered or maintained by the Borrower or any other member of the ERISA Group, and schedules showing the amounts contributed to each such Plan by or on behalf of the Borrower or any other member of the ERISA Group in which any of their personnel participate or from which such personnel may derive a benefit, and each Schedule B (Actuarial Information) to the annual report filed by the Borrower or any other member of the ERISA Group with the Internal Revenue Service with respect to each such Plan.

#### 7.3.10 Notice of Voluntary Termination.

Promptly upon the filing thereof, copies of any notice of standard or distress termination with the PBGC, or any successor or equivalent form, filed with the PBGC in connection with the termination of any Plan.

#### 7.3.11 Other Information.

Promptly following request therefor, such other information as any Agent or Lender may reasonably request, including, without limitation, forecasts and projections.

#### 7.3.12 Annual Reserves Verification.

Within one hundred twenty (120) days following each fiscal year end of the Borrower, the Borrower shall deliver to each Agent and each Lender the report of Weir International, or such other independent engineer as shall be reasonably satisfactory to the Agents, verifying the amount of the Eligible Reserves by using reasonable assumptions and standards.

### 8. DEFAULT

#### 8.1 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):

##### 8.1.1 Payments Under Loan Documents.

The Borrower shall fail to pay (i) any principal of any Term Loan (including scheduled installments, mandatory prepayments or the payment due at maturity) when such principal is due hereunder or (ii) any interest on any Term Loan, or any other amount owing hereunder or under the other Loan Documents within three (3) Business Days after such interest or other amount becomes due in accordance with the terms hereof or thereof;

##### 8.1.2 Breach of Warranty.

Any representation or warranty made at any time by the Borrower herein or by any of the other 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 misleading in any material respect as of the time it was made or furnished;

##### 8.1.3 Breach of Negative Covenants or Visitation Rights.

Any of the Loan Parties shall default in the observance or performance of any covenant contained in Section 7.1.5 [Visitation Rights], Section 7.2 [Negative Covenants], or Section 7.3.4 [Notice of Default];

#### 8.1.4 Breach of Other Covenants.

(a) Any of the Loan Parties shall fail to timely perform the covenants set forth in Sections 7.3.1 [Quarterly Financial Statements], 7.3.2 [Annual Financial Statements] or 7.3.3 [Certificate of the Borrower] and such default shall continue unremedied for a period of thirty (30) Business Days after any officer of any Loan Party becomes aware of the occurrence thereof;

(b) Any of the Loan Parties shall default in the observance or performance of 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) Business Days after any officer of any Loan Party becomes aware of the occurrence thereof (such grace period to be applicable only in the event such default can be remedied by corrective action of the Loan Parties as determined by the Administrative Agent in its sole discretion);

#### 8.1.5 Defaults in Other Agreements or Indebtedness.

(a) 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 other Indebtedness or any Derivatives Obligations under which any Loan Party or Subsidiary of any Loan Party may be obligated as a borrower or guarantor in excess of \$10,000,000 in the aggregate, and such breach, default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not) any indebtedness when due (whether at stated maturity, by acceleration or otherwise) or if such breach or default permits or causes (or with the giving of notice or the passage of time or both would permit or cause) the acceleration of any indebtedness (whether or not such right shall have been waived) or the termination of any commitment to lend;

(b) A default or event of default shall occur at any time under the terms of or with respect to any Obligation (as such term is defined in the Collateral Sharing Agreement), and such breach, default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not) any indebtedness or other obligation thereunder when due (whether at stated maturity, by acceleration or otherwise) or if such breach or default permits or causes (or with the giving of notice or the passage of time or both would permit or cause) the acceleration of any indebtedness or other obligation (whether or not such right shall have been waived) or the termination of any other agreement or instrument evidencing any Obligations (as such term is defined in the Collateral Sharing Agreement);

#### 8.1.6 Judgments or Orders.

Any judgments or orders for the payment of money in excess of \$10,000,000 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, which judgment 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 shall not be an Event of Default under this Section 8.1.6 if and for so long as (i) the amount of such judgment or order in excess of \$10,000,000 is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (ii) such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order;

#### 8.1.7 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 become or be declared ineffective or inoperative or shall in any way be challenged or contested or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby;

#### 8.1.8 Proceedings Against Assets.

Any of the Loan Parties' or any of their Subsidiaries' assets 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;

#### 8.1.9 Notice of Lien or Assessment.

A notice of Lien or assessment in excess of \$10,000,000 which is not a Permitted Lien is filed of record with respect to all or any part of any of the Loan Parties' or any of their Subsidiaries' assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any tax or debt owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes payable;

#### 8.1.10 Insolvency.

The Borrower and its Subsidiaries, taken as a whole, cease to be Solvent, or the Borrower and its Subsidiaries, taken as a whole, fail to pay their debts generally as they become due or admit their inability to pay their debts generally as they become due;

#### 8.1.11 Events Relating to Plans and Benefit Arrangements.

Any of the following occurs: (i) any Reportable Event, which the Administrative Agent determines in good faith constitutes 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; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) the PBGC shall give notice of its intent to institute proceedings to terminate any Plan or Plans or to appoint a trustee to administer or liquidate any Plan; and, in the case of the occurrence of (i), (ii), (iii) or (iv) above, the

Administrative Agent determines in good faith that the amount of the Borrower's liability is likely to exceed 10% of its Consolidated Tangible Net Worth; (v) the Borrower or any member of the ERISA Group shall fail to make any contributions when due to a Plan or a Multiemployer Plan; (vi) the Borrower or any other member of the ERISA Group shall make any amendment to a Plan with respect to which security is required under Section 307 of ERISA; (vii) the Borrower or any other member of the ERISA Group shall withdraw completely or partially from a Multiemployer Plan; (viii) the Borrower or any other member of the ERISA Group shall withdraw (or shall be deemed under Section 4062(e) of ERISA to withdraw) from a Multiple Employer Plan; or (ix) any applicable Law is adopted, changed or interpreted by any Official Body with respect to or otherwise affecting one or more Plans, Multiemployer Plans or Benefit Arrangements and, with respect to any of the events specified in (v), (vi), (vii), (viii) or (ix), the Administrative Agent determines in good faith that any such occurrence would be reasonably likely to materially and adversely affect the total enterprise represented by the Borrower and the other members of the ERISA Group;

#### 8.1.12 Cessation of Business.

The Loan Parties, taken as a whole, cease to conduct their business as contemplated, except as expressly permitted under Section 7.2.3 [Liquidations, Mergers, etc.] or 7.2.4 [Dispositions of Assets and Subsidiaries], or are enjoined, restrained or in any way prevented by court order from conducting all or any material part of their business and such injunction, restraint or other preventive order is not dismissed within thirty (30) days after the entry thereof;

#### 8.1.13 Change of Control.

Any of the following shall occur: (i) Parent shall cease to own, directly or indirectly, at least ninety-nine percent (99%) of all issued and outstanding member interests in the Borrower, (ii) 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 the Parent; or (iii) 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 appointed by the board of directors of the Parent shall cease to constitute a majority of the board of directors of the Parent;

#### 8.1.14 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 the Parent, any Loan Party or Significant Subsidiary of a Loan Party in an involuntary case under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of the Parent, any Loan Party or Significant Subsidiary of a Loan Party for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undisguised or unseated and in effect for a period of thirty (30) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding; or

#### 8.1.15 Voluntary Proceedings.

The Parent, any Loan Party or Significant Subsidiary of a Loan Party shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or other similar 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.

#### 8.2 Consequences of Event of Default.

##### 8.2.1 Events of Default Other Than Bankruptcy, Insolvency or Reorganization Proceedings.

If an Event of Default specified under Sections 8.1.1 [Payments Under Loan Documents] through 8.1.13 [Change of Control] shall occur and be continuing, the Lenders and the Administrative Agent shall be under no further obligation to make Term Loans, and the Administrative Agent may, and upon the request of the Required Lenders shall, by written notice to the Borrower, take one or both of the following actions: (i) terminate the Commitments and thereupon the Commitments shall be terminated and of no further force and effect, (ii) declare the unpaid principal amount of the Term Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Indebtedness of the Borrower to the Lenders hereunder and thereunder to be forthwith due and payable, and the same shall thereupon become and be immediately due and payable to the Administrative Agent for the benefit of each Lender without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, and (iii) prohibit loans by the Borrower to the Parent, provided, however, that action under this clause (iii) shall be taken only upon the request of the Required Lenders; and

##### 8.2.2 Bankruptcy, Insolvency or Reorganization Proceedings.

If an Event of Default specified under Section 8.1.14 [Involuntary Proceedings] or 8.1.15 [Voluntary Proceedings] shall occur, the Commitments shall automatically terminate and be of no further force and effect, the Lenders shall be under no further obligation to make Term Loans hereunder and the unpaid principal amount of the Term Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Indebtedness of the Borrower to the Lenders hereunder and thereunder shall be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and loans by the Borrower to the Parent shall automatically be prohibited; and

### 8.2.3 Set-off.

If an Event of Default shall occur and be continuing, any Lender to whom any Obligation is owed by any Loan Party hereunder or under any other Loan Document or any participant of such Lender which has agreed in writing to be bound by the provisions of Section 9.13 [Equalization of Lenders] and any branch, Subsidiary or Affiliate of such Lender or participant anywhere in the world shall have the right, in addition to all other rights and remedies available to it, without notice to such Loan Party, to set-off against and apply to the then unpaid balance of all the Term Loans and all other Obligations of the Borrower and the other Loan Parties hereunder or under any other Loan Document any debt owing to, and any other funds held in any manner for the account of, the Borrower or such other Loan Party by such Lender or participant or by such branch, Subsidiary or Affiliate, including all funds in all deposit accounts (whether time or demand, general or special, provisionally credited or finally credited, or otherwise) now or hereafter maintained by the Borrower or such other Loan Party for its own account (but not including funds held in custodian or trust accounts) with such Lender or participant or such branch, Subsidiary or Affiliate. Such right shall exist whether or not any Lender or the Administrative Agent shall have made any demand under this Agreement or any other Loan Document, whether or not such debt owing to or funds held for the account of the Borrower or such other Loan Party is or are matured or unmatured and regardless of the existence or adequacy of any Collateral, Guaranty or any other security, right or remedy available to any Lender or the Administrative Agent; and

### 8.2.4 Suits, Actions, Proceedings.

If an Event of Default shall occur and be continuing, and whether or not the Administrative Agent shall have accelerated the maturity of the Term Loans pursuant to any of the foregoing provisions of this Section 8.2, the Agents or the Required Lenders (or, at the request of the Agents or the Required Lenders, any Lender, and any such Lender that has received such a request shall thus be entitled to exercise the rights set forth in this Section) if owed any amount with respect to the Term Loans, may, to the extent permitted by Law, proceed to protect and enforce its rights by suit in equity, action at law and/or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement or the other Loan Documents, including as permitted by applicable Law the obtaining of the ex parte appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any Agent or such Lender; and

### 8.2.5 Application of Proceeds.

From and after the date on which the Administrative Agent or any Lender shall have taken any action pursuant to this Section 8.2 and until all Obligations of the Loan Parties have been paid in full, subject to the provisions of the Collateral Sharing Agreement, any and all proceeds received by the Administrative Agent or any Lender from any sale or other disposition of the Collateral, or any part thereof, or the exercise of any remedy by the Administrative Agent or any Lender shall be applied as follows:

(i) first, to reimburse the Administrative Agent and the Lenders for out-of-pocket costs, expenses and disbursements, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by the Administrative Agent or the Lenders in connection with realizing on the Collateral or collection of any Obligations of any of the Loan Parties under any of the Loan Documents, including advances for taxes, insurance, repairs and the like and reasonable expenses incurred to sell or otherwise realize on, or prepare for sale or other realization on, any of the Collateral;

(ii) second, to the repayment of all Indebtedness then due and unpaid of the Loan Parties to the Lenders incurred under this Agreement or any of the other Loan Documents, whether of principal, interest, fees, expenses or otherwise, in such manner as the Administrative Agent may determine in its discretion; and

(iii) the balance, if any, as required by Law.

#### 8.2.6 Other Rights and Remedies.

In addition to all of the rights and remedies contained in this Agreement or in any of the other Loan Documents, the Administrative Agent shall have all of the rights and remedies under applicable Law, all of which rights and remedies shall be cumulative and non-exclusive, to the extent permitted by Law. The Administrative Agent may, and upon the request of the Required Lenders shall, exercise all post-default rights granted to the Administrative Agent and the Lenders under the Loan Documents or applicable Law.

#### 8.2.7 Notice of Sale.

Any notice required to be given by the Administrative Agent of a sale, lease, or other disposition of the Collateral or any other intended action by the Administrative Agent, if given ten (10) days prior to such proposed action, shall constitute commercially reasonable and fair notice thereof to the Borrower.

### 9. THE AGENTS

#### 9.1 Appointment.

Each Lender hereby designates, appoints and authorizes: (i) PNC Bank to act as Administrative Agent for such Lender under this Agreement and the other Loan Documents for such Lender under this Agreement and to execute and deliver or accept on behalf of each of the Lenders the other Loan Documents, and (ii) authorizes each of PNC Bank and JPMorgan Chase to act as Agent for such Lender under this Agreement. Each Lender hereby irrevocably authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and any other instruments and agreements referred to herein, and to exercise such powers and to perform such duties hereunder as are specifically delegated to or required of the Agents, the Administrative Agent or any of them by the terms hereof, together with such powers as are reasonably incidental thereto. PNC Bank agrees to act as the Administrative Agent on behalf of the Lenders to the extent provided in this Agreement, and each of PNC Bank and JPMorgan Chase agrees to act as Agent on behalf of the Lenders to the extent provided in this Agreement.

## 9.2 Delegation of Duties.

The Agents and the Administrative Agent may perform any of their respective duties hereunder by or through agents or employees (provided such delegation does not constitute a relinquishment of their respective duties as Agents or the Administrative Agent, as the case may be) and, subject to Sections 9.5 [Reimbursement and Indemnification of Agents by the Borrower] and 9.6 [Exculpatory Provisions; Limitation of Liability], shall be entitled to engage and pay for the advice or services of any attorneys, accountants or other experts concerning all matters pertaining to its duties hereunder and to rely upon any advice so obtained. It is acknowledged and agreed that each of Citibank, Credit Lyonnais, and U.S. Bank has received the title of Documentation Agent under this Agreement, however, such designation is solely to give each of Citibank, Credit Lyonnais, and U.S. Bank such title and each of Citibank, Credit Lyonnais, and U.S. Bank has no duties, responsibilities, functions, obligations or liabilities implied or otherwise under the Loan Documents solely as a result of being so designated as Documentation Agent.

## 9.3 Nature of Duties; Independent Credit Investigation.

Neither the Agents nor the Administrative Agent shall have any duties or responsibilities except those expressly set forth in this Agreement and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or otherwise exist. The duties of the Administrative Agent and of the Agents shall be mechanical and administrative in nature; neither the Administrative Agent nor the Agents shall have by reason of this Agreement a fiduciary or trust relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent or any Agent any obligations in respect of this Agreement except as expressly set forth herein. Without limiting the generality of the foregoing, the use of the term "Agents" in this Agreement with reference to the Agents or Administrative Agent, as the case may be, 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Each Lender expressly acknowledges (i) that neither the Administrative Agent nor any Agent has made any representations or warranties to it and that no act by the Administrative Agent or any Agent hereafter taken, including any review of the affairs of any of the Loan Parties, shall be deemed to constitute any representation or warranty by the Administrative Agent or any Agent to any Lender; (ii) that it has made and will continue to make, without reliance upon the Administrative Agent or any Agent, its own independent investigation of the financial condition and affairs and its own appraisal of the creditworthiness of each of the Loan Parties in connection with this Agreement and the making and continuance of the Term Loans hereunder; and (iii) except as expressly provided herein, that neither the Administrative Agent nor any Agent shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of any Term Loan, the issuance of any Letter of Credit or at any time or times thereafter.

#### 9.4 Actions in Discretion of Agents; Instructions From the Lenders.

The Administrative Agent and each Agent agrees, upon the written request of the Required Lenders, to take or refrain from taking any action of the type specified as being within the Administrative Agent's or such Agent's rights, powers or discretion herein, provided that neither the Administrative Agent nor any Agent shall be required to take any action which exposes the Administrative Agent or any Agent to personal liability or which is contrary to this Agreement or any other Loan Document or applicable Law. In the absence of a request by the Required Lenders, the Administrative Agent and each Agent shall have authority, in their sole discretion, to take or not to take any such action, unless this Agreement specifically requires the consent of the Required Lenders or all of the Lenders. Any action taken or failure to act pursuant to such instructions or discretion shall be binding on the Lenders, subject to Section 9.6 [Exculpatory Provisions, etc.]. Subject to the provisions of Section 9.6, no Lender shall have any right of action whatsoever against the Administrative Agent or any Agent as a result of the Administrative Agent or any Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders, or in the absence of such instructions, in the absolute discretion of the Administrative Agent or the Agents, as the case may be.

#### 9.5 Reimbursement and Indemnification of Agents by the Borrower.

The Borrower unconditionally agrees to pay or reimburse the Administrative Agent and each Agent and hold the Administrative Agent and each Agent harmless against (a) liability for the payment of all reasonable out-of-pocket costs, expenses and disbursements, including fees and expenses of outside counsel, appraisers and environmental consultants, incurred by the Administrative Agent or any Agent (i) in connection with the development, negotiation, preparation, printing, execution, administration, syndication, interpretation and performance of this Agreement and the other Loan Documents, (ii) relating to any requested amendments, waivers or consents pursuant to the provisions hereof, (iii) in connection with the enforcement of this Agreement or any other Loan Document or collection of amounts due hereunder or thereunder or the proof and allowability of any claim arising under this Agreement or any other Loan Document, whether in bankruptcy or receivership proceedings or otherwise, and (iv) in any workout or restructuring or in connection with the protection, preservation, exercise or enforcement of any of the terms hereof or of any rights hereunder or under any other Loan Document or in connection with any foreclosure, collection or bankruptcy proceedings, and (b) all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent or any Agent, in its capacity as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by the Administrative Agent or any Agent hereunder or thereunder, provided that the Borrower shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements if the same results from the Administrative Agent's or any Agent's gross negligence or willful misconduct, or if the Borrower was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that the Borrower shall remain liable to the extent such failure to give notice does not result in a loss to the Borrower), or if the same results from a compromise or settlement agreement entered into without the consent of the Borrower, which shall not be unreasonably withheld.

9.6 Exculpatory Provisions; Limitation of Liability.

Neither the Administrative Agent, any Agent nor any of their respective directors, officers, employees, agents, attorneys or Affiliates shall (a) be liable to any Lender for any action taken or omitted to be taken by it or them hereunder, or in connection herewith including pursuant to any Loan Document, unless caused by its or their own gross negligence or willful misconduct, (b) be responsible in any manner to any of the Lenders for the effectiveness, enforceability, genuineness, validity or the due execution of this Agreement or any other Loan Documents or for any recital, representation, warranty, document, certificate, report or statement herein or made or furnished under or in connection with this Agreement or any other Loan Documents, or (c) be under any obligation to any of the Lenders to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions hereof or thereof on the part of the Loan Parties, or the financial condition of the Loan Parties, or the existence or possible existence of any Event of Default or Potential Default. No claim may be made by any of the Loan Parties, any Lender, the Administrative Agent or any Agent or any of their respective Subsidiaries against the Administrative Agent, any Agent, any Lender or any of their respective directors, officers, employees, agents, attorneys or Affiliates, or any of them, for any special, indirect or consequential damages or, to the fullest extent permitted by Law, for any punitive damages in respect of any claim or cause of action (whether based on contract, tort, statutory liability, or any other ground) based on, arising out of or related to any Loan Document or the transactions contemplated hereby or any act, omission or event occurring in connection therewith, including the negotiation, documentation, administration or collection of the Term Loans, and the Borrower (for itself and on behalf of each of its Subsidiaries), the Administrative Agent, each Agent and each Lender hereby waives, releases and agrees never to sue upon any claim for any such damages, whether such claim now exists or hereafter arises and whether or not it is now known or suspected to exist in its favor. Each Lender agrees that, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent or any Agent hereunder or given to the Administrative Agent or any Agent for the account of or with copies for the Lenders, the Administrative Agent, each Agent and each of their respective directors, officers, employees, agents, attorneys or Affiliates shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Loan Parties which may come into the possession of the Administrative Agent, any Agent or any of their directors, officers, employees, agents, attorneys or Affiliates.

9.7 Reimbursement and Indemnification of Agents by the Lenders.

Each Lender agrees to reimburse and indemnify the Administrative Agent and each Agent (to the extent not reimbursed by the Borrower and without limiting the Obligation of the Borrower to do so) in proportion to its Ratable Share of Term Loans (or if no Term Loans are outstanding, of Commitments) from and against all liabilities, obligations, losses, damages, penalties, actions,

judgments, suits, reasonable costs, expenses or disbursements, including attorneys' fees and disbursements, and costs of appraisers and environmental consultants, of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent, the Agents, or any of them in their respective capacities as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by the Administrative Agent or any Agent hereunder or thereunder, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (a) if the same results from the Administrative Agent's or any Agent's gross negligence or willful misconduct, as the case may be, or (b) if such Lender was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that such Lender shall remain liable to the extent such failure to give notice does not result in a loss to the Lender), or (c) if the same results from a compromise and settlement agreement entered into without the consent of such Lender, which shall not be unreasonably withheld. In addition, each Lender agrees promptly upon demand to reimburse the Administrative Agent and each Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) in proportion to its Ratable Share of Term Loans (or if no Term Loans are outstanding, of Commitments) for all amounts due and payable by the Borrower to the Administrative Agent or the Agents, as the case may be in connection with the periodic audit of the Loan Parties' books, records and business properties by the Administrative Agent or the Agents.

#### 9.8 Reliance by Agents.

The Administrative Agent and each Agent shall be entitled to rely upon any writing, telegram, telex or teletype message, resolution, notice, consent, certificate, letter, cablegram, statement, order or other document or conversation by telephone or otherwise believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon the advice and opinions of counsel and other professional advisers selected by the Administrative Agent or any Agent. The Administrative Agent and each Agent shall be fully justified in failing or refusing to take any action hereunder unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action.

#### 9.9 Notice of Default.

Neither the Administrative Agent nor any Agent shall be deemed to have knowledge or notice of the occurrence of any Potential Default or Event of Default unless such person has received written notice from a Lender or the Borrower referring to this Agreement, describing such Potential Default or Event of Default and stating that such notice is a "notice of default."

#### 9.10 Notices.

Each of the Administrative Agent and each Agent agrees to promptly send to each Lender a copy of all notices received from the Borrower pursuant to the provisions of this Agreement or the other Loan Documents promptly upon receipt thereof. The Administrative Agent shall promptly notify the Borrower and the other Lenders of each change in the Base Rate and the effective date thereof.

9.11 Lenders in Their Individual Capacities.

With respect to its Commitment and the Term Loans made by it and any other rights and powers given to it as a Lender hereunder or under any of the other Loan Documents, the Administrative Agent and each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not the Administrative Agent or an Agent, as the case may be, and the term "Lenders" shall, unless the context otherwise indicates, include the Administrative Agent and each Agent in its individual capacity. PNC Bank and its Affiliates, JPMorgan Chase and its Affiliates, each other Agent and its Affiliates and each of the Lenders and their respective Affiliates may, without liability to account, except as prohibited herein, make loans to, accept deposits from, discount drafts for, act as trustee under indentures of, and generally engage in any kind of banking or trust business with the Loan Parties and their Affiliates, in the case of the Administrative Agent or any Agent, as though it were not acting as Administrative Agent or Agent, as the case may be, hereunder and in the case of each Lender, as though such Lender were not a Lender hereunder. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates or any Agent or its respective Affiliates may (i) receive information regarding the Loan Parties (including information that may be subject to confidentiality obligations in favor of the Loan Parties) and acknowledge that neither the Administrative Agent nor any Agent shall be under any obligation to provide such information to them, and (ii) accept fees and other consideration from the Loan Parties for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

9.12 Holders of Term Notes.

The Administrative Agent and each Agent may deem and treat any payee of any Term Note as the owner thereof for all purposes hereof unless and until written notice of the assignment or transfer thereof shall have been filed with the Administrative Agent and the Agents. Any request, authority or consent of any Person who at the time of making such request or giving such authority or consent is the holder of any Term Note shall be conclusive and binding on any subsequent holder, transferee or assignee of such Term Note or of any Term Note or Term Notes issued in exchange therefor.

9.13 Equalization of Lenders.

The Lenders and the holders of any participations in any Commitments or Term Loans or other rights or obligations of a Lender hereunder agree among themselves that, with respect to all amounts received by any Lender or any such holder for application on any Obligation hereunder or under any such participation, whether received by voluntary payment, by realization upon security, by the exercise of the right of set-off or banker's lien, by counterclaim or by any other non-pro rata source, equitable adjustment will be made in the manner stated in the following sentence so that, in effect, all such

excess amounts will be shared ratably among the Lenders and such holders in proportion to their interests in payments on the Term Loans, except as otherwise provided in Sections 3.4.3 [Administrative Agent's and Lender's Rights], 4.4.2 [Replacement of a Lender] or 4.5 [Additional Compensation in Certain Circumstances]. The Lenders or any such holder receiving any such amount shall purchase for cash from each of the other Lenders an interest in such Lender's Term Loans in such amount as shall result in a ratable participation by the Lenders and each such holder in the aggregate unpaid amount of the Term Loans, provided that if all or any portion of such excess amount is thereafter recovered from the Lender or the holder making such purchase, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, together with interest or other amounts, if any, required by law (including court order) to be paid by the Lender or the holder making such purchase.

#### 9.14 Successor Agents.

Any Agent or the Administrative Agent (i) may resign as Agent or Administrative Agent, as the case may be or (ii) shall resign if such resignation is requested by the Required Lenders (if the Agent or Administrative Agent is a Lender, such Agent's or Administrative Agent's Term Loans and Commitment shall be considered in determining whether the Required Lenders have requested such resignation) or required by Section 4.4.2 [Replacement of a Lender], in either case of (i) or (ii) by giving not less than thirty (30) days' prior written notice to the Borrower. If any Agent or the Administrative Agent shall resign under this Agreement, then either (a) the Required Lenders shall appoint from among the Lenders a successor to such Agent or Administrative Agent, as the case may be, for the Lenders, subject to the consent of the Borrower, such consent not to be unreasonably withheld, provided that, no consent of the Borrower shall be required during any period when an Event of Default exists and is continuing, or (b) if a successor Agent or Administrative Agent shall not be so appointed and approved within the thirty (30) day period following an Agent's or the Administrative Agent's notice, as the case may be, to the Lenders of its resignation, then the resigning Administrative Agent or resigning Agent, as the case may be shall appoint, with the consent of the Borrower, such consent not to be unreasonably withheld, provided that, no consent of the Borrower shall be required during any period when an Event of Default exists and is continuing, a successor who shall be a Lender shall serve as Administrative Agent or Agent, as the case may be, until such time as the Required Lenders appoint and the Borrower consents to the appointment of a successor to such resigning Administrative Agent or Agent. Upon its appointment pursuant to either clause (a) or (b) above, such successor Administrative Agent or Agent shall succeed to the rights, powers and duties of the resigning Administrative Agent or Agent, as the case may be, and the terms "Agent" and "Administrative Agent" shall mean such successor Agent or Administrative Agent, as the case may be, effective upon its appointment, and the former Administrative Agent's or Agent's rights, powers and duties as an Agent or Administrative Agent shall be terminated without any other or further act or deed on the part of such former Agent or Administrative Agent or any of the parties to this Agreement. After the resignation of the Administrative Agent or any Agent hereunder, the provisions of this Section 9 shall inure to the benefit of such former Administrative Agent and each former Agent, and such former Administrative Agent and each former Agent shall not by reason of such resignation be deemed to be released from liability for any actions taken or not taken by it while it was Administrative Agent or an Agent under this Agreement.

9.15 Administrative Agent's Fee.

The Borrower shall pay to the Administrative Agent a nonrefundable fee (the "Administrative Agent's Fee") for the Administrative Agent's services hereunder under the terms of a letter (the "Administrative Agent's Letter") between the Borrower and the Administrative Agent, as amended from time to time.

9.16 Availability of Funds.

The Administrative Agent may assume that each Lender has made or will make the proceeds of a Term Loan available to the Administrative Agent unless the Administrative Agent shall have been notified by such Lender on or before the later of (1) the close of Business on the Business Day preceding the Borrowing Date with respect to such Term Loan or two (2) hours before the time on which the Administrative Agent actually funds the proceeds of such Term Loan to the Borrower (whether using its own funds pursuant to this Section 9.16 or using proceeds deposited with the Administrative Agent by the Lenders and whether such funding occurs before or after the time on which Lenders are required to deposit the proceeds of such Term Loan with the Administrative Agent). The Administrative Agent may, in reliance upon such assumption (but shall not be required to), make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such amount on demand from such Lender (or, if such Lender fails to pay such amount forthwith upon such demand from the Borrower) together with interest thereon, in respect of each day during the period commencing on the date such amount was made available to the Borrower and ending on the date the Administrative Agent recovers such amount, at a rate per annum equal to (i) the Federal Funds Effective Rate during the first three (3) days after such interest shall begin to accrue and (ii) the applicable interest rate in respect of such Term Loan after the end of such three-day period.

9.17 Calculations.

In the absence of gross negligence or willful misconduct, the Administrative Agent shall not be liable for any error in computing the amount payable to any Lender whether in respect of the Term Loans, fees or any other amounts due to the Lenders under this Agreement. In the event an error in computing any amount payable to any Lender is made, the Administrative Agent, the Borrower and each affected Lender shall, forthwith upon discovery of such error, make such adjustments as shall be required to correct such error, and any compensation therefor will be calculated at the Federal Funds Effective Rate.

9.18 Certain Releases of Guarantors and Collateral.

It is expressly agreed that, upon the written request of the Borrower (accompanied by such certificates and other documentation as the Administrative Agent may reasonably request) the Administrative Agent on behalf of the Lenders and without any consent or action by any Lender, may, so long as no Event of Default exists after giving effect thereto, release: (i) any Collateral or any Guarantor from a Guaranty Agreement, in either case, in connection with any sale, transfer, lease, disposition, merger or other transaction permitted by this Agreement, or (ii) any Subsidiary from the Guaranty Agreement if such Subsidiary is no longer a Significant Subsidiary.

9.19 Beneficiaries.

Except as expressly provided herein, the provisions of this Section 9 are solely for the benefit of the Administrative Agent, each Agent and the Lenders, and the Loan Parties shall not have any rights to rely on or enforce any of the provisions hereof. In performing its functions and duties under this Agreement, the Administrative Agent and each Agent shall act solely as the Administrative Agent or Agent, as the case may be, of the Lenders and do not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any of the Loan Parties.

10. MISCELLANEOUS

10.1 Modifications, Amendments or Waivers.

With the written consent of the Required Lenders, the Administrative Agent, acting on behalf of all the Lenders, and the Borrower, on behalf of the Loan Parties, may from time to time enter into written agreements amending or changing any provision of this Agreement or any other Loan Document or the rights of the Lenders or the Loan Parties hereunder or thereunder, or may grant written waivers or consents to a departure from the due performance of the Obligations of the Loan Parties hereunder or thereunder. Any such agreement, waiver or consent made with such written consent shall be effective to bind all the Lenders and the Loan Parties; provided, that, no such agreement, waiver or consent may be made which will:

10.1.1 Increase of Commitments; Extension of Expiration Date.

Increase the amount of the Commitment of any Lender hereunder or extend the Tranche A Expiration Date or the Tranche B Expiration Date without the prior written consent of each Lender directly affected thereby;

10.1.2 Extension of Payment; Reduction of Principal, Interest or Fees; Modification of Terms of Payment.

Whether or not any Term Loans are outstanding, extend the time for payment of principal or interest of any Term Loan or any fee payable to any Lender, or reduce the principal amount of or the rate of interest borne by any Term Loan or reduce the rate of any fee payable to any Lender without the prior written consent of each Lender directly affected thereby;

### 10.1.3 Release of Collateral or Guarantor.

Except as set forth in Section 9.18, release any of the Collateral (including, without limitation, any amount held in the Pledged Collateral Account) or release any Guarantor from its Obligations under the Guaranty Agreement or any other security for any of the Loan Parties' Obligations without the prior written consent of each Lender; or

### 10.1.4 Miscellaneous.

Amend Sections 4.2 [Pro Rata Treatment of Lenders], 7.1.14 [Pledged Collateral Account], 9.6 [Exculpatory Provisions, etc.] or 9.13 [Equalization of Lenders] or this Section 10.1, alter any provision regarding the pro rata treatment of the Lenders, change the definition of Required Lenders, or change any requirement providing for the Lenders, the Required Lenders or all the Lenders to authorize the taking of any action hereunder without the prior written consent of each Lender adversely affected thereby; provided, further, that no agreement, waiver or consent which would modify the interests, rights or obligations of any Agent in its capacity as such shall be effective without the written consent of such Agent and no agreement, waiver or consent which would modify the interests, rights or obligations of the Administrative Agent in its capacity shall be effective without the written consent of the Administrative Agent.

### 10.2 No Implied Waivers; Cumulative Remedies; Writing Required.

No course of dealing and no delay or failure of the Administrative Agent, any Agent or any Lender in exercising any right, power, remedy or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or operate as a waiver thereof, nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power, remedy or privilege preclude any further exercise thereof or of any other right, power, remedy or privilege. The rights and remedies of the Administrative Agent, each Agent and the Lenders under this Agreement and any other Loan Documents are cumulative and not exclusive of any rights or remedies which they would otherwise have. Any waiver, permit, consent or approval of any kind or character on the part of any Lender of any breach or default under this Agreement or any such waiver of any provision or condition of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing.

### 10.3 Reimbursement and Indemnification of Lenders by the Borrower; Taxes. Limitations.

The Borrower agrees unconditionally upon demand to pay or reimburse to each Lender (other than the Administrative Agent and the Agents, as to which the Borrower's Obligations are set forth in Section 9.5 [Reimbursement and Indemnification of Agents by the Borrower]) and to save such Lender harmless against (i) liability for the payment of all reasonable out-of-pocket costs, expenses and disbursements (including fees and expenses of outside counsel) for each Lender (except with respect to (A) and (B) below), incurred by such Lender

(a) in connection with the administration and interpretation of this Agreement, and other instruments and documents to be delivered hereunder, (b) relating to any amendments, waivers or consents pursuant to the provisions hereof, (c) in connection with the enforcement of this Agreement or any other Loan Document, or collection of amounts due hereunder or thereunder or the proof and allowability of any claim arising under this Agreement or any other Loan Document, whether in bankruptcy or receivership proceedings or otherwise, and (d) in any workout or restructuring or in connection with the protection, preservation, exercise or enforcement of any of the terms hereof or of any rights hereunder or under any other Loan Document or in connection with any foreclosure, collection or bankruptcy proceedings, or (ii) all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Lender, in its capacity as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by such Lender hereunder or thereunder, provided that the Borrower shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (A) if the same results from such Lender's gross negligence or willful misconduct, or (B) if the Borrower was not given notice of the subject claim and the opportunity to participate in the defense thereof, at its expense (except that the Borrower shall remain liable to the extent such failure to give notice does not result in a loss to the Borrower), or (C) if the same results from a compromise or settlement agreement entered into without the consent of the Borrower, which shall not be unreasonably withheld. None of the Agents nor any Lender shall be liable for any damages arising from the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons. None of the Agents nor any Lender shall be liable or responsible to the Borrower or other party hereto for any special, indirect, consequential or punitive damages in connection with the Term Loans or otherwise under or in connection with the Loan Documents, the transactions contemplated thereby or any of their respective obligations thereunder. The Lenders will attempt to minimize the fees and expenses of legal counsel for the Lenders which are subject to reimbursement by the Borrower hereunder by considering the use of one law firm to represent the Lenders, the Administrative Agent, and the Agents if appropriate under the circumstances. The Borrower agrees unconditionally to pay all stamp, document, transfer, recording or filing taxes or fees and similar impositions now or hereafter determined by the Administrative Agent, any Agent or any Lender to be payable in connection with this Agreement or any other Loan Document, and the Borrower agrees unconditionally to save the Administrative Agent, each Agent and the Lenders harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such taxes, fees or impositions.

#### 10.4 Holidays.

Whenever payment of a Term Loan to be made or taken hereunder shall be due on a day which is not a Business Day, such payment shall be due on the next Business Day and such extension of time shall be included in computing interest and fees, except that the Tranche A Term Loans shall be due on the Business Day preceding the Tranche A Expiration Date if the Tranche A Expiration Date is not a Business Day and except that the Tranche B Term Loans shall be due on the Business Day preceding the Tranche B Expiration Date if the Tranche B Expiration Date is not a Business Day. Whenever any payment or action to be made or taken hereunder (other than payment of the Term Loans) shall be stated to be

due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day (except as provided in Section 3.2 [Interest Periods] with respect to Interest Periods under the Euro-Rate Option), and such extension of time shall not be included in computing interest or fees, if any, in connection with such payment or action.

#### 10.5 Funding by Branch, Subsidiary or Affiliate.

##### 10.5.1 Notional Funding.

Each Lender shall have the right from time to time, without notice to the Borrower, to deem any branch, Subsidiary or Affiliate (which for the purposes of this Section 10.5 shall mean any corporation or association which is directly or indirectly controlled by or is under direct or indirect common control with any corporation or association which directly or indirectly controls such Lender) of such Lender to have made, maintained or funded any Term Loan to which the Euro-Rate Option applies at any time, provided that immediately following (on the assumption that a payment were then due from the Borrower to such other office), and as a result of such change, the Borrower would not be under any greater financial obligation pursuant to Section 4.5 [Additional Compensation in Certain Circumstances] than it would have been in the absence of such change. Notional funding offices may be selected by each Lender without regard to such Lender's actual methods of making, maintaining or funding the Term Loans or any sources of funding actually used by or available to such Lender.

##### 10.5.2 Actual Funding.

Each Lender shall have the right from time to time to make or maintain any Term Loan by arranging for a branch, Subsidiary or Affiliate of such Lender to make or maintain such Term Loan subject to the last sentence of this Section 10.5.2. If any Lender causes a branch, Subsidiary or Affiliate to make or maintain any part of the Term Loans hereunder, all terms and conditions of this Agreement shall, except where the context clearly requires otherwise, be applicable to such part of the Term Loans to the same extent as if such Term Loans were made or maintained by such Lender, but in no event shall any Lender's use of such a branch, Subsidiary or Affiliate to make or maintain any part of the Term Loans hereunder cause such Lender or such branch, Subsidiary or Affiliate to incur any cost or expenses payable by the Borrower hereunder or require the Borrower to pay any other compensation to any Lender (including any expenses incurred or payable pursuant to Section 4.5 [Additional Compensation in Certain Circumstances]) which would otherwise not be incurred.

#### 10.6 Notices.

All notices, requests, demands, directions and other communications (as used in this Section 10.6, collectively referred to as "notices") given to or made upon any party hereto under the provisions of this Agreement shall be by telephone or in writing (including telex or facsimile communication) unless otherwise expressly permitted hereunder and shall be delivered or sent by telex or facsimile to the respective parties at the addresses and numbers set forth under their respective names on Schedule 1.1(B) hereof or in accordance with any

subsequent unrevoked written direction from any party to the others. All notices shall, except as otherwise expressly herein provided, be effective (a) in the case of telex or facsimile, when received, (b) in the case of hand-delivered notice, when hand-delivered, (c) in the case of telephone, when telephoned, provided, however, that in order to be effective, telephonic notices must be confirmed in writing no later than the next day by letter, facsimile or telex, (d) if given by mail, four (4) days after such communication is deposited in the mail with first-class postage prepaid, return receipt requested, and (e) if given by any other means (including by air courier), when delivered; provided, that notices to the Agents or to the Administrative Agent shall not be effective until received. Any Lender giving any notice to the Borrower shall simultaneously send a copy thereof to the Administrative Agent, and the Administrative Agent shall promptly notify the other Lenders of the receipt by it of any such notice. Any notice delivered to the Borrower shall be deemed to be notice to the Loan Parties and shall be binding upon all of the Loan Parties.

#### 10.7 Severability.

The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

#### 10.8 Governing Law.

This Agreement shall be deemed to be a contract under the Laws of the Commonwealth of Pennsylvania and for all purposes shall be governed by and construed and enforced in accordance with the internal laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

#### 10.9 Prior Understanding.

This Agreement and the other Loan Documents supersede all prior understandings and agreements, whether written or oral, between the parties hereto and thereto relating to the transactions provided for herein and therein, including any prior confidentiality agreements and commitments.

#### 10.10 Duration; Survival.

All representations and warranties of the Borrower contained herein or made by any Loan Party in connection herewith shall survive the making of Term Loans and shall not be waived by the execution and delivery of this Agreement, any investigation by the Administrative Agent, any Agent or the Lenders, the making of Term Loans or payment in full of the Term Loans. All covenants and agreements of the Borrower contained in Sections 7.1 [Affirmative Covenants], 7.2 [Negative Covenants] and 7.3 [Reporting Requirements] herein shall continue in full force and effect from and after the date hereof so long as the Borrower may borrow hereunder and until termination of the Commitments and payment in full of the Term Loans. All covenants and agreements of the Borrower contained herein relating to the payment of principal, interest, premiums, additional compensation or expenses and indemnification, including those set forth in Section 4 [Payments] and Sections 9.5 [Reimbursement and Indemnification of Agents by the Borrower], 9.7 [Reimbursement and Indemnification of Agents by the Lenders] and 10.3 [Reimbursement and Indemnification of Lenders by the Borrower, etc.], shall survive payment in full of the Term Loans and termination of the Commitments.

10.11 Successors and Assigns.

10.11.1 Binding Effect; Assignments by Borrower.

This Agreement shall be binding upon and shall inure to the benefit of the Lenders, the Agents, the Administrative Agent, the Borrower and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights and Obligations hereunder or any interest herein without the consent of all of the Lenders.

10.11.2 Assignments and Participations by Lenders; Designations.

(a) Assignments and Participations.

This Section shall apply to any assignment or participation by a Lender of its Term Loans or Commitments. Each Lender may, at its own cost, make assignments of all or any part of its Commitment and Term Loans to one or more banks or other entities, subject to the consent of the Borrower (which consent shall not be required during any period in which an Event of Default exists) and the Administrative Agent with respect to any assignee, such consents not to be unreasonably withheld, provided that assignments by a Lender to an Affiliate of such Lender or Approved Fund of any Lender may be made without the consent of either of the Borrower or the Administrative Agent upon written notice of such assignment to the Administrative Agent and compliance with the terms and conditions of this Section, and provided further that assignments may not be made in amounts less than \$1,000,000 unless such assignment is an assignment of all of a Lender's Commitment or Term Loans or unless such assignment is an assignment to an Affiliate of such Lender, an Approved Fund of any Lender or to another Lender. Each Lender may, at its own cost, grant participations in all or any part of its Commitment and Term Loans made by it to one or more banks or other entities without the consent of any party hereto. In the case of an assignment of all or any portion of a Commitment, upon receipt by the Administrative Agent of the Assignment and Assumption Agreement, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights, benefits and obligations as it would have if it had been a signatory Lender hereunder, the Commitments in Section 2.1 [Commitments] shall be adjusted accordingly, and upon surrender of the Term Note subject to such assignment, the Borrower shall execute and deliver a new Term Note to the assignee in an amount equal to the amount of the Commitment assumed by it and a new Term Note to the assigning Lender in an amount equal to the Commitment retained by it hereunder. Any assigning Lender (including a Lender assigning all or a portion of its Commitment and Term Loans to an Affiliate of such Lender or Approved Fund of any Lender and, in the case of a Lender which is a fund, to a fund under common control with such Lender) shall pay to the Administrative Agent a service fee in the amount of \$2,500 for each assignment, which amount

shall not be subject to reimbursement or indemnification by the Borrower; provided, however, in the case of assignments on the same day by a Lender to an Approved Fund, so long as the Administrative Agent in its sole discretion agrees in writing prior to any such assignment only a single \$2,500 service fee shall be payable for all such assignments on such day by such Lender to such Approved Funds. In the case of a participation, the participant shall have only the rights specified in Section 8.2.3 [Set-Off] (the participant's rights against the selling Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto and not to include any voting rights except with respect to changes of the type referenced in Sections 10.1.1 [Increase of Commitments, etc.], 10.1.2 [Extension of Payment, etc.] and 10.1.3 [Release of Collateral or Guarantor]), all of such Lender's obligations under this Agreement or any other Loan Document shall remain unchanged, and all amounts payable by any Loan Party hereunder or thereunder shall be determined as if such Lender had not sold such participation. Any assignee or participant which is not incorporated under the Laws of the United States of America or a state thereof shall deliver to the Borrower and the Administrative Agent the form of certificate described in Section 10.17 [Tax Withholding] relating to federal income tax withholding. Each Lender may furnish any publicly available information concerning any Loan Party or its Subsidiaries and any other information concerning any Loan Party or its Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees or participants), provided that such assignees and participants agree to be bound by the provisions of Section 10.12 [Confidentiality].

(b) Designation.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "Designating Lender") may grant to one or more special purpose funding vehicles (each, an "SPV"), identified as such in writing from time to time by the Designated Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Term Loan that such Designating Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (x) nothing herein shall constitute a commitment by any SPV to make any Term Loan, (y) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Term Loan, the Designating Lender shall be obligated to make such Term Loan pursuant to the terms hereof and (z) the Designating Lender shall remain liable for any indemnity or other payment obligation with respect to its Commitment hereunder. The making of a Term Loan by an SPV hereunder shall utilize the Commitment of the Designating Lender to the same extent, and as if, such Term Loan were made by such Designating Lender.

(ii) As to any Term Loans or portion thereof made by it, each SPV shall have all the rights that a Lender making such Term Loans or portion thereof would have had under this Agreement; provided, however, that each SPV shall have granted to its Designating Lender an irrevocable power of attorney, to deliver and receive all communications and notices under this Agreement (and any Loan Documents) and to exercise, on such SPV's behalf, all of such SPV's voting rights under this Agreement. No additional Note shall be required to evidence the Term Loans or portion thereof made by an SPV; and the related Designating Lender shall be deemed to hold its Note as agent for such SPV to the extent of the Term Loans or portion thereof funded by such SPV. In addition, any payments for the account of any SPV shall be paid to its Designating Lender as agent for such SPV. Notwithstanding any term or condition hereof, no SPV, unless it shall have become a Lender hereunder in accordance with the terms of Section 10.11.2(a), shall be a party hereto or have any right to vote or give or withhold its consent under this Agreement. The Administrative Agent shall have no duty or obligation to give any notices required to be delivered hereunder to any SPV.

(iii) Each party hereto hereby agrees that no SPV shall be liable for any indemnity or payment under this Agreement for which a Lender would otherwise be liable. In furtherance of the foregoing, each party hereto hereby agrees (which agreements shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the later of (x) payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, (y) the payment in full of all Term Loans, and (z) the termination of all Commitments, it will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof, provided that the Designating Lender for each SPV hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage and expense arising out of the inability to institute any such proceeding against such SPV.

(iv) In addition, notwithstanding anything to the contrary contained in this Section 10.11.2(b) or otherwise in this Agreement (other than the proviso set forth directly below in this Section 10.11.2(b)), any SPV may (y) with notice to, but without the prior written consent of the Borrower or the Administrative Agent, at any time and without paying any processing fee therefor, assign or participate all or a portion of its interest in any Term Loans to the Designating Lender or to any financial institutions providing liquidity and/or credit support to or for the account of such SPV to support the funding or maintenance of Term Loans and (z) disclose on a confidential basis any non public information relating to its Term Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancements to such SPV; provided, however, that in no event may any non-public financial information provided by the Borrower under Section 7.3 [Reporting Requirements] be provided by any SPV to any other Person. In no event shall the Borrower be obligated to pay to any SPV that has made a Term Loan any greater amount than the Borrower would have been obligated to pay under this Agreement if the Designating Lender had made such Term Loan. This Section 10.11.2(b) may not be amended without the written consent of any Designating Lender affected thereby.

#### 10.11.3 Non-U.S. Assignees and Participants.

Each Lender or assignee or participant of a Lender that is not incorporated under the laws of the U.S. or a state thereof (and, upon the written request of the Administrative Agent, each other Lender or assignee or participant of a Lender) shall deliver to the Borrower and the Administrative Agent a Withholding Certificate as described in Section 10.17 [Tax Withholding] relating to federal income tax withholding. Each Lender may furnish any publicly available information concerning any Loan Party or its Subsidiaries and any other information concerning any Loan Party or its Subsidiaries in the possession of such Lender from time to time to assignees and participants (including prospective assignees or participants), provided that such assignees and participants agree to be bound by the provisions of Section 10.12 [Confidentiality].

#### 10.11.4 Assignments by Lenders to Federal Reserve Banks.

Notwithstanding any other provision in this Agreement, any Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement, its Term Notes (if any) and the other Loan Documents to any Federal Reserve Bank without notice to or consent of the Borrower and the Administrative Agent, and any Lender which is an investment fund may pledge all or any portion of its Term Notes or Term Loans to its trustee in support of its obligations to such trustee. No such pledge or grant of a security interest shall release the transferor Lender of its obligations hereunder or under any other Loan Document. In no event shall such Federal Reserve Bank or trustee, as a result of such pledge or grant of a security interest, be considered to be a "Lender" hereunder or be entitled to require the assigning Lender to take or omit to take any action hereunder. For avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section 10.11 concerning assignments relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests, including any pledge or assignment by a Lender to any Federal Reserve Bank in accordance with applicable law.

#### 10.12 Confidentiality.

##### 10.12.1 General.

The Agents, the Administrative Agent and the Lenders each agree to keep confidential all information obtained from any Loan Party or its Subsidiaries which is nonpublic and confidential or proprietary in nature (including any information the Borrower specifically designates in writing as confidential), except as provided below, and to use such information only in connection with their respective capacities under this Agreement and for the purposes contemplated hereby. The Agents, the Administrative Agent and the Lenders shall be permitted to disclose such information (i) to outside legal counsel, accountants and other professional advisors who need to know such information in connection with the execution, administration and enforcement of this Agreement, subject to the agreement of such Persons to maintain the confidentiality, (ii) to assignees and participants as contemplated by Section 10.11 [Successors and Assigns], (iii) to any direct or indirect contractual counterparty in any swap, hedge or similar agreement or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.12) (iv) to the extent requested by any bank regulatory authority, insurance company regulatory authority or, with notice to the Borrower as permitted by applicable Law, as otherwise required by applicable Law or by any subpoena or other legal process, or in connection with any investigation or proceeding arising out of the transactions contemplated by this Agreement, (v) if it becomes publicly available other than as a result of a breach of this Agreement or becomes available from a source not known to be subject to confidentiality restrictions, (vi) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about the Lender's investment portfolio, (vii) in connection with the exercise, preservation or protection of any right or remedy hereunder or under the other Loan Documents, applicable law or in equity or (viii) if the Borrower shall have consented to such disclosure.

10.12.2 Sharing Information With Affiliates of the Lenders.

The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and the Borrower (on its own behalf and on behalf of its Subsidiaries) hereby authorizes each Lender to share any information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate of such Lender, it being understood that any such Subsidiary or Affiliate of any Lender receiving such information shall be bound by the provisions of Section 10.12.1 above as if it were a Lender hereunder. Such authorization shall survive the repayment of the Term Loans and other Obligations and the termination of the Commitments.

10.13 Counterparts.

This Agreement may be executed by different parties hereto on any number of separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument.

10.14 Agent's or Lender's Consent.

Whenever the Administrative Agent's, any Agent's or any Lender's consent is required to be obtained under this Agreement or any of the other Loan Documents as a condition to any action, inaction, condition or event, the Administrative Agent, each Agent and each Lender shall be authorized to give or withhold such consent in its sole and absolute discretion and to condition its consent upon the giving of additional collateral, the payment of money or any other matter.

10.15 Exceptions.

The representations, warranties and covenants contained herein shall be independent of each other, and no exception to any representation, warranty or covenant shall be deemed to be an exception to any other representation, warranty or covenant contained herein unless expressly provided, nor shall any such exceptions be deemed to permit any action or omission that would be in contravention of applicable Law.

10.16 CONSENT TO FORUM; WAIVER OF JURY TRIAL.

THE BORROWER HEREBY IRREVOCABLY CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA, AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE

MADE BY CERTIFIED OR REGISTERED MAIL DIRECTED TO THE BORROWER AT THE ADDRESS PROVIDED FOR IN SECTION 10.6 [NOTICES] AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT THEREOF. THE BORROWER WAIVES ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED AGAINST IT AS PROVIDED HEREIN AND AGREES NOT TO ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE. THE BORROWER, THE AGENTS, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE COLLATERAL TO THE FULL EXTENT PERMITTED BY LAW.

#### 10.17 Tax Withholding.

Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the U.S. or a state thereof (and, upon the written request of the Administrative Agent, each other Lender or assignee or participant of a Lender) agrees that it will deliver to each of the Borrower and the Administrative Agent two (2) duly completed appropriate valid Withholding Certificates (as defined under ss.1.1441-1(c)(16) of the Income Tax Regulations ("Regulations")) certifying its status (i.e., U.S. or foreign Person) and, if appropriate, making a claim of reduced, or exemption from, U.S. withholding tax on the basis of an income tax treaty or an exemption provided by the Internal Revenue Code. The term "Withholding Certificate" includes Form W-9; Form W-8BEN; Form W-8ECI; or, Form W-8IMY, and the related statements and certifications as required under ss.1.1441-1(c)(3) of the Regulations; a statement described in ss.1.871-14(c)(2)(v) of the Regulations; or, any other certificates under the Code or Regulations that certify or establish the status of a payee or beneficial owner as a U.S. or foreign Person. Each Lender, assignee or participant required to deliver to the Borrower and the Administrative Agent a valid Withholding Certificate pursuant to the preceding sentence shall deliver such valid Withholding Certificate as follows: (A) each Lender which is a party hereto on the Restatement Effective Date shall deliver such valid Withholding Certificate at least five (5) Business Days prior to the first date on which any interest or fees are payable by the Borrower hereunder for the account of such Lender; (B) each assignee or participant shall deliver such valid Withholding Certificate at least five (5) Business Days before the effective date of such assignment or participation (unless the Administrative Agent in its sole discretion shall permit such assignee or participant to deliver such Withholding Certificate less than five (5) Business Days before such date in which case it shall be due on the date specified by the Administrative Agent). Each Lender, assignee or participant which so delivers a valid Withholding Certificate further undertakes to deliver to each of the Borrower and the Administrative Agent two (2) additional copies of such Withholding Certificate (or a successor form) on or before the date that such Withholding Certificate expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent Withholding Certificate so delivered by it, and such amendments thereto or extensions or renewals thereof as may be reasonably requested by the Borrower or the Administrative Agent. Notwithstanding the submission of a Withholding Certificate claiming a reduced rate of, or exemption from, U.S. withholding tax, the Administrative Agent shall be entitled to withhold U. S. federal income

taxes at the full withholding rate unless the Lender, assignee or participant establishes pursuant to the foregoing that it is entitled to an exemption or that it is subject to a reduced rate or, if in its reasonable judgment the Administrative Agent is not required to do so under the due diligence requirements imposed upon a withholding agent under ss.1.1441-7(b) of the Regulations. The Administrative Agent shall be indemnified under ss.1.1461-1(e) of the Regulations against any claims and demands of any Lender or assignee or participant of a Lender for the amount of any tax it deducts and withholds in accordance with regulations under ss.1441 of the Internal Revenue Code.

#### 10.18 Joinder of Guarantors.

Any Significant Subsidiary of the Borrower which is required to become a Guarantor pursuant to Section 7.2.6 [Subsidiaries, Partnerships and Joint Ventures] shall execute and deliver to the Administrative Agent (i) a Guarantor Joinder in substantially the form attached hereto as Exhibit 1.1(G)(1) pursuant to which it shall join as a Guarantor each of the documents to which the Guarantors are parties; (ii) documents in the forms described in Section 6.1 [Conditions to Closing] modified as appropriate to relate to such Subsidiary; and (iii) documents necessary to grant and perfect a Prior Security Interest to the Administrative Agent for the benefit of the Lenders in all of the equity interests of such Subsidiary and in all Collateral held by such Subsidiary. The Borrower shall deliver such Guarantor Joinder and related documents to the Administrative Agent within thirty (30) Business Days after the end of the fiscal quarter in which such Subsidiary of the Borrower becomes a Significant Subsidiary. In addition, Canyon Fuel (assuming it is a Significant Subsidiary) shall join the Loan Documents as a Guarantor at such time as the Borrower can unilaterally, under the terms of the Canyon Fuel LLC Agreement, cause such joinder to occur.

#### 10.19 Register.

The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at its address for notices referred to at Section 10.6 [Notices] a register (the "Register") and an account for each Lender in which the Administrative Agent will record the names and addresses of the Lenders and the Commitments of, and principal amount of the Term Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Commitments and the Term Loans recorded therein for all purposes of this Agreement; provided, however that the failure of the Administrative Agent to maintain the Register or an account for any Lender shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Term Loans made to the Borrower by such Lender in accordance with the terms of this Agreement. An assignment of any Term Loan shall be effective only upon appropriate entries with respect thereto being made in the Register. Any assignment or transfer of all or part of a Term Loan evidenced by a Term Note shall be registered on the Register only upon surrender for registration of assignment or transfer of the Term Note evidencing such Term Loan, accompanied by a duly executed Assignment and Assumption Agreement, and thereupon one or more new Term Notes in the same aggregate principal amount shall be issued by the Borrower in the appropriate amount(s) to the designated assignee and the

assigning Lender, if such Lender retains any portion of its Term Loans, and the old Term Notes shall be returned by the Administrative Agent to the Borrower marked "replaced". The Administrative Agent shall maintain a copy of each Assignment and Assumption Agreement delivered to it as part of the Register. The Register shall be available for inspection by the Borrower, and the Lenders and their representatives (including counsel and accountants), at any reasonable time and from time to time upon reasonable prior notice. Upon its receipt of a duly completed Assignment and Assumption Agreement executed by an assigning Lender and an assignee and meeting the requirements set forth in Section 10.11.2 [Assignments and Participations by Lenders] hereof, the Administrative Agent shall (i) accept such Assignment and Assumption Agreement, (ii) record the information contained therein in the Register, and (iii) give prompt notice thereof to the Lenders. Notwithstanding anything to the contrary contained herein, no assignment under Section 10.11.2 shall be effective unless and until the Administrative Agent shall have recorded such assignment in the Register. The Administrative Agent shall record the name of the transferor, the name of the transferee, and the amount of the transfer in the Register after receipt of all documents required pursuant to Section 10.11.2 and such other documents as the Administrative Agent may reasonably request.

#### 10.20 Amendment and Restatement.

This Agreement amends and restates in its entirety the Original Credit Agreement; and, Borrower confirms that the Original Credit Agreement, the Collateral Documents, the other Loan Documents and the Collateral for the Obligations thereunder (as all such capitalized terms are defined in the Original Credit Agreement) have at all times, since the date of the execution and delivery of such documents, remained in full force and effect and continued to secure such obligations which are continued as the Obligations hereunder as amended hereby; and, all such Collateral (as defined in the Original Credit Agreement), pursuant to the Collateral Documents hereunder shall continue to secure the Obligations hereunder. The Term Loans hereunder are a continuation of the Term Loans under (and as such term is defined in) the Original Credit Agreement and are amended to consist of Tranche A Term Loans and Tranche B Term Loans. Borrower and Administrative Agent acknowledge and agree that the amendment and restatement of the Original Credit Agreement by this Agreement is not intended to constitute, nor does it constitute, a novation, interruption, suspension of continuity, satisfaction, discharge or termination of the obligations, loans, liabilities, or indebtedness under the Original Credit Agreement and other Loan Documents thereunder or the collateral security therefor and this Agreement and the other Loan Documents are entitled to all rights and benefits originally pertaining to the Original Credit Agreement and the other Loan Documents (as such term is defined therein).

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed this Agreement as of the day and year first above written.

ATTEST: ARCH WESTERN RESOURCES, LLC

/s/ Janet L. Horgan  
Name: Janet L. Horgan  
Title: Secretary

By: /s/ Robert J. Messey  
Name: Robert J. Messey  
Title: Vice President r

[Seal]

PNC BANK, NATIONAL ASSOCIATION  
individually and as Administrative Agent

By: /s/ Richard C. Munsick  
Richard C. Munsick  
Managing Director

JP MORGAN CHASE BANK, individually and  
as Syndication Agent

By: /s/ Peter S. Predun  
Vice President

CITIBANK, N.A., individually and as  
Documentation Agent

By: /s/ Raymond G. Dunning  
Raymond G. Dunning  
Managing Director

CREDIT LYONNAIS NEW YORK BRANCH,  
individually and as Documentation  
Agent

By: /s/ Attila Koc  
Senior Vice President

U.S. BANK NATIONAL ASSOCIATION,  
individually and as Documentation Agent

By: /s/ Eric Hartman  
Eric Hartman  
Vice President

BANK LEUMI USA

By: /s/ Joung Hee Hong  
Joung Hee Hong  
Vice President

BNP PARIBAS

By: /s/ Evans R. Swann  
Evans R. Swann  
Director

/s/ Polly Schot  
Polly Schot  
Vice President

CREDIT INDUSTRIEL ET COMMERCIAL

By: /s/ Brian O'Leary  
Brian O'Leary  
Vice President

/s/ Anthony Rock  
Anthony Rock  
Vice President

ERSTE BANK

By: /s/ Gregory Aptman  
Gregory Aptman  
Vice President

By: /s/ John Runnion  
Managing Director

FLEET NATIONAL BANK

By: /s/ Jeffrey H. Rathkamp  
Vice President

GENERAL ELECTRIC CAPITAL CORPORATION

By: /s/ William S. Richardson  
William S. Richardson  
Duly Authorized Signatory

KZH CNC LLC

By: /s/ Susan Lee  
Susan Lee  
Authorized Agent

KZH CYPRESSTREE-1 LLC

By: /s/ Susan Lee  
Susan Lee  
Authorized Agent

KZH ING-2 LLC

By: /s/ Susan Lee  
Susan Lee  
Authorized Agent

KZH PONDVIEW LLC

By: /s/ Susan Lee  
Susan Lee  
Authorized Agent

KZH STERLING LLC

By: /s/ Susan Lee  
Susan Lee  
Authorized Agent

KZH WATERSIDE LLC

By: /s/ Susan Lee  
Susan Lee  
Authorized Agent

MIZUHO CORPORATE BANK LIMITED

By: /s/ Nobuyasu Fukatsu  
Nobuyasu Fukatsu  
Senior Vice President

NATIONAL CITY BANK

By: /s/ Jennifer R. Hammarlund  
Jennifer R. Hammarlund  
Assistant Vice President

PRINCIPAL LIFE INSURANCE COMPANY

By: /s/ Jon C. Heiny  
Jon C. Heiny  
Counsel

By: /s/ JoEllen J. Watts  
JoEllen J. Watts  
Counsel

THE BANK OF NEW YORK

By: /s/ Craig J. Anderson  
Craig J. Anderson  
Vice President

THE SUMITOMO TRUST & BANKING CO.  
LTD., NEW YORK BRANCH

By: /s/ Elizabeth A. Quirk  
Elizabeth A. Quirk  
Vice President

THE TRAVELERS INSURANCE COMPANY

By: /s/ Robert M. Mills  
Robert M. Mills  
Investment Officer

TORONTO DOMINION (NEW YORK) INC.

By: /s/ Gwen Zirkle  
Gwen Zirkle  
Vice President

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ David L. Driggers  
David L. Driggers  
Managing Director



ARCH COAL, INC.  
1997 STOCK INCENTIVE PLAN  
(As Amended and Restated on February 28, 2002)

SECTION 1

Statement of Purpose

1.1. The Arch Coal, Inc. 1997 Stock Incentive Plan (the "Plan") has been established by Arch Mineral Corporation, which pursuant to the Agreement and Plan of Merger by and between the Company and Ashland Coal, Inc., et. al, will change its name to Arch Coal, Inc., to become effective at the Effective Time as defined herein in order to:

(a) attract and retain executive, managerial and other salaried employees;

(b) motivate participating employees, by means of appropriate incentives, to achieve long-range goals;

(c) provide incentive compensation opportunities that are competitive with those of other major corporations; and

(d) further identify a Participant's interests with those of the Company's other stockholders through compensation based on the Company's common stock; thereby promoting the long-term financial interest of the Company and its Related Companies, including the growth in value of the Company's equity and enhancement of long-term stockholder return.

SECTION 2

Definitions

2.1. Unless the context indicates otherwise, the following terms shall have the meaning set forth below:

(a) Acquiring Corporation. The term "Acquiring Corporation" shall mean the surviving, continuing successor or purchasing corporation in an acquisition or merger with the Company in which the Company is not the surviving corporation.

(b) Award. The term "Award" shall mean any award or benefit granted to any Participant under the Plan, including, without limitation, the grant of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Stock, Performance Units, Merit Awards, Phantom Stock Awards and Stock acquired through purchase under Section 12.

(c) Board. The term "Board" shall mean the Board of Directors of the Company acting as such but shall not include the Committee or other committees of the Board acting on behalf of the Board.

(d) Cause. The term "Cause" shall mean (a) the continued failure by the Participant to substantially perform his or her duties with the Company (other than any such failure resulting from his or her incapacity due to physical or mental illness), or (b) the engaging by the Participant in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise.

(e) Change in Control. A "Change in Control" shall mean a change in control of the Company of a nature that would be required to be reported (assuming such event has not been "previously reported") in response to Item 1(a) of a Current Report on Form 8-K pursuant to Section 13 or 15(d) of the Exchange Act as in effect on the date this Plan is approved by the shareholders of the Company; provided that, without limitation, such a Change in Control shall be deemed to have occurred (1) upon the approval of the Board (or if approval of the Board is not required as a matter of law, the shareholders of the Company) of (A) any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of Stock would be converted into cash, securities or other property, other than a merger in which the holders of the Stock immediately prior to the merger will have more than 50% of the ownership of common stock of the surviving corporation immediately after the merger, (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company, or (C) adoption of any plan or proposal for the liquidation or dissolution of the Company, or (2) when any "person" (as defined in Section 13(d) of the Exchange Act), other than a Significant Stockholder, or any subsidiary of the Company or employee benefit plan or trust maintained by the Company or any of its subsidiaries, shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 20% of the Stock outstanding at the time, without the prior approval of the Board.

(f) Code. The term "Code" means the Internal Revenue Code of 1986, as amended. A reference to any provision of the Code shall include reference to any successor provision of the Code.

(g) Committee. The term "Committee" means the committee of the Board

selected in accordance with the provisions of Subsection 4.2.

(h) Company. The term "Company" means Arch Coal, Inc., a Delaware corporation, which prior to the Effective Date was known as Arch Mineral Corporation.

(i) Date of Termination. A Participant's "Date of Termination" shall be the date on which his or her employment with all Employers and Related Companies

terminates for any reason; provided that for purposes of this Plan only, a Participant's employment shall not be deemed to be terminated by reason of a transfer of the Participant between the Company and a Related Company (including Employers) or between two Related Companies (including Employers); and further provided that a Participant's employment shall not be considered terminated by reason of the Participant's leave of absence from an Employer or a Related Company that is approved in advance by the Participant's Employer.

(j) Disability. Except as otherwise provided by the Committee, a Participant shall be considered to have a "Disability" during the period in which he or she is unable, by reason of a medically determined physical or mental impairment, to carry out his or her duties with an Employer, which condition, in the discretion of the Committee, shall generally be an event which qualifies as a "long term disability" under applicable long term disability benefit programs of the Company.

(k) Effective Date. The term "Effective Date" shall mean the "Effective Time" of the "Merger" under the Agreement and Plan of Merger dated as of April 4, 1997, among the Company, Ashland Coal, Inc., and AMC Merger Corporation.

(l) Employee. The term "Employee" shall mean a person with an employment relationship with an Employer.

(m) Employer. The Company and each Subsidiary which, with the consent of the Company, participates in the Plan for the benefit of its eligible Employees are referred to collectively as the "Employers" and individually as an "Employer".

(n) Exchange Act. The term "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(o) Exercise Price. The term "Exercise Price" means, with respect to each share of Stock subject to an Option, the price fixed by the Committee at which such share may be purchased from the Company pursuant to the exercise of such Option, which price at no time may be less than 100% of the Fair Market Value of the Stock on the date the Option is granted, except as permitted and contemplated by Section 21 of the Plan.

(p) Fair Market Value. The "Fair Market Value" of the Stock on any given date shall be the last sale price, regular way, or, in case no such sale takes place on such date, the average of the closing bid and asked prices, regular way, of the Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Stock is not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Stock is listed or admitted to trading or, if the Stock is not listed or admitted to trading on any national securities exchange, the last

quoted sale price on such date or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market on such date, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System or such other system then in use, or, if on any such date the Stock is not quoted by any such organization, the average of the closing bid and asked prices on such date as furnished by a professional market maker making a market in the Stock. If the Stock is not publicly held or so listed or publicly traded, "Fair Market Value" per share of Stock shall mean the Fair Market Value per share as reasonably determined by the Committee.

(q) Immediate Family. With respect to a particular Participant, the term "Immediate Family" shall mean, whether through consanguinity or adoptive relationships, the Participant's spouse, children, stepchildren, siblings and grandchildren.

(r) Incentive Stock Option. The term "Incentive Stock Option" shall mean any Incentive Stock Option granted under the Plan.

(s) Merit Award. The term "Merit Award" shall mean any Merit Award granted under the Plan.

(t) Non-Employee Director. The term "Non-Employee Director" shall mean a person who qualifies as such under Rule 16b-3(b)(3) under the Exchange Act or any successor provision, and who also qualifies as an "outside director" under Section 162(m) of the Code.

(u) Non-Qualified Stock Option. The term "Non-qualified Stock Option" shall mean any Non-Qualified Stock Option granted under the Plan.

(v) NYSE. The term "NYSE" refers to the New York Stock Exchange, Inc.

(w) Option. The term "Option" shall mean any Incentive Stock Option or Non-Qualified Stock Option granted under the Plan.

(x) Participant. The term "Participant" means an Employee who has been granted an award under the Plan.

(y) Performance-Based Compensation. The term "Performance-Based Compensation" shall have the meaning ascribed to it in Section 162(m)(4)(C) of the Code.

(z) Performance Goals. The term "Performance Goals" means the goals established by the Committee under an Award which, if met, will entitle the Participant to payment under such Award and will qualify such payment as "Performance-Based Compensation" as that term is used in Code Section 162(m)(4)(C). Such goals will be based upon one or more of the following business criteria: net income; earnings per share; earnings before interest and

taxes ("EBIT"); earnings before interest, taxes, depreciation, and amortization ("EBITDA"); debt reduction; safety; return on investment; operating income; operating ratio; cash flow; return on assets; stockholders' return; revenue; return on equity; economic value added (EVA(R)); operating costs; sales; or compliance with Company policies.

(aa) Performance Period. The term "Performance Period" shall mean the period over which applicable performance is to be measured.

(bb) Performance Stock. The term "Performance Stock" shall have the meaning ascribed to it in Section 10 of the Plan.

(cc) Performance Units. The term "Performance Units" shall have the meaning ascribed to it in Section 11 of the Plan.

(dd) Phantom Stock Award. The term "Phantom Stock Award" shall mean any Phantom Stock Award granted under the Plan.

(ee) Plan. The term "Plan" shall mean this Arch Coal, Inc. 1997 Stock Incentive Plan as the same may be from time to time amended or revised.

(ff) Qualified Retirement Plan. The term "Qualified Retirement Plan" means any plan of an Employer or a Related Company that is intended to be qualified under Section 401(a) of the Code.

(gg) Related Companies. The term "Related Companies" means any Significant Stockholder and their subsidiaries; and any other company during any period in which it is a Subsidiary or a division of the Company, including any entity acquired by, or merged with or into, the Company or a Subsidiary.

(hh) Restricted Period. The term "Restricted Period" shall mean the period of time for which shares of Restricted Stock or Restricted Stock Units are subject to forfeiture pursuant to the Plan or during which Options and Stock Appreciation Rights are not exercisable.

(ii) Restricted Stock. The term "Restricted Stock" shall have the meaning ascribed to it in Section 8 of the Plan.

(jj) Restricted Stock Units. The term "Restricted Stock Units" shall have the meaning ascribed to it in Section 9 of the Plan.

(kk) Retirement. "Retirement" of a Participant shall mean the occurrence of a Participant's Date of Termination under circumstances that constitute such Participant's retirement at normal or early retirement age under the terms of

the Qualified Retirement Plan of Participant's Employer that is extended to the Participant immediately prior to the Participant's Date of Termination or, if no such plan is extended to the Participant on his or her Date of Termination, under the terms of any applicable retirement policy of the Participant's Employer.

(ll) SEC. "SEC" means the Securities and Exchange Commission.

(mm) Significant Stockholder. The term "Significant Stockholder" shall mean any shareholder of the Company who, immediately prior to the Effective Date, owned more than 5% of the common stock of the Company.

(nn) Stock. The term "Stock" shall mean shares of common stock, \$.01 par value per share, of the Company.

(oo) Stock Appreciation Rights. The term "Stock Appreciation Rights" shall mean any Stock Appreciation Right granted under the Plan.

(pp) Subsidiary. The term "Subsidiary" shall mean any present or future subsidiary corporation of the Company within the meaning of Code Section 424(f).

(qq) Tax Date. The term "Tax Date" shall mean the date a withholding tax obligation arises with respect to an Award.

### SECTION 3

#### Eligibility

3.1. Subject to the discretion of the Committee and the terms and conditions of the Plan, the Committee shall determine and designate from time to time, the Employees or other persons as contemplated by Section 21 of the Plan who will be granted one or more Awards under the Plan.

### SECTION 4

#### Operation and Administration

4.1. The Plan has been adopted by the Board on April 1, 1997, effective as of the Effective Date, subject to the further approval of the shareholders of the Company. In addition, if the Plan is approved by the shareholders, to the extent required pursuant to Section 162(m) of the Code, it or any part thereof shall be resubmitted to shareholders for reapproval at the first shareholders' meeting that occurs during the fifth year following the year of the initial approval and thereafter at five year intervals, in each case, as may be required to qualify any Award hereunder as Performance-Based Compensation. The Plan shall be unlimited in duration and remain in effect until termination by the Board; provided however, that no Incentive Stock Option may be granted under the Plan after April 1, 2007.

4.2. The Plan shall be administered by the Committee which shall consist of two or more members of the Board who are Non-Employee Directors. Plenary authority to manage and control the operation and administration of the Plan shall be vested in the Committee, which authority shall include, but shall not be limited to:

(a) Subject to the provisions of the Plan, the authority and discretion to select Employees to receive Awards, to determine the time or times of receipt, to determine the types of Awards and the number of shares covered by the Awards, to establish the terms, conditions, performance criteria, restrictions, and other provisions of such Awards. In making such Award determinations, the Committee may take into account the nature of services rendered by the respective Employee, his or her present and potential contribution to the Company's success and such other factors as the Committee deems relevant.

(b) Subject to the provisions of the Plan, the authority and discretion to determine the extent to which Awards under the Plan will be structured to conform to the requirements applicable to Performance-Based Compensation as described in Code Section 162(m), and to take such action, establish such procedures, and impose such restrictions at the time such awards are granted as the Committee determines to be necessary or appropriate to conform to such requirements.

(c) The authority and discretion to interpret the Plan and the Awards granted under the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any agreements made pursuant to the Plan, to make all other determinations that it deems necessary or advisable for the administration of the Plan and to correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award, in each case, in the manner and to the extent the Committee deems necessary or advisable to carry it into effect.

4.3. Any interpretation of the Plan by the Committee and any decision made by it under the Plan shall be final and binding on all persons. The express grant in the Plan of any specific power to the Committee shall not be construed as limiting any power or authority of the Committee. Provided, however, that except as otherwise permitted under Treasury Regulation 1.162-27(e)(2)(iii)(C), the Committee may not increase any Award once made if payment under such Award is intended to constitute Performance-Based Compensation.

4.4. The Committee may only act at a meeting by unanimous consent if comprised of two members, and otherwise by a majority of its members. Any determination of the Committee may be made without a meeting by the unanimous written consent of its members. In addition, the Committee may authorize one or more of its members or any officer of an Employer to execute and deliver documents and perform other administrative acts pursuant to the Plan.

4.5. No member or authorized delegate of the Committee shall be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his or her own fraud or gross misconduct. The Committee, the individual members thereof, and persons acting as the authorized delegates of the Committee under the Plan, shall be indemnified by the Employers against any and all liabilities, losses, costs and expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Committee or its members or authorized delegates by reason of the performance of any action pursuant to the Plan if the Committee or its members or authorized delegates did not act in willful violation of the law or regulation under which such liability, loss, cost or expense arises. This indemnification shall not duplicate but may supplement any coverage available under any applicable insurance policy, contract with the indemnitee or the Company's By-laws.

4.6. Notwithstanding any other provision of the Plan to the contrary, but without giving effect to Awards made pursuant to Section 21, the maximum number of shares of Stock with respect to which any Participant may receive any Award of an Option or a Stock Appreciation Right under the Plan during any calendar year is 300,000; the maximum number of shares with respect to which any Participant may receive Awards of Restricted Stock during any calendar year is 100,000; the maximum number of shares with respect to which any Participant may receive Merit Awards during any calendar year is 100,000; and the maximum number of shares with respect to which any Participant may receive other Awards during any calendar year is 100,000.

4.7. To the extent that the Committee determines that it is necessary or desirable to conform any Awards under the Plan with the requirements applicable to "Performance-Based Compensation", as that term is used in Code Section 162(m)(4)(C), it may, at or prior to the time an Award is granted, establish Performance Goals for a particular Performance Period. If the Committee establishes Performance Goals for a Performance Period, it may approve a payment from that particular Performance Period upon attainment of the Performance Goal.

## SECTION 5

### Shares Available Under the Plan

5.1. The shares of Stock with respect to which Awards may be made under the Plan shall be shares of currently authorized but unissued or treasury shares acquired by the Company, including shares purchased in the open market or in private transactions. Subject to the provisions of Section 16, the total number of shares of Stock available for grant of Awards shall not exceed nine million (9,000,000) shares of Stock. Except as otherwise provided herein, if any Award shall expire or terminate for any reason without having been exercised in full, the unissued shares of Stock subject thereto (whether or not cash or other consideration is paid in respect of such Award) shall again be available for the purposes of the Plan. Any shares of Stock which are used as full or partial payment to the Company upon exercise of an Award shall be available for purposes of the Plan.

## SECTION 6

### Options

6.1. The grant of an "Option" under this Section 6 entitles the Participant to purchase shares of Stock at a price fixed at the time the Option is granted, or at a price determined under a method established at the time the Option is granted, subject to the terms of this Section 6. Options granted under this Section 6 may be either Incentive Stock Options or Non-Qualified Stock Options, and subject to Subsection 6.6 and Sections 15 and 20, shall not be exercisable for at least six months from the date of grant, as determined in the discretion of the Committee. An "Incentive Stock Option" is an Option that is intended to satisfy the requirements applicable to an "incentive stock option" described in Section 422(b) of the Code. A "Non-Qualified Option" is an Option that is not intended to be an "incentive stock option" as that term is described in Section 422(b) of the Code.

6.2. The Committee shall designate the Employees to whom Options are to be granted under this Section 6 and shall determine the number of shares of Stock to be subject to each such Option. To the extent that the aggregate Fair Market Value of Stock with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the Company and all Related Companies) exceeds \$100,000, such Options shall be treated as Non-Qualified Stock Options, but only to the extent required by Section 422 of the Code.

6.3. The determination and payment of the purchase price of a share of Stock under each Option granted under this Section shall be subject to the following terms of this Subsection 6.3:

(a) The purchase price shall be established by the Committee or shall be determined by a method established by the Committee at the time the Option is granted; provided, however, that in no event shall the price per share be less than the Fair Market Value per share on the date of the grant except as otherwise permitted by Section 21 of the Plan;

(b) The full purchase price of each share of Stock purchased upon the exercise of any Option shall be paid at the time of such exercise and, as soon as practicable thereafter, a certificate representing the shares so purchased shall be delivered to the person entitled thereto; and

(c) The purchase price shall be paid either in cash, in shares of Stock (valued at Fair Market Value as of the day of exercise), through a combination of cash and Stock (so valued) or through such cashless exercise arrangement as

may be approved by the Committee and established by the Company, provided that any shares of Stock used for payment shall have been owned by the Participant for at least six (6) months.

6.4. Except as otherwise expressly provided in the Plan, an Option granted under this Section 6 shall be exercisable in accordance with the following terms of this Subsection 6.4.

(a) The terms and conditions relating to exercise of an Option shall be established by the Committee, and may include, without limitation, conditions relating to completion of a specified period of service, achievement of performance standards prior to exercise of the Option, or achievement of Stock ownership objectives by the Participant. No Option may be exercised by a Participant after the expiration date applicable to that Option.

(b) The exercise of an Option will result in the surrender of the corresponding rights under a tandem Stock Appreciation Right, if any.

6.5. The exercise period of any Option shall be determined by the Committee but the term of any Option shall not extend more than ten years after the date of grant.

## SECTION 7

### Stock Appreciation Rights

7.1. Subject to the terms of this Section 7, a Stock Appreciation Right granted under the Plan entitles the Participant to receive, in cash or Stock (as determined in accordance with Subsection 7.4), value equal to all or a portion of the excess of: (a) the Fair Market Value of a specified number of shares of Stock at the time of exercise; over (b) a specified price which shall not be less than 100% of the Fair Market Value of the Stock at the time the Stock Appreciation Right is granted, or, if granted in tandem with an Option, the exercise price with respect to shares under the tandem Option.

7.2. Subject to the provisions of the Plan, the Committee shall designate the Employees to whom Stock Appreciation Rights are to be granted under the Plan, shall determine the exercise price or a method by which the price shall be established with respect to each such Stock Appreciation Right, and shall determine the number of shares of Stock on which each Stock Appreciation Right is based. A Stock Appreciation Right may be granted in connection with all or any portion of a previously or contemporaneously granted Option or not in connection with an Option. If a Stock Appreciation Right is granted in connection with an Option then, in the discretion of the Committee, the Stock Appreciation Right may, but need not, be granted in tandem with the Option.

7.3. The exercise of Stock Appreciation Rights shall be subject to the following:

(a) If a Stock Appreciation Right is not in tandem with an Option, then the Stock Appreciation Right shall be exercisable in accordance with the terms established by the Committee in connection with such rights but, subject to Sections 15 and 20, shall not be exercisable for six months from the date of grant and the term of any Stock Appreciation Right shall not extend more than ten years from the date of grant; and may include, without limitation, conditions relating to completion of a specified period of service, achievement of performance standards prior to exercise of the Stock Appreciation Rights, or achievement of objectives relating to Stock ownership by the Participant; and

(b) If a Stock Appreciation Right is in tandem with an Option, then the Stock Appreciation Right shall be exercisable only at the time the tandem Option is exercisable and the exercise of the Stock Appreciation Right will result in the surrender of the corresponding rights under the tandem Option.

7.4. Upon the exercise of a Stock Appreciation Right, the value to be distributed to the Participant, in accordance with Subsection 7.1, shall be distributed in shares of Stock (valued at their Fair Market Value at the time of exercise), in cash, or in a combination of Stock or cash, in the discretion of the Committee.

## SECTION 8

### Restricted Stock

8.1. Subject to the terms of this Section 8, Restricted Stock Awards under the Plan are grants of Stock to Participants, the vesting of which is subject to certain conditions established by the Committee, with some or all of those conditions relating to events (such as continued employment or satisfaction of performance criteria) occurring after the date of the grant of the Award, provided, however, that to the extent that vesting of a Restricted Stock Award is contingent on continued employment, the required employment period shall generally (unless otherwise determined by the Committee) not be less than one year following the grant of the Award unless such grant is in substitution for an Award under this Plan or a predecessor plan of the Company or a Related Company. To the extent, if any, required by the General Corporation Law of the State of Delaware, a Participant's receipt of an Award of newly issued shares of Restricted Stock shall be made subject to payment by the Participant of an amount equal to the aggregate par value of such newly issued shares of Stock.

8.2. The Committee shall designate the Employees to whom Restricted Stock is to be granted, and the number of shares of Stock that are subject to each such Award. The Award of shares under this Section 8 may, but need not, be made in conjunction with a cash-based incentive compensation program maintained by the Company, and may, but need not, be in lieu of cash otherwise awardable under such program.

8.3. Shares of Restricted Stock granted to Participants under the Plan shall be subject to the following terms and conditions:

(a) Restricted Stock granted to Participants may not be sold, assigned, transferred, pledged or otherwise encumbered during the Restricted Period;

(b) The Participant as owner of such shares shall have all the rights of a stockholder, including but not limited to the right to vote such shares and, except as otherwise provided by the Committee or as otherwise provided by the Plan, the right to receive all dividends and other distributions paid on such shares;

(c) Each certificate issued in respect of shares of Restricted Stock granted under the Plan shall be registered in the name of the Participant but, at the discretion of the Committee, each such certificate may be deposited with the Company with a stock power endorsed in blank or in a bank designated by the Committee;

(d) The Committee may award Restricted Stock as Performance-Based Compensation, which shall be Restricted Stock that will be earned (or for which earning is accelerated) upon the achievement of Performance Goals established by the Committee and the Committee may specify the number of shares that will be earned upon achievement of different levels of performance; except as otherwise provided by the Committee, achievement of maximum targets during the Performance Period shall result in the Participant's earning of the full amount of Restricted Stock comprising such Performance-Based Compensation and, in the discretion of the Committee, achievement of the minimum target but less than the maximum target, the Committee may result in the Participant's earning of a portion of the Award; and

(e) Except as otherwise provided by the Committee, any Restricted Stock which is not earned by the end of a Restricted Period or Performance Period, as the case may be, shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Restricted Period or Performance Period, as the case may be, the Committee may determine, in its sole discretion, that the Participant will be entitled to settlement of all or any portion of the Restricted Stock as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Restricted Stock or make such other adjustments as the Committee, in its sole discretion, deems desirable. Subject to the limitations of the Plan and the Award of Restricted Stock, upon the vesting of Restricted Stock, such Restricted Stock will be transferred free of all restrictions to the Participant (or his or her legal representative, beneficiary or heir).

## SECTION 9

### Restricted Stock Units

9.1. Subject to the terms of this Section 9, a Restricted Stock Unit entitles a Participant to receive shares for the units at the end of a Restricted Period to the extent provided by the Award with the vesting of such units to be contingent upon such conditions as may be established by the Committee (such as continued employment or satisfaction of performance criteria) occurring after the date of grant of the Award, provided, however, that to the extent that the vesting of a Restricted Stock Unit is contingent on continued employment, the required employment period shall generally not be less than one year following the date of grant of the Award unless such grant is in substitution for an Award under this Plan or a predecessor plan of the Company or a Related Company. The Award of Restricted Stock Units under this Section 9 may, but need not, be made in conjunction with a cash-based incentive compensation program maintained by the Company, and may, but need not, be in lieu of cash otherwise awardable under such program.

9.2. The Committee shall designate the Employees to whom Restricted Stock Units shall be granted and the number of units that are subject to each such Award. During any period in which Restricted Stock Units are outstanding and have not been settled in Stock, the Participant shall not have the rights of a stockholder, but, in the discretion of the Committee, may be granted the right to receive a payment from the Company in lieu of a dividend in an amount equal to any cash dividends that might be paid during the Restricted Period.

9.3 Except as otherwise provided by the Committee, any Restricted Stock Unit which is not earned by the end of a Restricted Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Restricted Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all, any portion, or none of the Restricted Stock Units as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Restricted Stock Units or make such other adjustments as the Committee, in its sole discretion, deems desirable.

## SECTION 10

### Performance Stock

10.1. Subject to the terms of this Section 10, an Award of Performance Stock provides for the distribution of Stock to a Participant upon the achievement of performance objectives, which may include Performance Goals, established by the Committee.

10.2. The Committee shall designate the Employees to whom Awards of Performance Stock are to be granted, and the number of shares of Stock that are subject to

each such Award. The Award of shares of Performance Stock under this Section 10 may, but need not, be made in conjunction with a cash-based incentive compensation program maintained by the Company, and may, but need not, be in lieu of cash otherwise awardable under such program.

10.3. Except as otherwise provided by the Committee, any Award of Performance Stock which is not earned by the end of the Performance Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Performance Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all, any portion, or none of the Performance Stock as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Performance Stock or make such other adjustments as the Committee, in its sole discretion, deems desirable.

## SECTION 11

### Performance Units

11.1. Subject to the terms of this Section 11, the Award of Performance Units under the Plan entitles the Participant to receive value for the units at the end of a Performance Period to the extent provided under the Award. The number of Performance Units earned, and value received from them, will be contingent on the degree to which the performance measures established at the time of grant of the Award are met.

11.2. The Committee shall designate the Employees to whom Performance Units are to be granted, and the number of Performance Units to be subject to each such Award.

11.3. For each Participant, the Committee will determine the value of Performance Units, which may be stated either in cash or in units representing shares of Stock; the performance measures used for determining whether the Performance Units are earned; the Performance Period during which the performance measures will apply; the relationship between the level of achievement of the performance measures and the degree to which Performance Units are earned; whether, during or after the Performance Period, any revision to the performance measures or Performance Period should be made to reflect significant events or changes that occur during the Performance Period; and the number of earned Performance Units that will be settled in cash and/or shares of Stock.

11.4. Settlement of Performance Units shall be subject to the following:

(a) The Committee will compare the actual performance to the performance measures established for the Performance Period and determine the number of Performance Units as to which settlement is to be made;

(b) Settlement of Performance Units earned shall be wholly in cash, wholly in Stock or in a combination of the two, to be distributed in a lump sum or installments, as determined by the Committee; and

(c) Shares of Stock distributed in settlement of Performance Units shall be subject to such vesting requirements and other conditions, if any, as the Committee shall determine, including, without limitation, restrictions of the type that may be imposed with respect to Restricted Stock under Section 8.

11.5. Except as otherwise provided by the Committee, any Award of Performance Units which is not earned by the end of the Performance Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Performance Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all, any portion, or none of the Performance Units as to which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of such Performance Units or make such other adjustments as the Committee, in its sole discretion, deems desirable.

## SECTION 12

### Stock Purchase Program

12.1. The Committee may, from time to time, establish one or more programs under which Employees will be permitted to purchase shares of Stock under the Plan, and shall designate the Employees eligible to participate under such Stock purchase programs. The purchase price for shares of Stock available under such programs, and other terms and conditions of such programs, shall be established by the Committee. The purchase price may not be less than 75% of the Fair Market Value of the Stock at the time of purchase (or, in the Committee's discretion, the average Stock value over a period determined by the Committee), and further provided that if newly issued shares of Stock are sold, the purchase price may not be less than the aggregate par value of such newly issued shares of Stock.

12.2. The Committee may impose such restrictions with respect to shares purchased under this Section 12, as the Committee, in its sole discretion, determines to be appropriate. Such restrictions may include, without limitation, restrictions of the type that may be imposed with respect to Restricted Stock under Section 8.

## SECTION 13

### Merit Awards

13.1. The Committee may from time to time make an Award of Stock under the Plan to selected Employees for such reasons and in such amounts as the Committee, in its sole discretion, may determine. The consideration to be paid by an Employee for any such Merit Award, if any, shall be fixed by the Committee from time to time, but, if required by the General Corporation Law of the State of Delaware, it shall not be less than the aggregate par value of the shares of Stock awarded to him or her.

## SECTION 14

### Phantom Stock Awards

14.1. The Committee may make Phantom Stock Awards to selected Employees which may be based solely on the value of the underlying shares of Stock, solely on any earnings or appreciation thereon, or both. Subject to the provisions of the Plan, the Committee shall have the sole and complete authority to determine the number of hypothetical or target shares as to which each such Phantom Stock Award is subject and to determine the terms and conditions of each such Phantom Stock Award. There may be more than one Phantom Stock Award in existence at any one time with respect to a selected Employee, and the terms and conditions of each such Phantom Stock Award may differ from each other.

14.2. The Committee shall establish vesting or performance measures for each Phantom Stock Award on the basis of such criteria and to accomplish such objectives as the Committee may from time to time, in its sole discretion, determine. Such measures may be based on years of service or periods of employment, or the achievement of individual or corporate performance objectives, but shall, in each instance, be based upon one or more of the business criteria as determined pursuant to Section 4.7. The vesting and performance measures determined by the Committee shall be established at the time a Phantom Stock Award is made. Phantom Stock Awards may not be sold, assigned, transferred, pledged, or otherwise encumbered, except as provided in Section 17, during the Performance Period.

14.3. The Committee shall determine, in its sole discretion, the manner of payment, which may include cash or shares of Stock in such proportions as the Committee shall determine.

14.4. Except as otherwise provided by the Committee, any Award of Phantom Stock which is not earned by the end of the Performance Period shall be forfeited. If a Participant's Date of Termination occurs prior to the end of a Performance Period, the Committee, in its sole discretion, may determine that the Participant will be entitled to settlement of all or a portion of the Phantom Stock for which he or she would otherwise be eligible, and may accelerate the determination of the value and settlement of Phantom Stock or make such other adjustment as the Committee, in its sole discretion, deems desirable.

## SECTION 15

### Termination of Employment

15.1. If a Participant's employment is terminated by the Participant's Employer for Cause or if the Participant's employment is terminated by the Participant without the written consent and approval of the Participant's Employer, all of the Participant's unvested Awards, including any unexercised Options, shall be forfeited.

15.2. If a Participant's Date of Termination occurs by reason of death, Disability or Retirement, all Options and Stock Appreciation Rights outstanding immediately prior to the Participant's Date of Termination shall immediately become exercisable and shall be exercisable until one year from the Participant's Date of Termination and thereafter shall be forfeited if not exercised, and all restrictions on any Awards outstanding immediately prior to the Participant's Date of Termination shall immediately lapse. Options and Stock Appreciation Rights which are or become exercisable at the time of a Participant's death may be exercised by the Participant's designated beneficiary or, in the absence of such designation, by the person to whom the Participant's rights will pass by will or the laws of descent and distribution.

15.3. If a Participant's Date of Termination occurs by reason of Participant's employment being terminated by the Participant's Employer for any reason other than Cause, or by the Participant with the written consent and approval of the Participant's Employer, the Restricted Period shall lapse on a proportion of any Awards outstanding immediately prior to the Participant's Date of Termination (except that, to the extent that an Award of Restricted Stock, Restricted Stock Units, Performance Units, Performance Stock and Phantom Stock is subject to a Performance Period), such proportion of the Award shall remain subject to the same terms and conditions for vesting as were in effect prior to the Date of Termination and shall be determined at the end of the Performance Period. The proportion of an Award upon which the Restricted Period shall lapse shall be a fraction, the denominator of which is the total number of months of any Restricted Period applicable to an Award and the numerator of which is the number of months of such Restricted Period which elapsed prior to the Date of Termination.

15.4. Options and Stock Appreciation Rights which are or become exercisable by reason of the Participant's employment being terminated by the Participant's Employer for reasons other than Cause or by the Participant with the consent and approval of the Participant's Employer, shall be exercisable until 60 days from the Participant's Termination Date and shall thereafter be forfeited if not exercised.

15.5. Except to the extent the Company shall otherwise determine, if, as a result of a sale or other transaction (other than a Change in Control), a Participant's Employer ceases to be a Related Company (and the Participant's Employer is or becomes an entity that is separate from the Company), the occurrence of such transaction shall be treated as the Participant's Date of Termination caused by the Participant's employment being terminated by the Participant's Employer for a reason other than Cause.

15.6. Notwithstanding the foregoing provisions of this Section 15, the Committee may, with respect to any Awards of a Participant (or portion thereof) that are outstanding immediately prior to the Participant's Date of Termination, determine that a Participant's Date of Termination will not result in forfeiture or other termination of the Award, or may extend the period during which any Options or Stock Appreciation Rights may be exercised, but shall not extend such period beyond the expiration date set forth in the Award.

## SECTION 16

### Adjustments to Shares

16.1. If the Company shall effect a reorganization, merger, or consolidation, or similar event or effect any subdivision or consolidation of shares of Stock or other capital readjustment, payment of stock dividend, stock split, spin-off, combination of shares or recapitalization or other increase or reduction of the number of shares of Stock outstanding without receiving compensation therefor in money, services or property, then the Committee shall appropriately adjust (i) the number of shares of Stock available under the Plan, (ii) the number of shares of Stock available under any individual or other limitations under the Plan, (iii) the number of shares of Stock subject to outstanding Awards and (iv) the per-share price under any outstanding Award to the extent that the Participant is required to pay a purchase price per share with respect to the Award.

16.2. If the Committee determines that an adjustment in accordance with the provisions of Subsection 16.1 would not be fully consistent with the purposes of the Plan or the purposes of the outstanding Awards under the Plan, the Committee may make such other adjustments, if any, that the Committee reasonably determines are consistent with the purposes of the Plan and/or the affected Awards.

16.3. To the extent that any reorganization, merger, consolidation, or similar event or any subdivision or consolidation of shares of Stock or other capital readjustment, payment of stock dividend, stock split, spin-off, combination of shares or recapitalization or other increase or reduction of the number of shares of Stock hereunder is also accompanied by or related to a Change in Control, the adjustment hereunder shall be made prior to the acceleration contemplated by Section 20.

## SECTION 17

### Transferability and Deferral of Awards

17.1. Awards under the Plan are not transferable except by will or by the laws of descent and distribution. To the extent that a Participant who receives an Award under the Plan has the right to exercise such Award, the Award may be exercised during the lifetime of the Participant only by the Participant. Notwithstanding the foregoing provisions of this Section 17, the Committee may, subject to any restrictions under applicable securities laws, permit Awards under the Plan (other than an Incentive Stock Option) to be transferred by a Participant for no consideration to or for the benefit of the Participant's Immediate Family (including, without limitation, to a trust for the benefit of a Participant's Immediate Family or to a Partnership comprised solely of members of the Participant's Immediate Family), subject to such limits as the Committee may establish, provided the transferee shall remain subject to all of the terms and conditions applicable to such Award prior to such transfer.

17.2. The Committee may permit a Participant to elect to defer payment under an Award under such terms and conditions as the Committee, in its sole discretion, may determine; provided that any such deferral election must be made prior to the time the Participant has become entitled to payment under the Award.

## SECTION 18

### Award Agreement

18.1. Each Participant granted an Award pursuant to the Plan shall sign an Award Agreement which signifies the offer of the Award by the Company and the acceptance of the Award by the Participant in accordance with the terms of the Award and the provisions of the Plan. Each Award Agreement shall reflect the terms and conditions of the Award. Participation in the Plan shall confer no rights to continued employment with an Employer nor shall it restrict the right of an Employer to terminate a Participant's employment at any time for any reason, notwithstanding the fact that the Participant's rights under this Plan may be negatively affected by such action.

## SECTION 19

### Tax Withholding

19.1 All Awards and other payments under the Plan are subject to withholding of all applicable taxes, which withholding obligations shall be satisfied (without regard to whether the Participant has transferred an Award under the Plan) by a

cash remittance, or with the consent of the Committee, through the surrender of shares of Stock which the Participant owns or to which the Participant is otherwise entitled under the Plan pursuant to an irrevocable election submitted by the Participant to the Company at the office designated for such purpose. The number of shares of Stock needed to be submitted in payment of the taxes shall be determined using the Fair Market Value as of the applicable tax date rounding down to the nearest whole share.

#### SECTION 20

##### Change in Control

20.1. After giving effect to the provisions of Section 16 (relating to the adjustment of shares of Stock), and except as otherwise provided in the Plan or the Agreement reflecting the applicable Award, upon the occurrence of a Change in Control:

(a) All outstanding Options (regardless of whether in tandem with Stock Appreciation Rights) shall become fully exercisable and may be exercised at any time during the original term of the Option;

(b) All outstanding Stock Appreciation Rights (regardless of whether in tandem with Options) shall become fully exercisable and may be exercised at any time during the original term of the Option;

(c) All shares of Stock subject to Awards shall become fully vested and be distributed to the Participant; and

(d) Performance Units may be paid out in such manner and amounts as may be reasonably determined by the Committee.

#### SECTION 21

##### MERGERS / ACQUISITIONS

21.1 In the event of any merger or acquisition involving the Company and/or a Subsidiary of the Company and another entity which results in the Company being the survivor or the surviving direct or indirect parent corporation of the merged or acquired entity, the Committee may grant Awards under the provisions of the Plan in substitution for awards held by employees or former employees of such other entity under any plan of such entity immediately prior to such merger or acquisition upon such terms and conditions as the Committee, in its discretion, shall determine and as otherwise may be required by the Code to ensure such substitution is not treated as the grant of a new Award for tax or accounting purposes.

21.2 In the event of a merger or acquisition involving the Company in which the Company is not the surviving corporation, the Acquiring Corporation shall either assume the Company's rights and obligations under outstanding Awards or substitute awards under the Acquiring Corporation's plans, or if none, securities for such outstanding Awards. In the event the Acquiring Corporation elects not to assume or substitute for such outstanding Awards, and without limiting Section 20, the Board shall provide that any unexercisable and/or unvested portion of the outstanding Awards shall be immediately exercisable and vested as of a date prior to such merger or consolidation, as the Board so determines. The exercise and/or vesting of any Award that was permissible solely by reason of this Section 21.2 shall be conditioned upon the consummation of the merger or consolidation. Unless otherwise provided in the Plan or the Award, any Awards which are neither assumed by the Acquiring Corporation nor exercised on or prior to the date of the transaction shall terminate effective as of the effective date of the transaction.

## SECTION 22

### Termination and Amendment

22.1 The Board may suspend, terminate, modify or amend the Plan, provided that any amendment that would (a) increase the aggregate number of shares of Stock which may be issued under the Plan, (b) would change the method of determining the exercise price of Options, other than to change the method of determining Fair Market Value of Stock as set forth in Section 2.1(o) of the Plan, or (c) materially modify the requirements as to eligibility for participation in the Plan, shall be subject to the approval of the Company's stockholders, except that any such increase or modification that may result from adjustments authorized by Section 16 does not require such approval. No suspension, termination, modification or amendment of the Plan may terminate a Participant's existing Award or materially and adversely affect a Participant's rights under such Award without the Participant's consent.