

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983
Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Michelle M. McGreal

*Proposed Counsel to the Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

NOTICE OF FILING OF POSTPETITION FINANCING DOCUMENTS

PLEASE TAKE NOTICE that Patriot Coal Corporation and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) hereby file the following documents related to their postpetition financing:

- (a) the First Out DIP Credit Agreement,² attached hereto as Exhibit A;
- (b) a blackline showing the changes to the First Out DIP Credit Agreement from the form thereof filed as Exhibit A of ECF No. 29, attached hereto as Exhibit B;

¹ The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

² All capitalized terms used but not defined herein shall have the meanings given to such terms in the Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing Debtors (I) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) and 364(E) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) [ECF No. 25].

- (c) the Second Out DIP Credit Agreement, attached hereto as Exhibit C;
- (d) a blackline showing the changes to the Second Out DIP Credit Agreement from the form thereof filed as Exhibit B of ECF No. 29, attached hereto as Exhibit D;
- (e) the Security Agreement, attached hereto as Exhibit E;
- (f) a blackline showing the changes to the Security Agreement from the form thereof filed as Exhibit C of ECF No. 29, attached hereto as Exhibit F; and
- (g) the Second Out DIP Guarantee Agreement, attached hereto as Exhibit G.

New York, New York
Dated: July 15, 2012

By: /s/ Brian M. Resnick

Marshall S. Huebner
Damian S. Schaible
Brian M. Resnick
Michelle M. McGreal

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 607-7983

*Proposed Counsel to the Debtors
and Debtors in Possession*

SCHEDULE 1
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of July 9, 2012
among

PATRIOT COAL CORPORATION,
a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as the Borrower,

CITIBANK, N.A.,
as Administrative Agent

CITICORP NORTH AMERICA, INC.,
BARCLAYS BANK PLC, NEW YORK BRANCH
and
BANK OF AMERICA, N.A.,
as L/C Issuers

and

The Lenders Party Hereto

CITIGROUP GLOBAL MARKETS INC.,
BARCLAYS BANK PLC
and
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arrangers and Joint Bookrunners

and

BARCLAYS BANK PLC,
as Syndication Agent

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE 1	DEFINITIONS AND ACCOUNTING TERMS 1
Section 1.01.	Defined Terms 1
Section 1.02.	Other Interpretive Provisions 40
Section 1.03.	Accounting Terms 40
Section 1.04.	Times of Day 41
Section 1.05.	Letter of Credit Amounts 41
Section 1.06.	Reserves 41
ARTICLE 2	THE COMMITMENTS AND CREDIT EXTENSIONS 41
Section 2.01.	The Loans 41
Section 2.02.	Borrowings, Conversions and Continuations of Loans 42
Section 2.03.	L/C Cash Collateral Account 44
Section 2.04.	Letters of Credit 44
Section 2.05.	[Reserved] 54
Section 2.06.	Prepayments 54
Section 2.07.	Termination or Reduction of Commitments 56
Section 2.08.	Repayment of Loans 56
Section 2.09.	Interest 57
Section 2.10.	Fees 57
Section 2.11.	Computation of Interest and Fees 58
Section 2.12.	Evidence of Debt 59
Section 2.13.	Payments Generally; Administrative Agent's Clawback 59
Section 2.14.	Sharing of Payments by Lenders 61
Section 2.15.	Defaulting Lender 62
Section 2.16.	Priority and Liens 64
Section 2.17.	No Discharge; Survival of Claims 65
ARTICLE 3	TAXES, YIELD PROTECTION AND ILLEGALITY 65
Section 3.01.	Taxes 65
Section 3.02.	Illegality 68

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 3.03. Inability to Determine Rates	68
Section 3.04. Increased Costs; Reserves on Eurocurrency Rate Loans	68
Section 3.05. Compensation for Losses	70
Section 3.06. Mitigation Obligations; Replacement of Lenders	71
Section 3.07. Survival	71
ARTICLE 4 CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	71
Section 4.01. Conditions of Initial Credit Extension	71
Section 4.02. Conditions to All Credit Extensions	75
ARTICLE 5 REPRESENTATIONS AND WARRANTIES	76
Section 5.01. Existence, Qualification and Power	76
Section 5.02. Authorization; No Contravention	76
Section 5.03. Governmental Authorization; Other Consents	77
Section 5.04. Binding Effect	77
Section 5.05. Financial Statements; No Material Adverse Effect	77
Section 5.06. Litigation	78
Section 5.07. No Default	78
Section 5.08. Ownership of Property; Liens; Investments	78
Section 5.09. Environmental Compliance	79
Section 5.10. Mining	81
Section 5.11. Insurance	81
Section 5.12. Taxes	81
Section 5.13. ERISA Compliance	81
Section 5.14. Subsidiaries; Equity Interests; Loan Parties	82
Section 5.15. Margin Regulations; Investment Company Act	82
Section 5.16. Disclosure	82
Section 5.17. Compliance With Laws	83
Section 5.18. Intellectual Property; Licenses, Etc	83
Section 5.19. [Reserved]	83
Section 5.20. Casualty, Etc	83
Section 5.21. Labor Matters	83
Section 5.22. Collateral Documents	83
Section 5.23. Use of Proceeds	83

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 5.24. Coal Act; Black Lung Act.....	84
Section 5.25. Activities and Liabilities of EACC Camps, Inc.....	84
Section 5.26. Anti-Terrorism Laws	84
ARTICLE 6 AFFIRMATIVE COVENANTS	85
Section 6.01. Financial Statements	85
Section 6.02. Certificates; Other Information.....	86
Section 6.03. Notices	90
Section 6.04. Payment of Post-Petition Obligations.....	90
Section 6.05. Preservation of Existence, Etc	91
Section 6.06. Maintenance of Properties	91
Section 6.07. Maintenance of Insurance.....	91
Section 6.08. Compliance with Laws	91
Section 6.09. Books and Records	92
Section 6.10. Inspection Rights; Field Exams	92
Section 6.11. Use of Proceeds.....	93
Section 6.12. Covenant to Guarantee Obligations and Give Security	93
Section 6.13. Compliance With Environmental Laws.....	95
Section 6.14. Preparation of Environmental Reports.....	95
Section 6.15. Further Assurances.....	95
Section 6.16. Compliance with Terms of Leaseholds and Related Documents	96
Section 6.17. Ratings	96
Section 6.18. First Day Orders.....	96
Section 6.19. Mining Financial Assurances.....	96
Section 6.20. Post-Closing Obligations	96
Section 6.21. Administration of Accounts and Inventory.....	96
Section 6.22. Cash Management System.....	97
Section 6.23. Financial Restructuring Officer and Advisor.....	98
ARTICLE 7 NEGATIVE COVENANTS	98
Section 7.01. Liens.....	98
Section 7.02. Indebtedness.....	100
Section 7.03. Investments	101
Section 7.04. Fundamental Changes.....	102

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 7.05. Dispositions.....	102
Section 7.06. Restricted Payments.....	104
Section 7.07. Change in Nature of Business.....	104
Section 7.08. Transactions With Affiliates.....	104
Section 7.09. Burdensome Agreements.....	105
Section 7.10. Use of Proceeds.....	105
Section 7.11. Minimum Consolidated EBITDA.....	105
Section 7.12. Capital Expenditures.....	105
Section 7.13. Minimum Liquidity.....	106
Section 7.14. Amendments of Organization Documents.....	106
Section 7.15. Accounting Changes.....	106
Section 7.16. Prepayments, Etc. of Indebtedness.....	106
Section 7.17. Amendment, Etc. of Orders, Related Documents and Indebtedness.....	107
Section 7.18. Limitation on Negative Pledge Clauses.....	107
ARTICLE 8 REAL PROPERTY LEASES.....	108
Section 8.01. Special Rights with respect to Real Property Leases.....	108
ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES.....	110
Section 9.01. Events of Default.....	110
Section 9.02. Remedies Upon Event of Default.....	114
Section 9.03. Application of Funds.....	115
ARTICLE 10 ADMINISTRATIVE AGENT.....	116
Section 10.01. Authorization and Action.....	116
Section 10.02. Administrative Agent’s Reliance, Etc.....	118
Section 10.03. Posting of Approved Electronic Communications.....	119
Section 10.04. The Administrative Agent Individually.....	121
Section 10.05. Activities of Agent’s Group.....	121
Section 10.06. Lender Credit Decision.....	122
Section 10.07. Indemnification.....	123
Section 10.08. Successor Administrative Agent.....	123
Section 10.09. Concerning the Collateral and the Collateral Documents.....	124
Section 10.10. Collateral Matters Relating to Related Obligations.....	126

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 10.11. Delivery of Certain Financial Information	127
Section 10.12. L/C Issuers	127
ARTICLE 11 GUARANTEE	127
Section 11.01. Guarantee	127
Section 11.02. Right of Contribution	128
Section 11.03. No Subrogation	129
Section 11.04. Amendments, etc. with Respect to the Borrower Obligations.....	129
Section 11.05. Guarantee Absolute and Unconditional	129
Section 11.06. Waiver by Subsidiary Guarantors	131
Section 11.07. [Reserved.]	132
Section 11.08. Releases.....	132
Section 11.09. Subordination of Other Obligations.....	132
Section 11.10. Authority of Subsidiary Guarantors or Borrower	132
Section 11.11. Financial Condition of Borrower	132
Section 11.12. Taxes and Payments.....	133
Section 11.13. Assignments	133
Section 11.14. Reinstatement.....	133
ARTICLE 12 MISCELLANEOUS	133
Section 12.01. Amendments, Etc	133
Section 12.02. Notices; Effectiveness; Electronic Communications.....	135
Section 12.03. No Waiver; Cumulative Remedies	137
Section 12.04. Expenses; Indemnity; Damage Waiver.....	138
Section 12.05. Payments Set Aside.....	140
Section 12.06. Successors and Assigns.....	140
Section 12.07. Treatment of Certain Information; Confidentiality.....	143
Section 12.08. Right of Setoff.....	144
Section 12.09. Interest Rate Limitation	145
Section 12.10. Counterparts; Integration; Effectiveness.....	145
Section 12.11. Survival of Representations and Warranties.....	145
Section 12.12. Severability	145
Section 12.13. Replacement of Lenders	146
Section 12.14. Governing Law; Jurisdiction; Etc	146

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 12.15. Waiver of Jury Trial.....	147
Section 12.16. Designation of Secured Agreements.....	148
Section 12.17. No Advisory or Fiduciary Responsibility	148
Section 12.18. USA Patriot Act Notice	149
Section 12.19. Time of the Essence	149

SCHEDULES

1.01(a)	Subsidiary Guarantors
1.01(b)	Existing Secured Agreements
2.01(a)	Revolving Credit Commitments
2.01(b)	Term Commitments
5.06	Litigation
5.08(a)	Material Owned Real Property
5.08(b)	Material Leased Real Property
5.08(c)	Real Property
5.09	Environmental Matters
5.14	Subsidiaries and Other Equity Investments; Loan Parties
5.18	Intellectual Property Matters
5.21	Labor Matters
6.21	Post-Closing Obligations
7.01	Existing Liens
7.02	Existing Indebtedness
7.03	Existing Investments
7.17	Negative Pledges
12.02	Agents' Offices, Certain Addresses for Notices

EXHIBITS

Form of

A	Borrowing Notice
B	Notice of Conversion or Continuation
C-1	Term Note
C-2	Revolving Note
D	Compliance Certificate
E	Assignment and Acceptance
F	13-Week Projection
G	Borrowing Base Certificate
H	Security Agreement
I	Perfection Certificate
J	Interim Order
K	Assumption Agreement

SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT (“**Agreement**”) is entered into as of July 9, 2012, among PATRIOT COAL CORPORATION, a Delaware corporation and a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code (the “**Borrower**”), the subsidiaries of the Borrower listed on Schedule 1.01(a), and each other subsidiary of the Borrower that from time to time becomes party hereto pursuant to Section 6.12 (collectively, the “**Subsidiary Guarantors**” and individually, a “**Subsidiary Guarantor**”), each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), CITIBANK, N.A., as administrative agent for the Revolving Lenders and L/C Issuers and collateral agent for the Revolving Secured Parties (in such capacities, the “**Revolving Administrative Agent**”), CITIBANK, N.A., as administrative agent for the Term Lenders and collateral agent for the Term Secured Parties (in such capacities, the “**Term Administrative Agent**”, and, together with the Revolving Administrative Agent, the “**Administrative Agent**”) CITICORP NORTH AMERICA, INC., as L/C Issuer, BARCLAYS BANK PLC, NEW YORK BRANCH, as L/C Issuer and BANK OF AMERICA, N.A., as L/C Issuer.

INTRODUCTORY STATEMENT

On July 9, 2012 (the “**Petition Date**”), the Borrower, EACC Camps, Inc. and the Subsidiary Guarantors other than Patriot Ventures LLC (collectively, the “**Debtors**”) filed voluntary petitions with the Bankruptcy Court initiating cases pending under Chapter 11 of the Bankruptcy Code (collectively, the “**Cases**” and each a “**Case**”) and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

The Borrower has applied to the Lenders for (i) a revolving credit facility in an aggregate principal amount of \$125,000,000 (the “**Revolving Credit Facility**”) and (ii) a term loan facility in an aggregate principal amount of \$375,000,000 (the “**Term Facility**”; the Term Facility and the Revolving Facility, collectively, the “**Facilities**” and each a “**Facility**”). All of the Borrower’s obligations under the Facilities are to be guaranteed by the Subsidiary Guarantors. The Lenders are willing to extend or continue, as the case may be, such credit to the Borrower on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings set forth below:

“**13-Week Projection**” means a projected statement of sources and uses of cash for the Borrower and its Subsidiaries on a weekly basis for the following 13 calendar weeks, in substantially the form of Exhibit F, which shall include (a) the anticipated uses of the Revolving

Credit Facility for each week during such period, (b) a rolling comparative analysis of the actual cash flow for the prior week against the forecast for such week, (c) a cumulative comparative analysis of actual cash flow against the forecast, (d) an explanation for any significant variances between such results and the forecasts and (e) cash balances of all deposit accounts of the Loan Parties as of such date. As used herein, “**13-Week Projection**” shall initially refer to the “Budget” delivered to the Administrative Agent in connection with the initial borrowings under the Facilities authorized by the Interim Order and dated not more than 5 days prior to the Petition Date and, thereafter, the most recent 13-Week Projection delivered by the Borrower in accordance with Section 6.02(k).

“**Acceptable Reorganization Plan**” shall mean a Reorganization Plan that provides for (a) the termination of the Commitments, (b) payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable) upon the earlier of (i) substantial consummation of such Reorganization Plan or (ii) the effective date of such Reorganization Plan, and (c) the cancellation, cash collateralization, posting of backstop letters of credit or such other provision for outstanding Letters of Credit on the Consummation Date of such Reorganization Plan, and is otherwise reasonably acceptable to the Arrangers and the Required Lenders.

“**Account**” has the meaning specified in the UCC.

“**Account Debtor**” has the meaning given to such term in the UCC.

“**Accounting Change**” means a change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“**Activities**” has the meaning specified in Section 10.05(a).

“**Additional Credit**” has the meaning specified in Section 4.02(e).

“**Administrative Agent**” has the meaning specified in the introductory statement hereto.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 12.02, or such other address or account of the Administrative Agent as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Agent Affiliate**” has the meaning specified in Section 10.03(c).

“**Agent’s Group**” has the meaning specified in Section 10.05(a).

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Aggregate Commitments**” means all Revolving Credit Commitments and all Term Commitments.

“**Agreement**” has the meaning assigned in the introductory statement hereto.

“**Anti-Terrorism Laws**” has the meaning specified in Section 5.26.

“**Applicable Percentage**” means, with respect to any Lender, (a) with respect to the Revolving Credit Facility, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Lender’s Revolving Credit Commitment at such time (or, if the Revolving Credit Commitment of each Lender shall have been terminated or expired, then the percentage of Total Revolving Credit Outstandings represented by the aggregate Outstanding Amount of such Lender’s Revolving Credit Loans and L/C Obligations) and (b) with respect to the Term Facility, the percentage (carried out to the ninth decimal place) of the Term Facility represented by the aggregate of such Lender’s undrawn Term Commitment and Term Loans at such time. The initial Applicable Percentage of each Lender in respect of the each Facility is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable.

“**Applicable Rate**” means (a) with respect to Revolving Credit Loans, (i) 3.25% per annum, in the case of Eurocurrency Rate Loans and Letters of Credit, (ii) 2.25% per annum, in the case of Base Rate Loans and (iii) 0.75% per annum, in the case of Revolving Commitment Fees and (b) with respect to Term Loans, (i) 8.00% per annum, in the case of Eurocurrency Rate Loans and (ii) 7.00% per annum, in the case of Base Rate Loans and (iii) 0.75% per annum, in the case of Term Commitment Fees.

“**Appropriate Lender**” means (i) in respect of the Revolving Credit Facility, each Revolving Lender, and (ii) in respect of the Term Facility, each Term Lender.

“**Approved Electronic Communications**” means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, including (a) any supplement to the Agreement, any joinder to any Collateral Document and any other written Contractual Obligation delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and (b) any Financial Statement, financial and other report, notice, request, certificate and other information material; provided, however, that, “Approved Electronic Communication” shall exclude (i) any notice of Borrowing, conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to Section 2.06 and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be

delivered to satisfy any of the conditions set forth in Article 3 or any other condition to any Borrowing hereunder or any condition precedent to the effectiveness of this Agreement.

“Approved Electronic Platform” has the meaning specified in Section 10.03(a).

“Approved Foreign Account Debtors” means Tata Steel Limited, Trafigura AG, Vitol Holding B.V., Arcelor Mittal Sourcing, Gerdau Acominas SA, ThyssenKrupp Stahl AG and any other Account Debtor designated as an “Approved Foreign Account Debtor” by the Administrative Agent in its sole discretion.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means, collectively, Citigroup Global Markets Inc., Barclays Bank PLC, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, each in its capacity as joint lead arranger and joint bookrunner under the Loan Documents.

“As-Extracted Collateral” has the meaning specified in the UCC.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required hereunder), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, changes in shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Automatic Rejection Date” means the final day of the 120-day period (or, if extended by the Bankruptcy Court, 210-day period) provided for in Section 365(d)(4) of the Bankruptcy Code for the Loan Parties to assume leases in the Cases.

“Availability Period” means the period from and including the Closing Date to but not including the Termination Date.

“Avoidance Action” means the Debtors’ claims and causes of action that constitute avoidance actions under Sections 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

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

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York or any appellate court having jurisdiction over the Cases from time to time.

“**Bank of America**” means Bank of America, N.A., a national banking association.

“**Barclays**” means Barclays Bank PLC, New York Branch.

“**Base Rate**” means, in relation to a Loan in Dollars, the highest of (a) the rate of interest in effect for such day publicly announced from time to time by the Administrative Agent as its “prime rate” in effect in New York, New York; each change in such prime rate shall be effective on the date such change is publicly announced as effective, (b) the Federal Funds Rate from time to time plus 0.50% and (c) the Eurodollar Rate applicable for an Interest Period of one month plus 1.00%; *provided* that, in the case of any Term Loan, the Base Rate shall not be less than 2.50%.

“**Base Rate Loan**” means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

“**Beneficiary**” means the Administrative Agent and each Arranger, Lender and L/C Issuer.

“**Black Lung Act**” means the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901, et seq., the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, et seq., the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95 (1978), and the Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, Title 11, 95 Stat. 1643, in each case as amended.

“**Black Lung Liability**” means any liability or benefit obligations related to black lung claims and benefits under the Black Lung Act, and liabilities and benefits related to pneumoconiosis, silicosis, exposure to isocyanates or other lung disease arising under any federal or state law, including any Mining Law.

“**Blocked Account Agreement**” means, with respect to any Deposit Account, Securities Account, Commodities Contract or Commodities Account of any Loan Party, an agreement among the Administrative Agent, such Loan Party and such depository bank, securities intermediary or commodity intermediary, as applicable, sufficient to grant “control” to the Administrative Agent (a) under 9-104 of the UCC with respect to any Deposit Account, (b) under 9-106 of the UCC with respect to any Commodities Contract or Commodities Account or (c) under 8-106 with respect to any Securities Account.

“**Borrower**” has the meaning specified in the introductory statement hereto.

“**Borrower Materials**” has the meaning specified in Section 10.03(e).

“**Borrower Obligations**” means the Obligations of the Borrower.

“**Borrowing**” means a Revolving Credit Borrowing or a Term Borrowing, as the context may require.

“**Borrowing Base**” means, at any time, (a) the sum of (i) 85% of the face amount of all Eligible Billed Receivables of the Loan Parties, (ii) 75% of the face amount of all Eligible Unbilled Receivables of the Loan Parties, and (iii) 100% of Qualified Cash maintained by any Loan Party in the Cash Collateral Account in an amount not to exceed the lesser of (x) \$50,000,000 and (y) the aggregate amount of L/C Obligations outstanding at such time *minus* (b) any Reserves then in effect.

“**Borrowing Base Certificate**” means a certificate in substantially the form of Exhibit G (with such changes therein as may be required by the Administrative Agent to reflect the components of, and Reserves against, the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of each Loan Party owning any Eligible Receivables included in the Borrowing Base, which shall include detailed calculations as to the Borrowing Base as reasonably requested by the Administrative Agent.

“**Borrowing Base Deficiency**” means, at any time, the existence of Total Revolving Credit Outstandings which are in excess of the Maximum Revolving Credit.

“**Borrowing Notice**” means a notice of (a) a Revolving Credit Borrowing or (b) a Term Borrowing which, in each case, shall be substantially in the form of Exhibit A.

“**Business**” has the meaning specified in Section 5.09(b).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurocurrency Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“**Capital Expenditures**” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations). For purposes of this definition, the purchase price of equipment that is purchased substantially concurrently with the trade-in of existing equipment or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time, the proceeds of such asset sale or the amount of such insurance proceeds, as the case may be.

“**Capital Lease Obligations**” means of any Person as of the date of determination, the aggregate liability of such Person under Financing Leases reflected on a balance sheet of such Person under GAAP.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests

in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing, but excluding any securities convertible into or exchangeable for shares of Capital Stock.

“**Carve-Out**” means (i) all fees and interest required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code, (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not exceeding \$75,000, (iii) any and all allowed and unpaid claims of any professional of the Debtors or the statutory committee of unsecured creditors appointed in the Cases (the “**Creditors’ Committee**”) whose retention is approved by the Bankruptcy Court during the Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses (and the reimbursement of out-of-pocket expenses allowed by the Bankruptcy Court incurred by any members of the Creditors’ Committee (but excluding fees and expenses of third party professionals employed by such members of the Creditors’ Committee)) incurred, subject to the terms of the Orders, (A) prior to the occurrence of an Event of Default and (B) at any time after the occurrence and during the continuance of an Event of Default in an aggregate amount not exceeding \$7,000,000, *provided* that (x) the dollar limitation in this clause (iii) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent or any Lender or any of the foregoing’s respective attorneys, advisors and agents, (y) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above and (z) cash or other amounts on deposit in the Cash Collateral Account shall not be subject to the Carve-Out.

“**Carve-Out Reserve**” means, at any time, a reserve in an amount equal to \$7,000,000.

“**Cases**” has the meaning specified in the introductory statement hereto.

“**Cash Collateral Account**” means a cash deposit account established and maintained at the Administrative Agent and over which the Administrative Agent has sole dominion and control, upon terms as may be reasonably satisfactory to the Administrative Agent.

“**Cash Collateralize**” has the meaning specified in Section 2.04(h).

“**Cash Equivalents**” means any of the following types of Investments:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the federal government of the United States of America or any agency or instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof;

(b) time deposits or eurodollar time deposits with, or overnight bank deposits and bankers’ acceptances of, any (i) (A) Lender or (B) commercial bank that is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized

under the laws of the United States of America, any state thereof or the District of Columbia, any foreign bank, or its branches or agencies (fully protected against currency fluctuations) that, at the time of acquisition, are rated at least “A-1” by S&P or “P-1” by Moody’s, in each case with maturities of not more than twelve months from the date of acquisition thereof;

(c) (i) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) entered into with any financial institution meeting the qualifications specified in clause (b) above or (ii) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America, in each case maturing within 12 months or less from the date of acquisition, *provided*, that the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions With Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985;

(d) commercial paper issued by any Person rated at least “A-1” by S&P or “P-1” by Moody’s, in each case with maturities of not more than 270 days from the date of acquisition thereof; and

(e) shares of any money market fund that (i) has at least 95% of its assets invested continuously in the types of investments referred to in clauses (a), (b), (c) and (d) above, (ii) has net assets whose value exceeds \$500,000,000 and (iii) is rated at least “A-1” by S&P or “P-1” by Moody’s.

“**Cash Management Agreement**” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“**Cash Management Bank**” means (a) a Revolving Lender or an Affiliate of a Revolving Lender that is a party to a Secured Cash Management Agreement on the Closing Date or (b) any Person that, at the time it enters into a Secured Cash Management Agreement, is a Revolving Lender or an Affiliate of a Revolving Lender, in each case, in its capacity as a party to such Secured Cash Management Agreement.

“**CFC**” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request or directive (whether or not having the force of law) by any Governmental Authority required to be complied with by any Lender; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on

Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means:

(a) an event or series of events by which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, directly or indirectly, of 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors).

“Citibank” means Citicorp North America, Inc., a Delaware corporation.

“Class” means (i) with respect to any Loans, whether such Loans are Revolving Credit Loans or Term Loans, (ii) with respect to any Commitments, whether such Commitments are Revolving Credit Commitments or Term Commitments and (iii) with respect to any Lenders, whether such Lenders are Revolving Lenders or Term Lenders.

“Class Required Lenders” means the Required Term Lenders or the Required Revolving Lenders, as the context requires.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 12.01.

“Coal” means coal owned by any Loan Party, or coal that any Loan Party has the right to extract, in each case located on, under or within, or produced or severed from the Real Property of any Loan Party.

“**Coal Act**” means the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701, et seq., as amended.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means all of the property of the Loan Parties that is under the terms of the Collateral Documents and the Orders, subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties as security for the Obligations.

“**Collateral Documents**” means, collectively, the Security Agreement, the Mortgages, the Existing Mortgages and each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties or as security for the Obligations or a Lien in favor of the First Out Agent for the benefit of the First Out Secured Parties as security for the Second Out Obligations. The Collateral Documents shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

“**Collection Account**” has the meaning specified in Section 6.22.

“**Commitment**” means a Revolving Credit Commitment and/or a Term Commitment, as the context may require.

“**Commodities Account**” has the meaning specified in the UCC.

“**Commodities Contact**” has the meaning specified in the UCC.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D.

“**Consolidated EBITDA**” means, as of the last day of any period, Consolidated Net Income for such period (excluding, without duplication, (a) Federal, state, local and foreign income tax expense or benefit for such period, (b) noncash compensation expenses related to common stock and other equity securities issued to employees, (c) extraordinary or non-recurring gains and losses in accordance with GAAP, (d) gains or losses on discontinued operations and (e) any FASB ASC 360-10 writedowns, in each case for such period), *plus* (i) consolidated interest expense, determined in accordance with GAAP, *plus* (ii) any minority interests share of income and losses for such period, *plus* (iii) to the extent deducted in computing such Consolidated Net Income, the sum of all income taxes, depreciation, depletion and amortization of property, plant, equipment and intangibles, *plus* (iv) any debt extinguishment costs, *plus* (v) non-cash charges, including in respect of any pre-petition obligations, liabilities or claims and non-cash charges due to cumulative effects of changes in accounting principles (but excluding any such charge which requires an accrual of, or a cash reserve for, anticipated cash charges for any future period), *plus* (vi) reclamation and remediation obligation expenses, including such expenses relating to selenium (it being understood that reclamation and remediation obligation expenses may not be added back under any other clause in this definition), *plus* (vii) cash proceeds of asset sales or principal repayments in cash of notes receivables related to asset sales, so long as such cash proceeds and cash repayments in the aggregate do not exceed 20% of cumulative Consolidated EBITDA (from June 1, 2012) in any

reporting period, *plus* (viii) cash received from any non-wholly owned subsidiary or joint venture, *plus* (ix) negative sales or purchase contract accretion, *plus* (x) costs and expenses (including legal, financial and other advisors) incurred in connection with the Cases and any related Reorganization Plan or any other transaction related thereto, *plus* (xi) past mining obligation expenses less past mining obligation cash payments *minus* (xii) gains and losses on asset sales, *minus* (xiii) Consolidated EBITDA of any non-wholly owned subsidiary, and equity earnings and losses from joint ventures, *minus* (xiv) cash dividends made to any minority interest holder, *minus* (xv) positive sales or purchase contract accretion. For the avoidance of doubt, for any period, to the extent that Consolidated Net Income has been increased for such period due to any sales or purchase contract accretion, the amount of such increase shall be subtracted from Consolidated Net Income (and not added back) in calculating Consolidated EBITDA for such period.

“Consolidated Net Income” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the net income of the Borrower and its Subsidiaries for that period, determined in accordance with GAAP.

“Consummation Date” means the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Reorganization Plan that is confirmed pursuant to an order of the Bankruptcy Court.

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

“Control” means 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 ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Account” means any Deposit Account, Securities Account or Commodities Account (a) with, and under the sole dominion and control of, the Administrative Agent or (b) that is subject to a Blocked Account Agreement.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Creditors’ Committee” has the meaning specified in the definition of “Carve-Out”.

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

“Debtors” has the meaning specified in the introductory statement.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate *plus* (ii) the Applicable Rate, if any, applicable to Base Rate Loans *plus* (iii) 2% per annum; *provided, however*, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate *plus* 2% per annum.

“**Defaulting Lender**” means, subject to Section 2.15(b) any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) upon delivery of written notice of such determination to the Borrower, each L/C Issuer and each Lender.

“**Deposit Account**” has the meaning specified in the UCC.

“**Designated Amount**” has the meaning specified in Section 12.16.

“**Designation Notice**” has the meaning specified in Section 12.16.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any Real Property Leases, notes or accounts receivable or any rights and claims associated therewith.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary of the Borrower that is organized under the laws of any political subdivision of the United States or the District of Columbia.

“**Eligibility Reserves**” means such other reserves as the Administrative Agent, in its sole discretion, may from time to time establish to reflect risks or contingencies arising after the Closing Date that may affect any one or more class of such items and that have not already been taken into account in the calculation of the Borrowing Base.

“**Eligible Assignee**” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) except in the case of an assignment to an existing Lender or an Affiliate of an existing Lender, the Administrative Agent, (ii) in the case of an assignment of a Revolving Credit Commitment or Revolving Credit Loan, any L/C Issuer and, unless an Event of Default has occurred and is continuing, the Borrower and (iii) in the case of an assignment of a Term Commitment, unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed, *provided* that the Borrower shall be deemed to have consented to such Person if the Borrower has not responded within 10 Business Days of a request for such approval); *provided, further*, that in no event shall any Loan Party or Defaulting Lender be an “Eligible Assignee”.

“**Eligible Billed Receivables**” means Eligible Receivables for which an invoice has been sent to the applicable Account Debtor, calculated net of all finance charges, late fees and other fees that are unearned, sales, excise or similar taxes, and credits or allowances granted at such time.

“**Eligible Receivables**” means the aggregate gross outstanding balance of each Account of each Loan Party arising out of the sale of merchandise, goods or services in the ordinary course of business, that is made by such Loan Party to a Person that is not an Affiliate of any Loan Party and that constitutes Collateral in which the Administrative Agent has a fully perfected first priority Lien; *provided, however*, that an Account shall not be an “Eligible Receivable” if any of the following shall be true:

- (a) such Account (i) is more than 60 days past due according to the original terms of sale, (ii) is due more than 90 days from the original invoice date thereof or (iii) has been invoiced at least twice; or

(b) any warranty contained in this Agreement or any other Loan Document with respect to such specific Account is not true and correct with respect to such Account; or

(c) the Account Debtor on such Account has disputed liability or made any claim with respect to any other Account due from such Account Debtor to any Loan Party but only to the extent of such dispute or claim; or

(d) the Account Debtor on such Account has (i) filed a petition for bankruptcy or any other relief under the Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization or relief of debtors, (ii) made an assignment for the benefit of creditors, (iii) had filed against it any petition or other application for relief under the Bankruptcy Code or any such other law, (iv) has failed, suspended business operations, become insolvent, called a meeting of its creditors for the purpose of obtaining any financial concession or accommodation or (v) had or suffered a receiver or a trustee to be appointed for all or a significant portion of its assets or affairs, unless such Account Debtor (A) is a debtor-in-possession in a case then pending under chapter 11 of the Bankruptcy Code, (B) has established debtor-in-possession financing satisfactory to the Administrative Agent in its sole discretion and (C) otherwise satisfies each of the requirements set forth in this definition of Eligible Receivables; or

(e) the Account Debtor on such Account or any of its Affiliates is also a supplier to or creditor of any Loan Party unless such supplier or creditor has executed a no-offset letter satisfactory to the Administrative Agent, in its sole discretion; or

(f) such Account is with an Approved Foreign Account Debtor and the total Accounts of all Approved Foreign Account Debtors to the Loan Parties represent more than 25% of the Eligible Receivables of the Loan Parties at such time, but only to the extent of such excess; or

(g) the sale represented by such Account is to an Account Debtor other than an Approved Foreign Account Debtor located outside the United States, unless the sale is on letter of credit or acceptance terms acceptable to the Administrative Agent, in its sole discretion and (i) such letter of credit names the Administrative Agent as beneficiary for the benefit of the Secured Parties or (ii) the issuer of such letter of credit has consented to the assignment of the proceeds thereof to the Administrative Agent; or

(h) the sale to such Account Debtor on such Account is on a bill-on-hold, guaranteed sale, sale-and-return, sale-on-approval or consignment basis or is made pursuant to an agreement providing for repurchase or return of any goods claimed to be defective or otherwise unsatisfactory; or

(i) such Account is subject to a Lien in favor of any Person other than the Administrative Agent for the benefit of the Secured Parties; or

(j) such Account is subject to any security deposit, deduction, offset, counterclaim, return privilege or other conditions other than volume sales discounts given in the ordinary course of the Loan Parties' business; *provided, however*, that such

Account shall be ineligible pursuant to this clause (j) only to the extent of such security deposit, deduction, offset, counterclaim, return privilege or other condition; or

(k) the Account Debtor on such Account is a Governmental Authority, unless the Borrower has assigned its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, in the case of a federal Governmental Authority, and pursuant to applicable law, if any, in the case of any other Governmental Authority, and such assignment has been accepted and acknowledged by the appropriate government officers; or

(l) 50% or more of the outstanding Accounts of the Account Debtor have become, or have been determined by the Administrative Agent, in accordance with the provisions hereof, to be, ineligible; or

(m) the sale represented by such Account is denominated in a currency other than Dollars; or

(n) such Account is not evidenced by an invoice or other writing in form acceptable to the Administrative Agent, in its sole discretion; or

(o) (i) any Loan Party, in order to be entitled to collect such Account, is required to perform any additional service for, or perform or incur any additional obligation to, the Person to whom or to which it was made, (ii) such Account was invoiced in advance of goods sold or (iii) the revenue associated with such Account has not been earned; or

(p) the total Accounts of such Account Debtor to the Loan Parties represent more than 15% of the Eligible Receivables of the Loan Parties at such time, but only to the extent of such excess; or

(q) to the extent that the Loan Parties have received cash payment in respect of such Accounts but have not yet applied such payment to reduce the amount of such Account; or

(r) such Account is classified as "Laws" billing on the books of any Loan Party or, otherwise, represents Coal mining costs incurred by a Loan Party that may be charged to an Account Debtor; or

(s) such Account has been written off the books of a Loan Party or has otherwise been designated as uncollectible on such books; or

(t) such Account (i) represents any unpaid portion of any other Account with such Account Debtor or (ii) constitutes a chargeback, debit memo or other adjustment for unauthorized deductions; or

(u) to the extent that (i) a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment on such Account and returned uncollected for any reason or (ii) such Account is otherwise

classified as a note receivable and the obligation with respect thereto is evidenced by a promissory note or other debt instrument or agreement; or

(v) the Administrative Agent, in accordance with its customary criteria, determines, in its sole discretion, that such Account might not be paid or is otherwise ineligible.

“Eligible Unbilled Receivables” means each Eligible Receivable (and each Account that would otherwise be an Eligible Receivable if not for clauses (i) and (ii) below), calculated net of all finance charges, late fees and other fees that are unearned, sales, excise or similar taxes, and credits or allowances granted at such time, for which (i) the sale represented by such Eligible Receivable was not more than 30 days prior to any date of determination, (ii) an invoice has not yet been sent to the applicable Account Debtor.

“Environment” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, natural resources such as flora or fauna or as otherwise defined in any Environmental Law.

“Environmental Laws” means any and all current and future federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, concessions, grants, franchises, agreements or other governmental restrictions or common law causes of action applicable to the Borrower’s properties and operations relating to (a) protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials, substances or wastes into the environment including ambient air, surface water, ground water, or land, (b) SMCRA, (c) MSHA, (d) human health as affected by hazardous or toxic substances, (e) acid mine drainage and (f) mining operations and activities to the extent relating to environmental protection or reclamation; *provided*, that **“Environmental Laws”** do not include any laws relating to worker or retiree benefits, including benefits arising out of occupational diseases.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the Environment, (e) Reclamation or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, registrations, certifications, notifications, exemptions and any other authorization required under any applicable Environmental Law (including, without limitation, those necessary under any applicable Environmental Laws for the construction, maintenance and operation of any coal mine or related processing facilities or Reclamation).

“**Equity Interests**” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“**Eurocurrency Liabilities**” has the meaning assigned to that term in Regulation D of the Federal Reserve Board.

“**Eurodollar Base Rate**” means, with respect to any Interest Period for any Eurocurrency Rate Loan, the rate determined by the Administrative Agent to be the offered rate for deposits in Dollars for the applicable Interest Period appearing on the Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on the second full Business Day next preceding the first day of each Interest Period. In the event that such rate does not appear on the Reuters Screen LIBOR01 Page (or otherwise on the Reuters screen), the Eurocurrency Base Rate for the purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Administrative Agent.

“**Eurocurrency Rate**” means, with respect to any Interest Period for any Eurocurrency Rate Loan, an interest rate per annum equal to the rate per annum obtained by dividing (a) the Eurocurrency Base Rate by (b)(i) a percentage equal to 100% *minus* (ii) the reserve percentage applicable two Business Days before the first day of such Interest Period under regulations

issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the Eurocurrency Rate is determined) having a term equal to such Interest Period; *provided*, that, in the case of any Term Loans, in no event shall the Eurocurrency Rate be less than 1.50% per annum.

“Eurocurrency Rate Loan” means a Revolving Credit Loan or Term Loan that bears interest at a rate based on the Eurocurrency Rate.

“Event of Default” has the meaning specified in Section 9.01.

“Excess Availability” means, at any time the Maximum Revolving Credit at such time *minus* the Total Revolving Credit Outstandings at such time.

“Excluded Account” means (i) any deposit or concentration accounts funded in the ordinary course of business, the deposits in which shall not exceed \$100,000 individually, or \$500,000 in the aggregate and (ii) any payroll, trust and tax withholding funded in the ordinary course of business or required by applicable law.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) branch profits taxes or taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), as a result of a present or former connection between the Administrative Agent, such Lender or such L/C Issuer (or such other recipient) and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent, such Lender, or such L/C Issuer (or such other recipient) having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any Loan Document), (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 12.13), any United States withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or any tax that is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law after the date such Foreign Lender becomes a party hereto) to comply with Section 3.01(e); except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 3.01(a), or (c) any United States withholding Taxes imposed under FATCA.

“Executive Order” has the meaning specified in Section 5.26.

“Existing Convertible Notes” means the convertible notes of the Borrower issued pursuant to the Existing Convertible Notes Indenture as in effect on the Closing Date in an aggregate principal amount of \$200,000,000.

“Existing Convertible Notes Indenture” means the Indenture, dated as of May 28, 2008, among the Borrower, the subsidiaries party thereto and U.S. Bank National Association, as trustee.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement dated as of May 5, 2010 among the Borrower, the lenders party thereto and Bank of America, N.A., as administrative agent (as amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, supplemented or otherwise modified).

“Existing Mortgages” means the Mortgages in favor of the Second Out Agent entered into in connection with the Existing Credit Agreement.

“Existing Secured Agreements” means the agreements set forth on Schedule 1.01(b).

“Existing Securitization Facility” means (1) the Purchase and Sale Agreement by and among the Patriot Coal Sales LLC, Magnum Coal Sales LLC (together with Patriot Coal Sales LLC, the **“Originators”**), the Borrower and Patriot Coal Receivables (SPV) Ltd. (the **“SPV”**) (as amended, restated, supplemented or otherwise modified), (2) that certain Receivables Purchase Agreement by and among the SPV, the Borrower, the various conduit purchasers, related committed purchasers, L/C participants and purchaser agents from time to time party thereto and Fifth Third Bank, as administrator and as L/C bank (as amended, restated, supplemented or otherwise modified) and (3) that certain Performance Guaranty, by the Borrower for the benefit of Fifth Third Bank, as administrator (on behalf of the beneficiaries) (as amended, restated, supplemented or otherwise modified).

“Existing Senior Notes” means the senior notes of the Borrower issued pursuant to the Senior Notes Indenture as in effect on the Closing Date in an aggregate principal amount of \$250,000,000.

“Existing Senior Notes Indenture” means the Indenture, dated as of May 5, 2010 among the Borrower, the subsidiaries party thereto and Wilmington Trust Company, as trustee.

“Existing Swing Line Obligations” obligations in an amount not to exceed \$25,000,000 in respect of Swing Line Loans (as defined in the Existing Credit Agreement) arising under the Existing Credit Agreement prior to the Petition Date.

“Extension Date” means the date at least ten Business Days prior to the then current Maturity Date on which all of the following conditions have been satisfied (a) no Default shall exist, or would result from any Credit Extension or from the occurrence of the Extension Date, (b) the representations and warranties of the Loan Parties contained in this Agreement and in each other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively, (c) an Acceptable Reorganization Plan shall have been filed in the Bankruptcy

Court with respect to the Cases, (d) the “Extension Date” as defined in the Second Out Facility shall have occurred and the “Maturity Date” thereunder shall have been extended to December 31, 2013, (e) the Extension Fee and all other fees and expenses due and payable under the Loan Documents shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable, and (f) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying that the foregoing conditions have been satisfied.

“**Extension Fee**” has the meaning specified in Section 2.10(b)

“**Extraordinary Receipt**” means any cash received by the Borrower or any of its Subsidiaries as proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) or condemnation awards (and payments in lieu thereof).

“**Facilities**” has the meaning specified in the introductory statement hereto.

“**Fair Market Value**” means with respect to any asset or group of assets at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined in good faith by the Borrower or, if such asset shall have been the subject of a relatively contemporaneous appraisal by an independent third party appraiser, the basic assumptions underlying which have not materially changed since its date, the value set forth in such appraisal; *provided, however* that if the value of the consideration obtainable in a sale of such asset would exceed \$25,000,000, such determination as to value shall be made by the Board of Directors of the Borrower and evidenced by a resolution of the Board of Directors certified by a Responsible Officer and delivered to the Administrative Agent.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Federal Reserve Board**” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Fee Letters**” means each fee letter, dated July 9, 2012, among the Arrangers and the Borrower.

“**Final Order**” has the meaning specified in Section 4.02(e).

“**Final Order Entry Date**” means the date on which the Final Order is entered by the Bankruptcy Court.

“**First Day Orders**” means all orders entered by the Bankruptcy Court on, or within five days of, the Petition Date or based on motions filed on or about the Petition Date.

“**Financial Statements**” means the financial statements of the Borrower and its Subsidiaries delivered in accordance with Section 4.01(e) and Section 6.01.

“**Financing Lease**” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

“**Foreign Lender**” means, with respect to the Borrower, any Lender that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

“**Foreign Subsidiary**” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia and any Subsidiary thereof.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender’s Ratable Portion of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination.

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

“**Grantor**” means each entity defined as a Grantor under the Security Agreement.

“Guarantee” means, as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to the extent the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation in order to induce the creation of such obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, reimbursement obligations under letters of credit and any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; *provided, however*, that the term Guarantee shall not include (i) ordinary course performance guarantees by any Loan Party of the obligations (other than for the payment of borrowed money) of any other Loan Party and (ii) endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor Subsidiary” means any Subsidiary of the Borrower that is (a) a debtor in a case then pending under chapter 11 of the Bankruptcy Code or any ancillary proceedings, (b) a Domestic Subsidiary and (c) a Foreign Subsidiary, in the case of clause (c) to the extent the Borrower determines in good faith and in its reasonable discretion that no material adverse tax consequences would result; *provided*, that such term shall not include (i) the SPV, (ii) EACC Camps Inc., a West Virginia corporation, so long as Section 5.25 continues to be true and correct in all respects or (iii) (A) WWMV, LLC, (B) Rhino Eastern LLC, (C) White Stallion Coal, LLC, (D) Squaw Creek Coal Company or (E) Tecumseh Coal Corporation, each of which is a non-wholly owned joint venture with a third party.

“Hazardous Materials” means (i) any explosive or radioactive substances or wastes and (ii) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

“**Hedge Bank**” means (a) a Revolving Lender or an Affiliate of a Revolving Lender that is a party to a Secured Hedge Agreement on the Closing Date or (b) any Person that, at the time it enters into a Secured Hedge Agreement, is a Revolving Lender or an Affiliate of a Revolving Lender, in each case, in its capacity as a party to such Secured Hedge Agreement.

“**Honor Date**” shall have the meaning specified in Section 2.04(d)(i).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, bid, performance and reclamation bonds, surety and appeal bonds and similar instruments issued for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices and accrued expenses incurred in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Lease Obligations; and

(g) all Guarantees of such Person in respect of any of the foregoing Indebtedness of any other Person.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such person is liable therefor as a result of such Person’s ownership interest in such entity or otherwise, except (other than in the case of general partner liability) to the extent that the terms of such Indebtedness expressly provide that such person is not liable therefor. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“**Indemnified Taxes**” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“**Indemnitees**” has the meaning specified in Section 12.04(b).

“**Information**” has the meaning specified in Section 12.07.

“**Intellectual Property Security Agreements**” means the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, each as defined under the Security Agreement.

“**Interest Payment Date**” means, (a) as to any Eurocurrency Rate Loan, the last Business Day of each month, the last day of each Interest Period applicable to such Loan and the Termination Date; and (b) as to any Base Rate Loan, the last Business Day of each month and the Termination Date.

“**Interest Period**” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two or three months thereafter, as selected by the Borrower in its Borrowing Notice or Notice of Conversion or Continuation, as applicable; *provided*, that:

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

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“**Interim Order**” means an interim order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in the form set forth as Exhibit J, with changes to such form as are reasonably satisfactory to each Arranger in its sole discretion, approving the Loan Documents, which Interim Order shall, among other things (i) have been entered on such prior notice to such parties as may be satisfactory to each Arranger in its sole discretion, (ii) authorize the extensions of credit in respect of the Revolving Facility and the Term Facility, each in the amounts and on the terms set forth herein, (iii) grant the Superpriority Claim status and other Collateral and Liens referred to herein and in the other Loan Documents, (iv) approve the payment by the Borrower of the fees provided for herein, (v) approve the repayment in full of the Existing Swingline Obligations and the Existing Securitization Facility, (vi) authorize the extensions of credit in respect of the Second Out Facility and the roll-up of the obligations under the Existing Credit Agreement and the Pre-Petition Letters of Credit, (vii) provide for the waiver of section 506(c) of

the Bankruptcy Code by the Debtors as to the Collateral, subject only to and effective upon entry of the Final Order, (viii) provide for approval of certain intercreditor provisions governing priority of payments and liens and exercise remedies among the Secured Parties and Second Out Secured Parties and (ix) provide for approval of certain provisions and protections to the Secured Parties relating to Real Property Leases.

“**Interim Order Entry Date**” means the date on which the Interim Order is entered by the Bankruptcy Court.

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock or other securities of another Person, (b) a loan, advance (excluding intercompany liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries) or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be (i) the amount actually invested, as determined immediately prior to the time of each such Investment, without adjustment for subsequent increases or decreases in the value of such Investment *minus* (ii) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash, Cash Equivalents or short-term marketable debt securities.

“**Inventory**” has the meaning specified in the UCC.

“**IP Rights**” has the meaning specified in Section 5.18.

“**IRS**” means the United States Internal Revenue Service.

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

“**Issuer Documents**” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any L/C Issuer and the Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to any such Letter of Credit.

“**Joint Venture**” means any Person (other than a Subsidiary) in which the Borrower and its Subsidiaries collectively hold an ownership interest.

“**Laws**” means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**L/C Advance**” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“**L/C Cash Collateral Account**” means the account established by, and under the sole dominion and control of, the Administrative Agent maintained with the Administrative Agent and designated as the “Patriot L/C Cash Collateral Account”.

“**L/C Cash Collateral Deposit Amount**” means, at any time, the total amount on deposit in the L/C Cash Collateral Account pursuant to the terms of this Agreement. The L/C Cash Collateral Deposit Amount may be reduced or increased from time to time in accordance with the terms of this Agreement.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Issuer**” means, collectively, each of Citibank, Barclays and Bank of America in its respective capacities as issuer of Letters of Credit hereunder, and such other Lender or Lenders that agree to act as L/C Issuer at the request of the Borrower, and any successor issuer of Letters of Credit hereunder.

“**L/C Obligations**” means as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts with respect to Letters of Credit, including all L/C Borrowings *plus* the aggregate amount of Letter of Credit Fees then due and payable.

“**L/C Sublimit**” means (a) with respect to the L/C Issuers taken as a whole, \$100,000,000 and (b) (i) with respect to Citi, \$34,000,000, (ii) with respect to Barclays, \$33,000,000 and (iii) with respect to Bank of America, \$33,000,000 or (iv) with respect to Citi, Barclays, Bank of America and any other L/C Issuer, such other amounts as may be agreed from time to time among all L/C Issuers, the Borrower and the Administrative Agent; *provided* that the aggregate L/C Sublimit for the L/C Issuers shall not exceed the L/C Sublimit in clause (a). The L/C Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“**Lender**” has the meaning specified in the introductory statement hereto.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire or Assignment and Acceptance by which it became a Lender or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means any letter of credit issued pursuant to Section 2.04(a).

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any L/C Issuer.”

“**Letter of Credit Expiration Date**” means the day that is five Business Days prior to the Maturity Date.

“**Letter of Credit Fee**” has the meaning specified in Section 2.04(j).

“**Liability Assumption Agreements**” means (a) the Coal Act Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC and Peabody, (b) the NBCWA Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody, and (c) the Salaried Employee Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Financing Lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**” means, on any date of determination, the sum of (a) the aggregate amount of Qualified Cash maintained by each Loan Party in a Control Account on such date *plus* (b) Excess Availability on such date.

“**Loan**” means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Term Loan, or a Revolving Credit Loan.

“**Loan Documents**” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) each Issuer Document, (e) each Secured Hedge Agreement, and (f) each Secured Cash Management Agreement.

“**Loan Parties**” means, collectively, the Borrower and each Subsidiary Guarantor.

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Material Adverse Effect**” means a material adverse effect upon (a) the business, assets, operations, property or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole, other than (i) as customarily would occur as a result of the filing of the Cases or the effect of bankruptcy or those circumstances and events leading up thereto specified in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 or (ii) as would occur as a result of non-cash impairment charges or a non-cash selenium charge, each as previously disclosed to the Arrangers or (b) the validity or enforceability of this or any of the other Loan Documents or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

“**Material Lease**” means any Real Property Lease or other Contractual Obligations in respect of Material Leased Real Property.

“**Material Leased Real Property**” means (a) all Real Property listed on Schedule 5.08(b) and (b) any other Real Property subject to a Real Property Lease with respect to which a Loan Party acquires an interest with Coal reserves having a fair market value reasonably estimated by the Borrower (or, at the reasonable request of the Administrative Agent, by an independent appraiser acceptable to the Administrative Agent) to be in excess of \$4,000,000.

“**Material Owned Real Property**” means (a) all Real Property listed on Schedule 5.08(a) and (b) any other Real Property owned in fee by any Loan Party having a fair market value reasonably estimated by the Borrower (or, at the reasonable request of the Administrative Agent, by an independent appraiser acceptable to the Administrative Agent) to be in excess of \$2,500,000.

“**Maturity Date**” means (i) the date that is 450 days after the Closing Date or (ii) if the Extension Date has occurred, December 31, 2013.

“**Maximum Revolving Credit**” means, at any time, (a) the lesser of (i) the Borrowing Base at such time *minus* the aggregate amount of Designated Amounts in respect of Secured Agreements and (ii) the Revolving Credit Commitments in effect at such time, (b) *minus* \$13,000,000, (c) *minus* the Carve-Out Reserve.

“**Mining Financial Assurances**” has the meaning specified in Section 5.10.

“**Mining Title**” means fee simple title to surface and/or Coal or an undivided interest in fee simple title thereto or a leasehold interest in all or an undivided interest in surface and/or Coal together with (A) for Real Property designated for surface mining, no less than those easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, and transport Coal by surface mining methods; (B) for Real Property designated for underground mining, no less than those easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, and transport Coal by underground mining methods; and (C) for Real Property where any Loan Party has facilities currently used in the Coal mining business, including office and administrative buildings, mine openings, air shafts, preparation and processing plants, slurries and gob disposal areas, retention and drainage ponds, unfinished reclamation areas, coal terminals, and coal loading and storage facilities, no less than those easements, licenses, privileges, rights, and appurtenances as are necessary to operate such facilities in the manner presently operated.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Mortgage**” means a deed of trust, trust deed, deed to secure debt, mortgage, leasehold mortgage and leasehold deed of trust in form and substance reasonably satisfactory to the Administrative Agent, in each case as amended, restated, supplemented or otherwise modified from time to time.

“**MSHA**” means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq., as amended.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Cash Proceeds**” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided, that if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary in connection therewith.

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

“**Note**” means a promissory note made by the Borrower in favor of a Lender evidencing Term Loans or Revolving Credit Loans, as the case may be, made by such Lender, substantially in the form of Exhibit C-1 or Exhibit C-2, as applicable.

“**Notice of Conversion or Continuation**” means a notice by the Borrower to (i) convert Base Rate Loans or any portion thereof to Eurocurrency Rate Loans or (ii) at the end of any applicable Interest Period, convert Eurocurrency Rate Loans or any portion thereof into Base Rate Loans or to continue such Eurocurrency Rate Loans or any portion thereof for an additional Interest Period, in each case, substantially in the form of Exhibit B.

“**Obligations**” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, including without limitation, the Subsidiary Guarantor Obligations.

“**Obligee Guarantor**” shall have the meaning given to such term in Section 11.09.

“**Operating Forecast**” means a consolidated business plan and projected operating budget substantially in the form of the budget dated July 8, 2012, previously delivered to the Administrative Agent.

“**Orders**” means, collectively, the Interim Order and the Final Order.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Taxes**” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Outstanding Amount**” means (i) with respect to Term Loans on any date, the aggregate outstanding principal amount thereof, after giving effect to any prepayments or repayments thereof occurring on such date, (ii) with respect to Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans occurring on such date; and (iii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“**Overnight Rate**” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or any L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“**Participant**” has the meaning specified in Section 12.06(d).

“**PBGC**” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA, or any successor thereto.

“**Peabody**” means Peabody Energy Corporation, a Delaware corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA

and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Perfection Certificate” means a perfection certificate substantially in the form of Exhibit I or any other form approved by the Administrative Agent, as such perfection certificate may be amended, restated, supplemented or otherwise modified from time to time.

“Permitted Land Swap” means any transfer conducted in the ordinary course of business, consistent with past practice, of Real Property by a Loan Party in which at least 90% of the consideration received by the transferor consists of Real Property; *provided*, that, unless otherwise agreed by the Administrative Agent (i) the aggregate Fair Market Value of the Real Property being received by the applicable Loan Party is approximately equal to or greater than the Fair Market Value of the Real Property being transferred by such Loan Party in such exchange, (ii) the Real Property received by such Loan Party will be used by such Loan Party in a line of business that the Loan Parties engaged in on the Closing Date, (iii) the exchange of assets by the parties to the transaction is substantially simultaneous, (iv) in evaluating any such transfer, such Loan Party shall use sound mining and business practices, including conducting engineering and geologic reviews of such property, internal or third-party appraisals and cash flow analyses or assessments of the impact of such transfer on the Borrower’s five year business plan, (v) the Real Property received by such Loan Party shall not be subject to any Contractual Obligation that limits the ability of such Loan Party to create, incur, assume or suffer to exist any Lien on such Real Property except to the extent that the Real Property being transferred by such Loan Party is subject to such a Contractual Obligation and (vi) the aggregate Fair Market Value of all Real Property transferred since the Closing Date by the Loan Parties in any such transfer or transfers shall not exceed \$50,000,000.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” has the meaning specified in the introductory statement hereto.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, by any ERISA Affiliate.

“Pledged Debt” has the meaning specified in Section 1.1 of the Security Agreement.

“Pledged Equity Interests” has the meaning specified in Section 1.1 of the Security Agreement.

“Prepayment Date” means (i) the date that is 30 days after the Interim Order Entry Date if the Final Order has not been entered by the Bankruptcy Court prior to such date (*provided, however*, that such date shall be 45 days after the Interim Order Entry Date if entry of the Final Order is delayed by any requirements as a result of an evidentiary hearing or similar hearing or process associated with objections being made to the entry of the Interim Order or the Final Order) or (ii) such later date as approved by the Required Lenders.

“Pre-Petition Debt” means, collectively, the Indebtedness and any and all claims (as such term is defined in Section 101(5) of the Bankruptcy Code) of each Debtor outstanding and unpaid on the date on the Petition Date, or such later date on which such Person becomes a Debtor by commencing a Case.

“Pre-Petition Letters of Credit” mean, collectively, the letters of credit issued under the Existing Credit Agreement prior to the Petition Date.

“Pre-Petition Payment” means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any (i) Pre-Petition Debt, (ii) “critical or foreign vendor payments” or (iii) trade payables (including, without limitation, in respect of reclamation claims), or other pre-petition claims against any Debtor.

“Production Payments” means with respect to any Person, all production payment obligations and other similar obligations with respect to coal and other natural resources of such Person that are recorded as a liability or deferred revenue on the financial statements of such Person in accordance with GAAP.

“Properties” means the facilities and properties currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries.

“Public Lender” has the meaning specified in Section 10.03(e).

“Qualified Cash” means unrestricted cash or Cash Equivalents of the Loan Parties that are subject to the valid, enforceable and first priority perfected security interest of the Administrative Agent, and which cash and Cash Equivalents are not subject to any other Lien or claim, except to the extent that the holder of any of the same has entered into an intercreditor agreement with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent (other than customary Liens or rights of setoff of the institution maintaining such accounts permitted hereunder solely in its capacity as a depository, *provided*, that, for purposes of the amount of Qualified Cash included in the calculation of Borrowing Base, such amount may be reduced, at the Administrative Agent’s option, by any obligations owing to such institution and Borrower shall provide such information with respect to such obligations as the Administrative Agent may from time to time request).

“Ratable Portion” or (other than in the expression “equally and ratably”) “ratably” means, with respect to any (i) Revolving Lender, the percentage obtained by dividing (a) the Revolving Credit Commitment of such Revolving Lender by (b) the aggregate Revolving Credit Commitments of all Revolving Lenders (or, at any time after the Termination Date, the percentage obtained by dividing the aggregate outstanding principal balance of the Total Revolving Credit Outstandings owing to such Revolving Credit Lender by the aggregate outstanding principal balance of the Total Revolving Credit Outstandings owing to all Revolving Lenders) or (ii) Term Lender, the percentage obtained by dividing (a) the principal amount of such Term Lender’s Loans by (b) the aggregate Term Loans of all Term Lenders.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all

improvements, fixtures, easements, hereditaments, permits and appurtenances relating thereto, and including, with respect to the Loan Parties, all property listed on Schedule 5.08(a) and Schedule 5.08(b).

“Real Property Lease” means any lease, license, letting, concession, occupancy agreement, sublease, easement or right of way to which such Person is a party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract minerals from any portion of Real Property not owned in fee by such Person) and every amendment or modification thereof including with respect to the Loan Parties, without limitation, the leases with respect to Real Property and other property listed on Schedule 5.08(b) and any Contractual Obligation with respect to any of the foregoing.

“Reclamation” means the reclamation and restoration of land, water and any future, current, abandoned or former mines, and of any other Environment affected by such mines, as required pursuant to SMCRA, any other Environmental Law or any Environmental Permit.

“Register” has the meaning specified in Section 12.06(c).

“Related Documents” means the Separation Agreement, the Tax Separation Agreement and the Liability Assumption Agreements.

“Related Obligations” has the meaning specified in Section 10.10.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and such Person’s and such Person’s Affiliates’ respective managers, administrators, trustees, members, partners, directors, officers, employees, agents, fund managers and advisors.

“Reorganization Plan” means a liquidation plan or plan of reorganization in any or all of the Cases of the Debtors.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Revolving Credit Loans, a Borrowing Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“Required Lenders” means, as of any date of determination, Lenders holding (i) more than 50% of the sum of (a) the Total Revolving Credit Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Revolving Commitments and (ii) more than 50% of the sum of (a) the Outstanding Amount of Term Loans and (b) the aggregate unused Term Commitments; *provided*, in each case, that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Lenders” means at any time Lenders that would constitute the Required Lenders without giving regard to clause (ii) of the definition thereof.

“Required Term Lenders” means at any time Lenders that would constitute the Required Lenders without giving regard to clause (i) of the definition thereof.

“Requirement of Law” means as to any Person, the Organizational Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means, at any time of determination, (a) any Eligibility Reserves and (b) such other reserves as determined from time to time in the reasonable discretion of the Administrative Agent.

“Responsible Officer” means the chief executive officer, president, or any vice president of the Borrower or, with respect to financial matters, the chief financial officer or treasurer of the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Capital Stock, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(a).

“Revolving Credit Commitment” means, as to each Revolving Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(a) and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth under the caption “Revolving Credit Commitment” opposite such Lender’s name on Schedule 2.01(a), or, as the case may be, opposite such caption in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Revolving Credit Commitments as of the Closing Date is \$125,000,000.

“Revolving Credit Commitment Fee” has the meaning specified in Section 2.10(a).

“Revolving Credit Facility” has the meaning specified in the introductory statement.

“Revolving Collateral” has the meaning specified in the Security Agreement.

“Revolving Collateral Account” means the account established by, and under the sole dominion and control of, the Administrative Agent maintained with the Administrative Agent and designated as the “Patriot Revolving Collateral Account”.

“Revolving Credit Facility Obligations” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Revolving Credit Loan, Revolving Credit Commitment or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“Revolving Credit Loan” has the meaning specified in Section 2.01.

“Revolving Lender” means, at any time, a Lender that has a Revolving Credit Commitment or Revolving Credit Loan at such time.

“Revolving Secured Parties” means , collectively, the Administrative Agent (to the extent of any Secured Revolving Obligations owing to the Administrative Agent), the Revolving Lenders, each L/C Issuer (to the extent of any Secured L/C Obligations owing to such L/C Issuer), the Hedge Banks, the Cash Management Banks, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.08.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Out Agent” means Bank of America, N.A., in its capacity as administrative agent under the Second Out Facility, or any successor administrative agent.

“Second Out Facility” means that certain Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of the date hereof, among the Borrower, the lenders party thereto from time to time, and the Second Out Agent.

“Second Out Obligations” means the “Obligations” as defined in the Second Out Facility.

“Second Out Secured Parties” means the “Secured Parties” as defined in the Second Out Facility.

“Secured Agreement” means any Secured Cash Management Agreement or Secured Hedge Agreement.

“Secured Cash Management Agreement” means (i) any Cash Management Agreement that is entered into by and between the Borrower and any Cash Management Bank to the extent designated as such by the Borrower and such Cash Management Bank in writing to the Administrative Agent from time to time in accordance with Section 12.16 and (ii) each Existing

Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Cash Management Agreement”

“**Secured Hedge Agreement**” means any Swap Contract permitted under Article 7 that is entered into by and between the Borrower and any Hedge Bank to the extent designated as such by the Borrower and such Hedge Bank in writing to the Administrative Agent from time to time in accordance with Section 12.16 and (ii) each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Hedge Agreement”.

“**Secured Parties**” means, collectively, the Revolving Secured Parties and the Term Secured Parties and any other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.08.

“**Secured Revolving Obligations**” means, collectively with respect to each Loan Party, all Revolving Credit Facility Obligations and all Related Obligations.

“**Secured Term Obligations**” means, collectively with respect to each Loan Party, all Term Facility Obligations.

“**Securities Account**” has the meaning specified in the UCC.

“**Security Agreement**” means that certain Debtor-in-Possession Pledge and Security and Intercreditor Agreement dated as of the date hereof, by and among the Administrative Agent and each of the Grantors party thereto, substantially in the form of Exhibit H, as amended, restated, supplemented or otherwise modified from time to time.

“**Separation Agreement**” means the Separation Agreement, Plan of Reorganization and Distribution, dated as of October 22, 2007, between Peabody and the Borrower.

“**Similar Business**” means coal production, coal mining, coal gasification, coal liquifaction, other BTU conversions, coal brokering, coal transportation, mine development, coal supply contract restructurings, ash disposal, environmental remediation, Reclamation, coal and coal bed methane exploration, production, marketing, transportation and distribution and other related businesses, and activities of the Borrower and its Subsidiaries as of the date hereof and any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

“**Single Class Default**” means an Event of Default resulting from a failure to perform the covenants set forth in Section 6.02(1), as to which the applicable Class of Lenders is the Revolving Lenders.

“**SMCRA**” means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201 et seq., as amended.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than

securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “**Subsidiary**” or to “**Subsidiaries**” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” has the meaning specified in the introductory paragraph hereto.

“**Subsidiary Guarantor Obligations**” mean, with respect to any Subsidiary Guarantor, the collective reference to (i) the Obligations and (ii) all obligations and liabilities of such Subsidiary Guarantor which may arise under or in connection with this Agreement or any other Loan Document to which such Subsidiary Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent and counsel to the Lenders that are required to be paid by such Subsidiary Guarantor pursuant to the terms of this Agreement or any other Loan Document).

“**Supermajority Revolving Lenders**” means, as of any date of determination, Lenders holding more than 75% of the sum of the Total Revolving Credit Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and the aggregate unused Revolving Commitments; *provided* that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority Revolving Lenders.

“**Superpriority Claim**” means a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

“**Swap Contract**” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any valid netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date

prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Syndication Agent” means Barclays Bank PLC, as syndication agent under the Loan Documents.

“Tangible Assets” means at any date, with respect to any Person, (a) the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of such Person at such date *minus* (b) the sum of all amounts that would, in accordance with GAAP, be set forth opposite the captions “goodwill” or other intangible categories (or any like caption) on a consolidated balance sheet of such Person on such date.

“Tax Separation Agreement” means that Tax Separation Agreement, dated as of October 22, 2007, between Peabody and the Borrower.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01(b).

“Term Commitment” means, as to each Term Lender, the obligation to make Term Loans to the Borrower pursuant to Section 2.01(b) in the amount set forth under the caption “Term Commitment” opposite such Lender’s name on Schedule 2.01(b), or, as the case may be, opposite such caption in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. As of the Closing Date, the aggregate amount of the Term Commitments is \$375,000,000.

“Term Commitment Fee” has the meaning specified in Section 2.10(b).

“Term Facility” has the meaning specified in the introductory statement.

“Term Collateral” has the meaning specified in the Security Agreement.

“Term Cash Collateral Account” means the account established by, and under the sole dominion and control of, the Administrative Agent maintained with the Administrative Agent and designated as the “Patriot Term Cash Collateral Account”.

“Term Facility Obligations” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Term Loan or Term Commitment, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“**Term Lender**” means, at any time, a Lender with an outstanding Term Loan or a Term Commitment at such time.

“**Term Loan**” has the meaning specified in Section 2.01(b).

“**Term Secured Parties**” means, collectively, the Administrative Agent (to the extent of any Term Facility Obligations owing to the Administrative Agent), the Term Lenders, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.08.

“**Termination Date**” means the earliest of (i) the Maturity Date, (ii) the date of termination of the Commitments pursuant to Section 2.06, (iii) the date of termination of the Commitment of each Lender and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 9.02, (iv) the Prepayment Date, (v) the Consummation Date and (vi) the date of dismissal of the Cases by the Bankruptcy Court.

“**Threshold Amount**” means \$10,000,000.

“**Total L/C Obligations**” means the aggregate Outstanding Amount of all L/C Obligations.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Term Loans, Revolving Credit Loans and L/C Obligations.

“**Total Revolving Credit Outstandings**” means the aggregate Outstanding Amount of all Revolving Credit Loans and L/C Obligations.

“**Total L/C Obligations**” means the aggregate Outstanding Amount of all L/C Obligations.

“**Transaction**” means, collectively, the entering into by the Loan Parties of the Loan Documents to which they are a party and the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“**Type**” means, with respect to any Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York; *provided*, that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s accrued benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the actuarial assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in Section 2.04(d)(i).

“**Unrestricted Cash**” means cash or Cash Equivalents of the Borrower or any of its Subsidiaries that would not appear as “restricted” on a consolidated balance sheet of the Borrower and its Subsidiaries.

“**U.S. Loan Party**” means any Loan Party that is organized under the laws of one of the states of the United States of America and that is not a CFC.

Section 1.02. *Other Interpretive Provisions.* With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “**include,**” “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation.**” The word “**will**” shall be construed to have the same meaning and effect as the word “**shall.**” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “**herein,**” “**hereof**” and “**hereunder,**” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “**asset**” and “**property**” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “**from**” means “**from and including;**” the words “**to**” and “**until**” each mean “**to but excluding;**” and the word “**through**” means “**to and including.**”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. *Accounting Terms.* (a) *Generally.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial

data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, *except* as otherwise specifically prescribed herein.

(b) *Changes in GAAP.* If at any time any Accounting Change or any other change as permitted by Section 7.15 would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such Accounting Change as if such Accounting Change has not been made; *provided*, that until so amended, all financial covenants, standards, and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred.

Section 1.04. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.05. *Letter of Credit Amounts.* Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.06. *Reserves.* When any Reserve is to be established or a change in any amount, percentage, reserve, eligibility criteria or other item in the definitions of the terms “Borrowing Base” and “Eligible Receivables” is to be determined in each case in the Administrative Agent’s “reasonable discretion”, such Reserve shall be implemented or such change shall become effective on the Business Day immediately following delivery of a written notice thereof to the Borrower, or immediately, without prior written notice, if such change is a result of a mathematical calculation and during the continuance of a Default.

ARTICLE 2

THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01. *The Loans.* (a) *Revolving Credit Loans.* Subject to the terms and conditions set forth herein and in the Orders, each Revolving Lender severally agrees to make loans (each such loan, a “**Revolving Credit Loan**”) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; *provided, however*, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Maximum Revolving Credit and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Lender, *plus* such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender’s Revolving Credit Commitment. Within the limits of each Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof and in the

Orders, the Borrower may borrow under this Section 2.01(a), prepay under Section 2.06, and reborrow under this Section 2.01(a). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein. In no event shall the Total Revolving Credit Outstandings *plus* the Term Loans exceed the amount authorized by the Bankruptcy Court in the Orders.

(b) *Term Loans.* Subject to the terms and conditions set forth herein and in the Orders, each Term Lender severally agrees to make loans (each such loan, a “**Term Loan**”) to the Borrower from time to time, on any Business Day on or after the Closing Date and prior to the date that is two Business Days following the Final Order Entry Date in two draws, in an aggregate principal amount not to exceed the amount of such Lender’s Term Commitment. For the avoidance of doubt, any unused Term Commitments shall terminate on the earlier of (i) the second Term Borrowing hereunder and (ii) the date that is two Business Days following the Final Order Entry Date (or if earlier, the Termination Date). The Term Borrowing shall be in aggregate amount of \$100,000,000 or an integral multiple of \$50,000,000 in excess thereof and shall consist of Term Loans of the same Type made on the same day by the Term Lenders ratably according to their respective Term Commitments; *provided*, that (x) the First Term Borrowing shall be in the amount authorized by the Bankruptcy Court in the Interim Order but in no event more than \$250,000,000 and (y) the second Term Borrowing shall be in an amount equal to the difference between (i) the lesser of (A) the full amount authorized by the Bankruptcy Court in the Final Order and (B) the aggregate amount of Term Commitments and (ii) the amount of the first Term Borrowing. Term Loans prepaid or repaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02. *Borrowings, Conversions and Continuations of Loans.* (a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans, and (ii) one Business Day prior to the requested date any Borrowing of Base Rate Loans. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Notice or Notice of Conversion or Continuation, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Except as provided in Sections 2.04(d), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing Notice (whether telephonic or written) shall specify (i) whether the Borrower requesting a Revolving Credit Borrowing, a Term Borrowing, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, (iv) the Type of Loans to be borrowed and (v) the duration of the Interest Period with respect thereto, if applicable. Each Notice of

Continuation or Conversion (whether telephonic or written) shall specify (i) whether the Borrower is requesting a conversion of Revolving Credit Loans from one Type to the other, a conversion of Term Loans from one Type to the other, a continuation of Revolving Credit Loans that are Eurocurrency Rate Loans, or a continuation of Term Loans that are Eurocurrency Rate Loans, and (ii) specifying (A) the amount and Type of Loan being converted or continued, (B) in the case of a conversion to or a continuation of Eurocurrency Rate Loans, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion. If the Borrower fails to specify a Type of Loan in a Borrowing Notice or if the Borrower fails to give a timely Notice of Conversion or Continuation with respect to Eurocurrency Rate Loans, then the applicable Revolving Credit Loans or Term Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Borrowing Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Borrowing Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under the applicable Loan, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each such Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of any Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however*, that if, on the date a Borrowing Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Advances outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any Unreimbursed Amounts in respect thereof, and second, shall be made available to the Borrower as provided above.

(c) Unless the Lenders are compensated for any losses under Section 3.05, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans if the Required Lenders or the Administrative Agent so notify the Borrower.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's "prime rate" used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than (x) five (5) Interest Periods in effect under the Revolving Credit Facility and (y) five (5) Interest Periods in effect under the Term Facility.

Section 2.03. *L/C Cash Collateral Account.*

(a) *Deposits in L/C Cash Collateral Account.* On any date on which the Administrative Agent receives any payment from the Borrower to increase the L/C Cash Collateral Deposit Amount, the Administrative Agent shall deposit in the L/C Cash Collateral Account the amount of such payment;

(b) *Withdrawals from and Closing of L/C Cash Collateral Account.* Amounts on deposit in the L/C Cash Collateral Account shall be withdrawn and distributed as follows:

(i) on any date on which any L/C Issuer is to be reimbursed by the Borrower for any payment made by such L/C Issuer with respect to a Letter of Credit, the Administrative Agent shall, unless the Borrower shall have so reimbursed such L/C Issuer in cash in accordance with Section 2.04(d), withdraw from the L/C Cash Collateral Account an amount equal to the amount of such payment, and make such amount available to such L/C Issuer;

(ii) upon receipt of the Borrower's written withdrawal request not later than 1:00 p.m. on the requested withdrawal date (which shall be a Business Day), the Administrative Agent shall withdraw from the L/C Cash Collateral Account the amount requested by the Borrower and make such funds available to the Borrower; *provided* that after giving effect to the withdrawal of such amount, the Total Revolving Credit Outstandings shall not exceed the Maximum Revolving Credit; and

(iii) upon the Termination Date and the expiration or cancellation of all outstanding Letters of Credit (or cash collateralization thereof pursuant to arrangements reasonably satisfactory to the Administrative Agent), the Administrative Agent (x) shall withdraw from the L/C Cash Collateral Account the aggregate amount then on deposit therein and apply such funds in accordance with Section 9.03; and (y) shall close the L/C Cash Collateral Account.

(c) *Investment of L/C Cash Collateral Deposit Amount.* The Administrative Agent shall, on behalf of the Borrower, invest the L/C Cash Collateral Deposit Amount in Cash Equivalents or such other investments as the Administrative Agent and the Borrower shall agree to from time to time. The return earned on the L/C Cash Collateral Deposit Amount will be deposited by the Administrative Agent in the L/C Cash Collateral Account. No Lender shall have any obligation under or in respect of the provisions of this Section 2.03(c).

Section 2.04. *Letters of Credit.* (a) *The Letter of Credit Commitment.* Subject to the terms and conditions set forth herein and in the Orders, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.04, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of

Credit Expiration Date, to issue Revolving Letters of Credit for the account of the Borrower or any other Loan Party, and to amend or extend Revolving Letters of Credit previously issued by it, in accordance with Section 2.04(c), and (2) to honor drawings under the Revolving Letters of Credit; and (3) the Revolving Lenders severally agree to participate in Revolving Letters of Credit issued for the account of the Borrower or any other Loan Party and any drawings thereunder; *provided*, that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the L/C Obligations outstanding with respect to such Issuer shall not exceed such L/C Issuer's L/C Sublimit, (x) the aggregate amount of L/C Obligations shall not exceed the L/C Sublimit of all L/C Issuers taken as a whole, (y) the Total Revolving Credit Outstandings shall not exceed the Maximum Revolving Credit, and (z) the Outstanding Amount of the Revolving Credit Loans of any Revolving Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Revolving Credit Commitment. Each request by the Borrower or any other Loan Party for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that (i) the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence and (ii) such Letter of Credit will not extend, renew or replace any Pre-Petition Letter of Credit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Revolving Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Revolving Letters of Credit to replace Revolving Letters of Credit that have expired or that have been drawn upon and reimbursed.

(b) (i) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.04(c)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the applicable L/C Issuer in its sole discretion and, in the case of a Letter of Credit, the Required Revolving Lenders, have approved such expiry date;

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the applicable L/C Issuer in its sole discretion and all the Revolving Lenders, have approved such expiry date; or

(C) such Letter of Credit would extend, renew or replace any Pre-Petition Letter of Credit.

(ii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit

generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than \$250,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars;

(E) subject to Section 2.04(c)(iv), such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(F) a default of any Revolving Lender's obligations to fund under Section 2.04(d) exists or any Revolving Lender is at such time a Defaulting Lender hereunder, unless the applicable L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender.

(iii) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would not have any obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 10 with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "**Administrative Agent**" as used in Article 10 included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

(v) No L/C Issuer shall be required to issue documentary or "trade" Letters of Credit (as opposed to "standby" Letters of Credit).

(c) *Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.* (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the

Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by such L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least four Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the applicable L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the applicable L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless such L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article 4 shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the applicable L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage *times* the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, an L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided*, that any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**")

in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Appropriate Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that the applicable L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.01(a)), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(iv) If the Borrower so requests in any applicable Letter of Credit Application, an L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “**Auto-Reinstatement Letter of Credit**”). Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Appropriate Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the applicable L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “**Non-Reinstatement Deadline**”), the applicable L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the applicable L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(d) *Drawings and Reimbursements; Funding of Participations.* (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. The Borrower shall reimburse such L/C Issuer through the Administrative Agent in an

amount equal to the amount of such drawing on the date on which the Borrower receives notice of any payment by such L/C Issuer under a Letter of Credit, *provided* that the Borrower receives notice by 1:00 p.m., New York City time on such date, or on the next Business Day if notice is not received by such time (each such date, an “**Honor Date**”). If the Borrower fails to so reimburse such L/C Issuer by the time set forth in the preceding sentence, the applicable L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”). The Administrative Agent shall, in the case of a payment under a Letter of Credit, promptly notify each Revolving Lender thereof and of the amount of such Revolving Lender’s Applicable Percentage thereof. Any notice given by such L/C Issuer or the Administrative Agent pursuant to this Section 2.04(d)(i) may be given by telephone 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.

(ii) Each Revolving Lender shall upon any notice pursuant to Section 2.04(d)(i) make funds available to the Administrative Agent for the account of the applicable L/C Issuer at the Administrative Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.04(d)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer.

(iii) With respect to any Unreimbursed Amount for a payment under a Letter of Credit that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at (A) the rate applicable to Revolving Credit Loans that are Base Rate Loans from the Honor Date to the date reimbursement is required pursuant to Section 2.04(d) (i) and (B) thereafter, the Default Rate. Each Revolving Lender’s payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.04(d)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.04.

(iv) Until each Revolving Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.04(d) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolving Lender’s obligation to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Revolving Letters of Credit, as contemplated by this Section 2.04(d), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any

setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(d) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Borrowing Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(d) by the time specified in Section 2.04(d)(ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.04(d)(vi) shall be conclusive absent manifest error.

(vii) Unless the Borrower shall have notified the Administrative Agent and the applicable L/C Issuer of its intent to reimburse any drawing on a Letter of Credit in cash on or before the Honor Date (and shall have actually made such reimbursement in cash to the L/C Issuer on such date), the Borrower's obligation to reimburse the L/C Issuer with respect to such drawing shall be satisfied by funds withdrawn by the Administrative Agent from the L/C Cash Collateral Account and transferred to the L/C Issuer in accordance with Section 2.03(b)(i) (and the Borrower hereby irrevocably authorizes and instructs the Administrative Agent to make such withdrawals and transfers).

(e) *Repayment of Participations.* (i) At any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.04(d), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.04(d) is required to be returned under any of the circumstances described in Section 12.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Revolving Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(f) *Obligations Absolute.* The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each Unreimbursed Amount shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any Lender, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit, except to the extent caused by the applicable L/C Issuer's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit, so long as the L/C Issuer shall have determined in the absence of gross negligence or willful misconduct, in good faith and in accordance with the standard of care specified in the Uniform Commercial Code of the State of New York, that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment appear on their face to be in conformity with such Letter of Credit;

(v) any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or

successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(vi) any other action taken or omitted to be taken by the applicable L/C Issuer under or in connection with any Letter of Credit or the related drafts or documents, whether or not similar to any of the foregoing, that might, but for this Section 2.04(g), constitute a legal or equitable discharge of the Borrower's obligations hereunder.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(g) *Role of L/C Issuer.* Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuers shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders, the Required Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Notwithstanding anything to the contrary herein the Borrower may have a claim against the applicable L/C Issuer, and the applicable L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the applicable L/C Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final, non-appealable judgment. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the applicable L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a 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.

(h) *Cash Collateral.* (i) Upon the request of the Administrative Agent, (A) as of the Letter of Credit Expiration Date or the Termination Date, any L/C Obligation for any reason remains outstanding or (B) if an Event of Default has occurred and is continuing, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of such L/C Obligation.

(ii) Sections 2.04 and 9.02(a)(iii) set forth certain additional requirements to deliver cash collateral hereunder. “**Cash Collateralize**” means to pledge to the Administrative Agent and deposit in a Control Account, for the benefit of the applicable L/C Issuer and the Revolving Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount of at least 103% of the L/C Obligations pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the applicable L/C Issuer (which documents are hereby consented to by the Revolving Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Revolving Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in the Cash Collateral Account. If at any time the Administrative Agent determines that any funds held in the Cash Collateral Account are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited in the Cash Collateral Account, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held in the Cash Collateral Account that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit in the Cash Collateral Account, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer for the amount of such drawing.

(i) *Applicability of ISP.* Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(j) *Letter of Credit Fees.* The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage a Letter of Credit fee (the “**Letter of Credit Fee**”) for each Letter of Credit equal to the Applicable Rate for Revolving Credit Loans that are Eurocurrency Rate Loans *times* the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. Letter of Credit Fees for Revolving Letters of Credit shall be (i) computed on a monthly basis in arrears and (ii) due and payable on the first Business Day after the end of each calendar month commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(k) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.* The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate of 0.25% per annum on the face amount drawn under each Letter of Credit, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and

payable on the first Business Day after the end of each calendar month in respect of the most recently-ended monthly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(l) *Conflict with Issuer Documents.* In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(m) *Letters of Credit Issued for Subsidiaries.* Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.05. *[Reserved].*

Section 2.06. *Prepayments.* (a) *Optional.* The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided*, that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class(es) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Any prepayment of a Term Loan may not be reborrowed.

(b) *Mandatory.* (i) *[Reserved.]*

(ii) If the Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition permitted by Section 7.05(a), (b), (c) or (k)) (A) which results

in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all other such Dispositions since the Closing Date, exceed \$5,000,000, the Borrower shall prepay an aggregate principal amount of Loans equal to 50% of such excess Net Cash Proceeds or (B) which results in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all other such Dispositions since the Closing Date, exceed \$100,000,000, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such excess Net Cash Proceeds immediately upon receipt thereof by such Person (such prepayments to be applied as set forth in clauses (v) and (vi) below), without, with respect to Revolving Credit Loans, a corresponding permanent reduction in Revolving Credit Commitments.

(iii) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Subsidiaries, and not otherwise included in clause (i) of this Section 2.06(b), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (vi) below), without, in respect of the Revolving Credit Loans, a corresponding permanent reduction in Revolving Credit Commitments; *provided, however,* that at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of receipt of such cash proceeds), and so long as no Default shall have occurred and be continuing, the Borrower or such Subsidiary may apply within 90 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received or reinvest in other operating assets; and *provided, further, however,* that any cash proceeds not so applied shall be applied to the prepayment of the Loans as set forth in this Section 2.06(b)(iii) at the end of such 90 day period.

(iv) If, at any time, the Total Revolving Credit Outstandings at such time exceed the Maximum Revolving Credit, then, within one Business, the Borrower shall prepay Revolving Credit Loans and/or the Borrower shall Cash Collateralize the L/C Obligations (including by depositing funds in the L/C Cash Collateral Account pursuant to Section 2.03(a)) in an aggregate amount sufficient to reduce the amount of Total Revolving Credit Outstandings as of such date of payment to an amount less than or equal to the Maximum Revolving Credit; *provided, however,* that, subject to the provisions of Section 2.04(h)(ii), the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.06(b)(iv) unless after the prepayment in full of the Revolving Credit Loans the Total Revolving Credit Outstandings exceed the Maximum Revolving Credit above at such time.

(v) Prepayments of the Facilities made pursuant to this Section 2.06(b) in respect of Net Cash Proceeds of Term Collateral *first*, shall be applied ratably to the outstanding Term Loans, *second*, shall be applied to the Second Out Obligations to the extent permitted under Section 10.10 of the Security Agreement, *third*, shall be applied to the L/C Borrowings, *fourth*, shall be applied ratably to the outstanding Revolving Credit Loans, *fifth*, shall be used to Cash Collateralize the remaining L/C Obligations and, *sixth*, shall be applied to any remaining Second Out Obligations.

(vi) Prepayments of the Facilities made pursuant to this Section 2.06(b) in respect of Net Cash Proceeds of Revolving Collateral *first*, shall be applied to the L/C Borrowings, *second*, shall be applied ratably to the outstanding Revolving Credit Loans, *third*, shall be used to Cash Collateralize the remaining L/C Obligations, *fourth* shall be applied ratably to the outstanding Term Loans and *fifth*, shall be applied to the Second Out Obligations.

(vii) In the case of prepayments of the Facilities required pursuant to clause (i), (ii) or (iii) of this Section 2.06(b), the amount remaining, if any, after the prepayment in full of all L/C Borrowings, Revolving Credit Loans, Term Loans and Second Out Obligations outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held in the Cash Collateral Account shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the L/C Issuer or the Revolving Lenders, as applicable.

Section 2.07. *Termination or Reduction of Commitments.* (a) The Borrower may, upon notice to the Administrative Agent, terminate, or from time to time permanently reduce, the Revolving Credit Commitments; *provided*, that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof and (iii) the Borrower shall not terminate or reduce the aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Maximum Revolving Credit. The Administrative Agent will promptly notify the Appropriate Lenders of any such notice of termination or reduction of the aggregate Revolving Credit Commitments. Any reduction of the aggregate Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Revolving Lender according to its Applicable Percentage. All Commitments shall terminate on July 13, 2012 if the Closing Date has not occurred by such date.

(b) *[Reserved]*.

(c) *Payment of Fees.* All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

Section 2.08. *Repayment of Loans.*

(a) *Revolving Credit Loans.* The Borrower shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(b) *[Reserved]*.

(c) *Term Loans.* The Borrower shall repay the Term Lenders on the Termination Date the aggregate principal amount of all Term Loans outstanding on such date.

Section 2.09. *Interest.* (a) Subject to the provisions of Section 2.09(b),

(i) Each Revolving Credit Loan that is (A) a Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period *plus* the Applicable Rate and (B) a Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate;

(ii) *[Reserved]*.

(iii) Each Term Loan that is (A) a Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period *plus* the Applicable Rate and (B) a Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate.

(b) (i) If any amount of principal or interest of any Loan (or any other Obligation) is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein.

Section 2.10. *Fees.* In addition to certain fees described in Sections 2.04(j) and (k):

(a) *Revolving Credit Commitment Fee.* The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage, a commitment fee (the “**Revolving Credit Commitment Fee**”) equal to the Applicable Rate *times* the actual daily amount by which the aggregate Revolving Credit Commitments of all Revolving Lenders exceed the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations. The Revolving Credit Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable monthly in arrears on the last Business Day of each month, commencing with the first such date to occur after the Closing Date, and on the Termination Date.

(b) *Term Commitment Fee.* The Borrower shall pay to the Administrative Agent for the account of each Term Lender in accordance with its Applicable Percentage, a commitment fee (the “**Term Commitment Fee**”) equal to the Applicable Rate *times* the actual daily amount by which the aggregate Term Commitments of all Term Lenders exceed the Outstanding Amount of Term Loans. The commitment fee shall accrue at all times from and including the Closing Date to but not including the earlier of (i) the Termination Date and (ii) the date of termination of the Term Commitments pursuant to Section 2.01(b), including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable monthly in arrears and on the second and final Term Borrowing, the date that is two Business Days following the Final Order Entry Date, and on the Termination Date.

(c) *Extension Fee.* If the Borrower elects, subject to the occurrence of the Extension Date, to extend the Maturity Date of the Facilities, the Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an extension fee (the “**Extension Fee**”) equal to 0.50% of the aggregate Revolving Credit Commitments and Term Loans of all Lenders outstanding on the Extension Date.

(d) *Upfront Fee.* The Borrower shall pay to the Administrative Agent, for the account of each Lender, fees in the amounts and at the times specified in the Fee Letter.

(e) *Other Fees.* The Borrower shall pay to each Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(f) *Defaulting Lender Fees.* Notwithstanding anything herein to the contrary, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to clauses (a), (b) and (c) above (without prejudice to the rights of the Non-Defaulting Lenders in respect of such fees); *provided*, that (i) to the extent that a Ratable Portion of the L/C Obligations of such Defaulting Lender is reallocated to the Non-Defaulting Lenders pursuant to Section 2.15(a), such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, *pro rata* in accordance with their respective Revolving Credit Commitments, and (ii) to the extent that all or any portion of such L/C Obligations cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the applicable L/C Issuer.

Section 2.11. *Computation of Interest and Fees.* (a) All computations of interest for Base Rate Loans (other than Loans bearing interest at the Base Rate based on clause (c) of the definition thereof) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided*, that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) *[Reserved]*.

Section 2.12. *Evidence of Debt.* (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.12(a), each Revolving Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Revolving Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

Section 2.13. *Payments Generally; Administrative Agent's Clawback.* (a) *General.* All payments to be made by the Borrower or the other Loan Parties shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower or the other Loan Parties hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its ratable share of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) *Funding by Lenders; Presumption by Administrative Agent.* Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date

in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) *Payments by Borrower; Presumptions by Administrative Agent.*

Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Appropriate Lenders or the applicable L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to such Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) *Failure to Satisfy Conditions Precedent.* If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) *Obligations of Lenders Several.* The obligations of (i) the Revolving Lenders hereunder to make Revolving Credit Loans and to fund participations in Letters of

Credit, (ii) the Term Lenders hereunder to make Term Loans, and (iii) all Lenders hereunder make payments pursuant to Section 12.04(c) are several and not joint. The failure of (x) any Revolving Lender to make any Revolving Credit Loan or to fund any such participation, (y) any Term Lender to make any Term Loan, or (z) any Lender to make payment under Section 12.04(c) on any date required hereunder shall not relieve any other Appropriate Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Appropriate Lender to do so.

(e) *Funding Source.* Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.14. *Sharing of Payments by Lenders.* If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Appropriate Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Appropriate Lenders hereunder and under the other Loan Documents at such time obtained by all Appropriate Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Appropriate Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Appropriate Lenders hereunder and under the other Loan Documents at such time obtained by all of the Appropriate Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and/or, if applicable, subparticipations in L/C Obligations of the other Appropriate Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Appropriate Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Appropriate Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided*, that:

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

(iii) the provisions of this Section shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Loans, subparticipations in L/C Obligations, or Term Loans to any assignee or participant, other

than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply), or (C) any payments pursuant to the Fee Letters.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.15. *Defaulting Lender.*

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders; and

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 9 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any L/C Issuer hereunder; *third*, to Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.04(h); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.04(h); *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the

principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Facility without giving effect to clause (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.14(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *[Reserved]*.

(iv) *Reallocation of Participations to Reduce Fronting Exposure.* All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation..

(v) *Cash Collateral.* If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.14(a)(ii).

(b) *Defaulting Lender Cure.* If the Borrower, the Administrative Agent and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable Facility (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the

Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) *New Letters of Credit.* So long as any Lender is a Defaulting Lender, no L/C Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.16. *Priority and Liens.* (a) The Borrower hereby covenants and agrees that upon the entry of an Interim Order (and when applicable, the Final Order):

(i) the Obligations pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim in the Cases subject only to the Carve-Out;

(ii) subject to the terms of the Orders and the Security Agreement, the Revolving Credit Obligations, pursuant to Section 364 of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable perfected (A) first priority Lien on all of the Revolving Collateral of each Loan Party and (B) first priority Lien (on a *pari passu* basis with the Liens described in clause (iii) below and with the Liens securing the Second Out Obligations) on all of the Term Collateral of each Loan Party subject, in each case, to the Carve-Out; *provided* that amounts in the Cash Collateral Account shall not be subject to the Carve-Out;

(iii) subject to the terms of the Orders and the Security Agreement, the Term Facility Obligations pursuant to Section 364 of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable perfected (A) first priority Lien (on a *pari passu* basis with the Liens described in clause (ii) above and with the Liens securing the Second Out Obligations) on all of the Term Collateral of each Loan Party and (B) junior Lien (on a *pari passu* basis with the Liens securing the Second Out Obligations), subject only to the Lien described in clause (ii) above, on all of the Revolving Collateral of each Loan Party subject, in each case, to the Carve-Out;

(b) *[Reserved]*.

(c) The relative priorities of the Liens described in this Section 2.16 with respect to the Revolving Collateral of the Debtors and the Term Collateral of the Debtors shall be as set forth in the Interim Order (and, when entered, the Final Order) and Section 10 of the Security Agreement. All of the Liens described in this Section 2.16 shall be effective and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order.

(d) Notwithstanding anything to the contrary herein, not more than 65% of the voting equity interests of any CFC shall be pledged in favor of any Lender or the Administrative Agent.

Section 2.17. *No Discharge; Survival of Claims.* The Borrower agrees that to the extent that its obligations under the Loan Documents have not been satisfied in full in cash, (i) its obligations under the Loan Documents shall not be discharged by the entry of an order confirming a Reorganization Plan (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders and the Liens granted to the Administrative Agent and the Lenders pursuant to the Orders shall not be affected in any manner by the entry of an order confirming a Reorganization Plan.

ARTICLE 3

TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. *Taxes.* (a) *Payments Free of Taxes.* Any and all payments by or on behalf of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided*, that if the Borrower or other Person making payments on behalf of the Borrower shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions including deductions applicable to additional sums payable under this Section 3.01(a) (after payment of all Indemnified Taxes and Other Taxes) the Administrative Agent, any Lender or any L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or other Person shall make such deductions and (iii) the Borrower or other Person shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) *Payment of Other Taxes by the Borrower.* Without limiting the provisions of Section 3.01(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) *Indemnification by the Borrower.* The Borrower shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within 30 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or such L/C Issuer or any of their respective Affiliates, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) *Status of Lenders.* Each Lender that is a “U.S. Person” as defined in section 7701(a)(30) of the Code that has not otherwise established to the reasonable satisfaction of the Borrower and Administrative Agent (or, in the case of a Participant purchasing its participation from a Foreign Lender, to the Lender from which the related participation shall have been purchased) that it is an exempt recipient (as defined in section 6049(b)(4) of the Code and the regulations thereunder) shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable law or upon the reasonable request of the Borrower or Administrative Agent), two duly completed and executed copies of Internal Revenue Service Form W-9.

Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable or any subsequent version thereof or successor thereto:

(i) duly completed and executed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed and executed copies of Internal Revenue Service Form W-8ECI relating to all payments to be received by such Foreign Lender hereunder or under any other Loan Document,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

In the event that, pursuant to Section 12.06(d), a Participant is claiming the benefits of this Section 3.01, such Participant shall provide the forms required above to the Lender from which the related participation was purchased, and if such Lender is a Foreign Lender, such Lender shall, promptly upon receipt thereof (but in no event later than the next scheduled payment under this Agreement) forward such documentation to the Borrower and the Administrative Agent, together with such additional forms as are required by law.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender's status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to the Administrative Agent or the Borrower, as the Administrative Agent or the Borrower shall reasonably request, on or prior to the Effective Date, and in a timely fashion thereafter (including upon the expiration or obsolescence of any such forms or documents and promptly after the occurrence of any event requiring a change from the most recent forms previously delivered), such other documents and forms as would reduce or avoid any Indemnified Taxes in respect of all payments to be made to such Lender outside of the U.S. pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in such other jurisdiction; *provided*, that in such Lender's reasonable judgment such documentation or forms would not materially prejudice such Lender. Each Lender shall promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction. Notwithstanding any other provision of this Section 3.01(e), a Lender shall not be required to deliver any form, document or other information pursuant to this Section 3.01(e) that such Lender is not legally able to deliver.

If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) *Treatment of Certain Refunds.* If the Administrative Agent, any Lender or any L/C Issuer receives a refund with respect to Indemnified Taxes or Other Taxes paid by the Borrower, which in the sole discretion and good faith judgment of the Administrative Agent, any Lender or any L/C Issuer is allocable to such payment, it shall promptly pay such refund (but only to the extent of the Indemnified Taxes or Other Taxes paid by the Borrower giving rise to such refund) to the Borrower, net of all out-of-pocket expenses of the Administrative Agent, such Lender or such L/C Issuer incurred in obtaining such refund (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent, such Lender or such L/C Issuer in good faith and in its sole discretion, and as will leave the Administrative Agent, such Lender or such L/C Issuer in no worse position than it would be in if no such Indemnified Taxes or Other Taxes had been imposed and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided, however*, that the Borrower agrees to promptly return such amount (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority), net of any reasonable incremental additional costs, to the applicable Administrative Agent, the Lender or the L/C Issuer, as the case may be, if it receives notice from the applicable Administrative Agent, Lender or L/C Issuer that such Administrative Agent, Lender or L/C Issuer is required to repay such refund. This subsection

shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02. *Illegality.* If any Lender determines that as a result of any Change in Law it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all such Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03. *Inability to Determine Rates.* If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or (b) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04. *Increased Costs; Reserves on Eurocurrency Rate Loans.* (a) *Increased Costs Generally.* If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate contemplated by Section 3.04(e)) or any L/C Issuer; or

(ii) impose on any Lender or L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; *provided*, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, in its reasonable discretion, in any legal, economic or regulatory manner) to designate a different Eurocurrency Rate lending office if the making of such designation would allow the Lender or its Eurocurrency Rate lending office to continue to perform its obligation to make Eurocurrency Rate Loans or to continue to fund or maintain Eurocurrency Rate Loans and avoid the need for, or reduce the amount of, such increased cost.

(b) *Capital Requirements.* If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital requirements has the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, describing the basis therefore and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not

constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided, that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 90-days prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Additional Reserve Requirements.* The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least 10 Business Days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender describing the basis therefor and showing the calculation thereof in reasonable detail. If a Lender fails to give notice 10 Business Days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable within 30 days from receipt of such notice.

Section 3.05. *Compensation for Losses.* Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any conversion, payment or prepayment of any Eurocurrency Rate Loan, and any conversion of a Base Rate Loan to a Eurocurrency Rate Loan, on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, or continue any Eurocurrency Rate Loan, or to convert a Base Rate Loan to a Eurocurrency Rate Loan, on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 12.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained, but excluding any loss of anticipated profits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

Section 3.06. *Mitigation Obligations; Replacement of Lenders.* (a) *Designation of a Different Lending Office.* If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the Administrative Agent or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) *Replacement of Lenders.* If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender gives a notice pursuant to Section 3.02 or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 12.13.

Section 3.07. *Survival.* All of the Borrower's obligations under this Article 3 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE 4

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Conditions of Initial Credit Extension.* The effectiveness of this Agreement and the obligation of each L/C Issuer and Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a duly authorized officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the

Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

- (i) executed counterparts of this Agreement executed by each Lender and each Loan Party;
- (ii) Notes executed by the Borrower in favor of each Lender requesting a Note or Notes;
- (iii) the Security Agreement executed by each Loan Party,
- (iv) proper financing statements (except for any as-extracted collateral filing or UCC fixture filing) in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary in order to perfect the Liens and security interests created or purported to be created under the Interim Order and the Security Agreement, covering the Collateral described therein;
- (v) the Perfection Certificate, executed by each Loan Party;
- (vi) such certificates of resolutions or other action, incumbency certificates and/or other certificates of duly authorized officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each officer of a Loan Party executing the Loan Documents to which such Loan Party is a party;
- (vii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;
- (viii) the executed opinion of Davis Polk & Wardwell LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;
- (ix) the executed opinion of Joseph W. Bean, Esq., special Missouri counsel and in-house counsel to the Loan Parties, addressed to the Administrative Agent, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;
- (x) a certificate of a duly authorized officer of each Loan Party (A) either (1) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (2) stating that no such consents, licenses or approvals are so required; and (B) stating that all consents, licenses and

approvals required in connection with the consummation of such Loan Party of the Transaction has been received;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that, except as disclosed in writing by the Borrower to the Administrative Agent and the Lenders or in filings made with the SEC and press releases, in each case prior to the Closing Date, since December 31, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect; and

(xii) such other assurances, certificates and documents as the Administrative Agent reasonably may require.

(b) Any fees required to be paid on or before the Closing Date to the Administrative Agent, any Arranger or the Lenders (i) pursuant to the Fee Letters or (ii) otherwise for which invoices have been received at least one Business Day prior to the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least one Business Day prior to the Closing Date, *plus* such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing and customary post-closing proceedings included in such invoices (*provided*, that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(d) The Administrative Agent shall have received copies of all Real Property Leases of the Loan Parties.

(e) The Administrative Agent shall have received (i) the Audited Financial Statements for the fiscal year ended December 31, 2011 and (ii) interim unaudited quarterly consolidated financial statements of the Borrower for each completed fiscal quarter ending not less than 45 days prior to the Closing Date.

(f) The Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act, to the extent requested at least 5 Business Days prior to the Closing Date.

(g) Concurrently with the initial extension of credit hereunder, the obligations of the Borrower and the other Loan Parties (other than contingent indemnification obligations) under the Existing Securitization Facility shall have been paid in full (or, in the case of obligations in respect of outstanding letters of credit, cash collateralized or otherwise provided for in a manner satisfactory to the applicable issuing bank), and the Administrative Agent shall have received customary payoff letters.

(h) The Administrative Agent shall be satisfied, in its sole discretion, with the cash management arrangements of the Loan Parties (or with the cash management arrangements required to be put in place by the Loan Parties pursuant to Section 6.22), it being understood and agreed that cash management arrangements consistent with Section 6.22 are satisfactory to the Administrative Agent.

(i) The Petition Date shall have occurred on or prior to July 11, 2012.

(j) The First Day Orders sought by the Borrower and entered on the Closing Date (including a cash management order) shall be satisfactory to the Administrative Agent and the Arrangers.

(k) The Interim Order Entry Date shall have occurred prior to the Closing Date and not later than 5 Business Days following the Petition Date, and the Interim Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to each Arranger and shall not be subject to a stay.

(l) All of the Liens described in Section 2.16 shall have been created and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order. The Interim Order shall have been effective to create the relative priorities of the Liens described in Section 2.16 with respect to the Collateral. The automatic stay under the Bankruptcy Code shall have been automatically vacated, subject to the terms of the Interim Order, to permit enforcement of the Secured Parties' rights and remedies under this Agreement and the other Loan Documents.

(m) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(n) The Operating Forecast and the initial 13-Week Projection (each in form and substance satisfactory to the Administrative Agent) shall have been received by the Administrative Agent prior to the date hereof

(o) The Administrative Agent shall have received an executed Borrowing Base Certificate satisfactory to the Administrative Agent.

(p) The Administrative Agent shall be satisfied in its sole discretion that there shall not occur as a result of, and after giving effect to, the initial extension of credit under the Facilities, a default (or any event which with the giving of notice or lapse of time or both would be a default) under any of the Borrower's or its Subsidiaries' debt instruments and other material agreements which would permit the counterparty thereto to exercise remedies thereunder on a post-petition basis.

(q) There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any

arbitrator or governmental instrumentality (other than the Cases) that could reasonably be expected to have a Material Adverse Effect.

(r) The “Required Lenders” (as defined in the Existing Credit Agreement) under the Existing Credit Agreement shall have executed and delivered to the Administrative Agent (as defined in the Existing Credit Agreement) written commitment advices, subject to satisfactory documentation, to enter into the Second Out Facility in accordance with a Summary of DIP Terms provided therewith and (ii) the Interim Order shall provide that the Second Out Facility shall be in full force and effect upon entry of the Interim Order and approval by the Required Lenders (as defined in the Existing Credit Agreement).

Section 4.02. *Conditions to All Credit Extensions.* The obligation of each Appropriate Lender to honor any Request for Credit Extension (other than a Borrowing Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in this Agreement and each other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, each applicable L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Closing Date shall have occurred.

(e) The Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Administrative Agent, *provided*, that at the time of the making of any Loan or the issuance of any Letter of Credit the aggregate amount of either of which, when added to the Total Outstandings, would exceed the amount under the applicable Facility authorized by the Interim Order (collectively, the “**Additional Credit**”), the Administrative Agent and each of the Lenders shall have received a final copy of an order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications are satisfactory in form and substance to the Administrative Agent and the Arrangers) and authorizing such Additional Credit (the “**Final Order**”), and at the time of the extension of any Additional Credit the Final Order shall be in full force and effect, and shall not have been

vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Administrative Agent.

(f) The making of such Loan (or the issuance of such Letter of Credit) shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

(g) In the case of any Revolving Credit Borrowing or L/C Credit Extension with respect to a Letter of Credit, (i) a Borrowing Base Certificate shall have been delivered in accordance with Section 6.02(l) and (ii) no Borrowing Base Deficiency will exist after giving effect to such Credit Extension.

(h) In the case of any Term Borrowing after the Closing Date, the Bankruptcy Court shall have entered the Final Order and the Final Order shall (i) be in full force and effect (ii) not have been vacated or reversed (iii) not have been modified or amended other than as acceptable to the Administrative Agent and the Arrangers and (iv) not be subject to a stay.

Each Request for Credit Extension (other than a Borrowing Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), (b) and (f) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

The Borrower and, to the extent that the following representations and warranties relate to the Loan Parties, each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

Section 5.01. *Existence, Qualification and Power.* (a) Each Loan Party is duly organized or formed and validly existing and (i) in good standing under the Laws of the jurisdiction of its incorporation or organization, except, with respect to this clause (ii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry of the Orders and subject to the terms thereof, each Loan Party has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents and Related Documents to which it is a party and consummate the Transaction, and (iii) is duly qualified and is licensed and, as applicable, in good standing, under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (iii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. *Authorization; No Contravention.* Subject to the entry of the Orders and subject to the terms thereof, the execution, delivery and performance by each Loan Party of each Loan Document, (a) have been duly authorized by all necessary corporate or other

organizational action, and (b) do not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation (except in respect of the Existing Senior Notes) to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents.* (a) Subject to the entry of the Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority and (b) no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with any other Person, in each case, is necessary or required in connection with (i) the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents or (iii) the perfection of the Liens created under the Collateral Documents (including the first priority nature thereof to the extent provided for in the Orders) except for (x) those approvals, consents, exemptions, authorizations or other actions which have already been obtained, taken, given or made and are in full force and effect, and (z) those landlord consents required with respect to Real Property Leases that constitute Collateral.

Section 5.04. *Binding Effect.* Subject to the entry of the Orders, this Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Orders, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.

Section 5.05. *Financial Statements; No Material Adverse Effect.* (a) The Audited Financial Statements of the Borrower and its Subsidiaries (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, of the Borrower and its Subsidiaries as of the date thereof, direct or contingent, including material liabilities for Taxes, material commitments and material Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated March 31, 2012, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby,

except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since December 31, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, except as previously disclosed in writing to the Administrative Agent and the Lenders or in filings made with the SEC and press releases, in each case prior to Closing Date.

(d) The consolidated pro forma balance sheet of the Borrower and its Subsidiaries as at May 31, 2012, and the related consolidated *pro forma* statements of income and cash flows of the Borrower and its Subsidiaries for the month then ended and the portion of the fiscal quarter then ended, certified by the chief financial officer or treasurer of the Borrower, copies of which have been furnished to the Administrative Agent, fairly present in all material respects the consolidated pro forma financial condition of the Borrower and its Subsidiaries as at such date and the consolidated pro forma results of operations of the Borrower and its Subsidiaries for the period ended on such date, in each case giving effect to the Transaction and the Cases, all in accordance with GAAP.

(e) The consolidated forecasted balance sheet and statements of income and cash flows of the Borrower and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.02(k) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable in light of the conditions existing at the time of delivery of such forecasts.

Section 5.06. *Litigation.* There are no unstayed actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues (a) that purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transaction, or (b), other than the Cases and except as specifically disclosed in public filings prior to the date hereof or on Schedule 5.06, as to which there is a reasonable possibility of an adverse determination and that could reasonably be expected to result in liability of the Loan Parties greater than the Threshold Amount.

Section 5.07. *No Default.* Neither the Borrower nor any Subsidiary is in default under or with respect to any Contractual Obligation (a) with respect to any Material Leased Real Property (except for non-material non-payment defaults and defaults which do not or, with the giving of any notice, the passage of time, or both, would not give rise a right of termination by the lessor) or (b) that would permit the exercise remedies thereunder on a post-petition basis. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

Section 5.08. *Ownership of Property; Liens; Investments.* (a) The Borrower and each of its Subsidiaries has (i) subject to the Liens listed on Schedule 7.01, good and marketable Mining Title to the Material Owned Real Property and the Material Leased Real Property for the

ordinary conduct of the business and operations of the Loan Parties as presently conducted on the date hereof and (ii) good record title to, or valid leasehold, easement or other real property interests in all other Real Property necessary for the ordinary conduct of the business and operations of the Loan Parties as presently conducted, subject to such defects in title as could not reasonably be expected to materially interfere with the ordinary conduct of the business and operations of any Loan Party.

(b) Subject to the exceptions listed thereon, Schedule 7.01 sets forth a complete and accurate list as of the Closing Date of all Liens (other than any Liens permitted under Sections 7.01(e) or (l)) on the property or assets of the Borrower and each of its Subsidiaries, showing as of the date hereof the lienholder thereof.

(c) Schedule 5.08(c) sets forth a complete and accurate list as of the Closing Date of the locations of all mines owned or leased by the Borrower or any of its Subsidiaries.

(d) The Borrower and each of its Subsidiaries has good record title to, or valid leasehold, easement or other property interests in all personal property necessary for the ordinary conduct of the business and operations of the Loan Parties as presently conducted.

(e) Schedule 7.03 sets forth a complete and accurate list as of the Closing Date of all Investments held by the Borrower and any of its Subsidiaries on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

(f) To the knowledge of the Loan Parties on the Closing Date, all Material Owned Real Property and the Material Leased Real Property that is being mined or operated as of the Closing Date is in a physical condition that would permit mining or operations as presently conducted.

Section 5.09. *Environmental Compliance.* Except as disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedule 5.09, or as otherwise could not reasonably be expected to have a Material Adverse Effect:

(a) The Properties do not contain, and have not previously contained, any Hazardous Materials in amounts or concentrations which (i) constitute or constituted a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(b) None of the Borrower nor any of its Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by the Borrower or any of its Subsidiaries (the "**Business**"), or any prior business for which the Borrower has retained liability under any Environmental Law.

(c) Hazardous Materials have not been transported or disposed of from the Properties in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, any applicable Environmental Law, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of the Properties in

violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(d) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened under any Environmental Law to which the Borrower or any of its Subsidiaries is or, to the knowledge of the Borrower, will be named as a party or with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other similar administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.

(e) There has been no release or threat of release of Hazardous Materials at or from the Properties, or arising from or related to the operations of the Borrower or any of its Subsidiaries in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under any applicable Environmental Laws.

(f) The Properties and all operations at the Properties are in compliance in all material respects with all applicable Environmental Laws.

(g) The Borrower and each of its Subsidiaries (i) hold all Environmental Permits (each of which is in full force and effect and is not subject to appeal, except in such instances where the requirement to hold an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted) required for any of their current operations or for the current ownership, operation or use of the Properties, including all Environmental Permits required for the coal mining-related operations of the Borrower or any of its Subsidiaries or, to the extent currently required, any pending construction or expansion related thereto; (ii) are, or have been, in compliance with all Environmental Permits, except in such instances where the requirement of an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted; and (iii) have used commercially reasonable efforts to cause all contractors, lessees and other Persons occupying, operating or using the mines on the Properties to comply with all Environmental Laws and obtain all Environmental Permits required for the operation of the mines.

(h) To the knowledge of the Borrower, none of the Properties have any associated direct or indirect acid mine drainage which (i) constitutes or constituted a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.

Section 5.10. *Mining.* The Borrower and each of its Subsidiaries has, in the amounts and forms required pursuant to Environmental Law, obtained all performance bonds and surety bonds, or otherwise provided any financial assurance required under Environmental Law for Reclamation or otherwise in the ordinary conduct of the business and operations of the Loan Parties (collectively, “**Mining Financial Assurances**”), except for such Mining Financial Assurances that do not exceed \$25,000,000 in the aggregate.

Section 5.11. *Insurance.* The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

Section 5.12. *Taxes.* The Borrower and its Subsidiaries have filed all Federal, state and other tax returns and reports required to be filed, and have paid all material Federal, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable (other than those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP); no tax Lien has been filed (other than Liens for (i) pre-petition Taxes that were not yet due on the Petition Date or which are being contested in good faith and by appropriate proceedings and (ii) post-petition Taxes not to exceed the Threshold Amount not yet due or which are being contested in good faith and by appropriate proceedings) and, to the knowledge of the Borrower, no material claim is being asserted or audit being conducted, with respect to any material Tax, fee or other charge of the Borrower or any of its Subsidiaries. There is no proposed tax assessment against the Borrower or any Subsidiary that would, reasonably be likely to result in liability of the Loan Parties greater than the Threshold Amount. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement, other than the Tax Separation Agreement.

Section 5.13. *ERISA Compliance.* (a) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws (except that with respect to any Multiemployer Plan which is a Plan, such representation is deemed made only to the knowledge of the Borrower) and (ii) with respect to each Plan, no failure to satisfy the minimum funding standards of Sections 412 or 430 of the Code has occurred, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no nonexempt “prohibited transaction” (as defined in Section 406 of ERISA) or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) No ERISA Event has occurred or is reasonably

expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur (except as may occur as a result of relief granted pursuant to section 1113 of the Bankruptcy Code), any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 5.14. *Subsidiaries; Equity Interests; Loan Parties.* As of the Closing Date, the Borrower has no Subsidiaries other than those specifically disclosed in Schedule 5.14, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by each Person in the percentages specified on Schedule 5.14 free and clear of all Liens except those created under the Collateral Documents and the Orders or permitted by this Agreement and the other Loan Documents. Schedule 5.14 indicates which subsidiaries are Loan Parties as of the Closing Date showing (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation.

Section 5.15. *Margin Regulations; Investment Company Act.* (a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Federal Reserve Board), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 7.01, Section 7.04 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 9.01(e) will be margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is required to register as an “investment company” under the Investment Company Act of 1940.

Section 5.16. *Disclosure.* No report, financial statement, certificate or other information furnished (in writing) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, taken as a whole with any other information furnished or publicly available, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the date when made or delivered; *provided*, that with respect to any forecast, projection or other statement regarding future performance, future financial results or other future developments, the Borrower

represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that no assurance can be given that the future developments addressed in such information can be realized).

Section 5.17. *Compliance With Laws.* The Borrower and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws (including any zoning, building, ordinance, code or approval or any building or mining permits) and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted, or (b) the failure to comply therewith has been disclosed in the Borrower's most recent annual, quarterly or other report filed with the SEC.

Section 5.18. *Intellectual Property; Licenses, Etc.* The Borrower and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "**IP Rights**") that are reasonably necessary for the operation of their respective businesses, except where the failure to own or possess the right to use such IP Rights could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the use of such IP Rights by the Borrower or any Subsidiary does not infringe upon any rights held by any other Person, except for any infringement that could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.18, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.19. *[Reserved]*.

Section 5.20. *Casualty, Etc.* Neither the businesses nor the properties of the Borrower or any of its Subsidiaries have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.21. *Labor Matters.* Except as specifically disclosed on Schedule 5.21, there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date.

Section 5.22. *Collateral Documents.* Subject to the entry of the Orders, the provisions of the Collateral Documents when executed and delivered (and at all times thereafter) are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien on all right, title and interest of the Collateral owned by the Loan Parties and described therein.

Section 5.23. *Use of Proceeds.* The Borrower will use the proceeds of the Loans solely as provided for in Section 6.11.

Section 5.24. *Coal Act; Black Lung Act.*

(a) The Borrower, each of its Subsidiaries and its “related persons” (as defined in the Coal Act) are in compliance in all material respects with the Coal Act and any regulations promulgated thereunder except which compliance is being contested in good faith by appropriate proceedings diligently conducted or excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court, and none of the Borrower, its Subsidiaries or its “related persons” (as defined in the Coal Act) has any liability under the Coal Act, except as disclosed in the Borrower’s financial statements or which could not reasonably be expected to have a Material Adverse Effect, or with respect to premiums or other material payments required thereunder which have been paid when due, or which liability is being contested in good faith by appropriate proceedings diligently conducted or the current payment of which is excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court.

(b) The Borrower and each of its Subsidiaries are in compliance in all material respects with the Black Lung Act except which compliance is being contested in good faith by appropriate proceedings diligently conducted or excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court, and neither the Borrower nor any of its Subsidiaries has either incurred any Black Lung Liability or assumed any other Black Lung Liability, except as disclosed in the Borrower’s financial statements or which could not reasonably be expected to have a Material Adverse Effect, or with respect to premiums, contributions or other material payments required thereunder which have been paid when due or which Black Lung Liability is being contested in good faith by appropriate proceedings diligently conducted or the current payment of which is excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court.

Section 5.25. *Activities and Liabilities of EACC Camps, Inc.* EACC Camps, Inc., a West Virginia corporation, owns no material assets, material Indebtedness or other material liabilities, direct or contingent, including material liabilities for Taxes and material commitments, and conducts no material business or operations.

Section 5.26. *Anti-Terrorism Laws.* (a) None of the Loan Parties or, to the knowledge of any of the Loans Parties, any of their Affiliates, is in violation of any applicable laws relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) No Loan Party or, to the knowledge of any of the Loan Parties, any of their Affiliates is any of the following:

(i) a Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person or entity owned or controlled by, or acting for or on behalf of, any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person or entity with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party or to the knowledge of any Loan Party, any of its Affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 5.26(b)(ii) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) knowingly engages in or conspires to knowingly engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any applicable Anti-Terrorism Law.

ARTICLE 6 AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and expenses related thereto not then payable or in existence as of the later of the Termination Date or the Letter of Credit Expiration Date), or any Letter of Credit shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01 and 6.02 (a) – (g)) cause each Subsidiary to:

Section 6.01. *Financial Statements.* Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2011), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended June 30, 2012), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event within 15 Business Days after the end of each fiscal month of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal month and for the portion of the Borrower's fiscal year then ended, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Section 6.01(a) or (b) above at the times specified therein.

Section 6.02. *Certificates; Other Information.* Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants reporting on such financial statements and stating that in performing their audit nothing came to their attention that caused them to believe the Borrower failed to comply with the financial covenants set forth in Section 7.11, except as specified in such certificate;

(b) concurrently with the delivery of the financial statements referred to in Section 6.01(c) (commencing with the delivery of the financial statements for the fiscal month ended June 30, 2012), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, which shall include detailed computations of the financial covenant set forth in Sections 7.11, 7.12 and 7.13.;

(c) promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent

accountants in connection with the accounts or books of the Borrower or any of its Subsidiaries, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) unless otherwise required to be delivered to the Lenders hereunder, promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) as soon as available, but in any event prior to the date audited financial statements are required to be delivered, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify;

(g) promptly, and in any event within five Business Days after receipt thereof by the Borrower or any Subsidiary, copies of each material notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of the Borrower or any Subsidiary;

(h) unless otherwise required to be delivered to the Lenders hereunder, not later than ten days after receipt thereof by the Borrower or any Subsidiary, copies of all notices of default, non-compliance or any other material matters (excluding those delivered pursuant to the relevant agreement in the ordinary course of business), material requests and other material documents (including amendments, waivers and other modifications) so received under or pursuant to any Related Document and, from time to time upon request by the Administrative Agent, such other information and reports regarding the Related Documents as the Administrative Agent may reasonably request;

(i) as soon as available, but in any event within the time period in which the Borrower must deliver its annual audited financials under Section 6.01(a), a report supplementing Schedules 5.08(a), 5.08(b) and 5.08(c) and identifying all Material Owned Real Property and Material Leased Real Property acquired or disposed of by any Loan Party during such fiscal year;

(j) promptly, such additional information regarding the business, financial, legal or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(k) weekly, on or before the third Business Day following the end of every calendar week (for purposes of this section, each calendar week being deemed to end on Friday), commencing with the calendar week ending July 13, 2012, a 13-Week Projection;

(l) a Borrowing Base Certificate substantially in the form of Exhibit G, as of the date required to be delivered or so requested, in each case with supporting documentation, (i) (A) semi-monthly (as of the 15th day and as of the last day of each month (or, if either such day is not a Business Day, as of the Business Day immediately preceding such 15th or last day, as applicable)), on or before the third Business Day following each 15th day and each last day of each month or (B) weekly at any time that Excess Availability is less than \$37,500,000 (as of the last Business Day of each week) on or before the third Business Day of each week, in each case, commencing July 13, 2012, which Borrowing Base Certificate shall reflect the Collateral contained in the Borrowing Base updated as of such 15th or last day of each month, as applicable; (ii) in addition to the bi-weekly Borrowing Base Certificates required pursuant to clause (i), upon the occurrence and continuance of an Event of Default, on or before the third Business Day following the end of each calendar week, which weekly Borrowing Base Certificate shall reflect the Collateral included in the Borrowing Base updated as of the immediately preceding Monday; (iii) upon the consummation of any Disposition pursuant to 7.05(g); and (iv) if requested by the Administrative Agent at any other time when the Administrative Agent reasonably believes that the then existing Borrowing Base Certificate is materially inaccurate, as soon as reasonably available after such request; in each case with supporting documentation as the Administrative Agent or the Revolving Lenders may reasonably request;

(m) The Borrower shall deliver or cause to be delivered to the Administrative Agent and, if requested, the Lenders, the following:

(i) upon request by the Administrative Agent, and in no event less frequently than 5th Business Day after the end of each month, (i) a monthly trial balance showing Accounts outstanding aged from statement date as follows: 1 to 30 days, 31 to 60 days, 61 to 90 days and 91 days or more, accompanied by a comparison to the prior month's trial balance and such supporting detail and documentation as shall be reasonably requested by the Administrative Agent and (ii) a summary of Inventory by location and type accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent;

(ii) on the date any Borrowing Base Certificate is delivered pursuant to Section 6.02(l), a report with respect to the Borrower, including all additions and reductions (cash and non-cash) with respect to intercompany Indebtedness of the Loan Parties, accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent;

(iii) at the time of delivery of each of the financial statements pursuant to Sections 6.01(a) and (b);

(A) a reconciliation of the Accounts trial balance and quarter-end Inventory reports of the Borrower to the general ledger of such Loan Party, in

each case, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent; and

(B) a list of any application for the registration of any patent, trademark or copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency which any Loan Party has filed in the prior fiscal quarter;

(iv) upon request by the Administrative Agent and, in no event less frequently than 45 days after the end of the second and fourth fiscal quarters of each year, a list of Account Debtors with respect to Eligible Accounts, with addresses and contact information;

(v) such other reports, statements and reconciliations with respect to the Borrowing Base or Collateral of any or all Loan Parties as the Administrative Agent shall from time to time reasonably request;

(n) promptly (and in any event within three Business Days) after any Loan Party has knowledge that Accounts of the Loan Parties in an aggregate face amount of \$15,000,000 or more cease to be Eligible Receivables, notice of such occurrence; and

(o) all pleadings, motions and other documents directly related to the Facilities (including, without limitation, any requests for relief under sections 363 or 365 or to approve any compromise and settlement of claims), any Reorganization Plan or any disclosure statement related thereto, or any request for relief under section 1113 or 1114 of the Bankruptcy Code by the earlier of (i) two Business Days prior to being filed (and if impracticable, then promptly after being filed) on behalf of any of the Debtors with the Bankruptcy Court or (ii) at the same time as such documents are provided by any of the Debtors to any statutory committee appointed in the Cases or the United States Trustee for the Southern District of New York, it being agreed that the Borrower shall be deemed in compliance with this covenant if it uses good faith efforts to comply.

Documents required to be delivered pursuant to Section 6.01(a), (b) or (c) or Section 6.02(a) or (b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 12.02; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) on which such documents are filed for public availability of the SEC's Electronic Data Gathering and Retrieval system; *provided*, that the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of the documents required to be delivered pursuant to Section 6.01(a), (b) or (c) or Section 6.02(a) or (b). The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor

compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 6.03. *Notices.* Notify the Administrative Agent:

- (a) promptly, of the occurrence of any Default or Event of Default;
- (b) promptly, of any event which could reasonably be expected to have a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event that, individually, or in the aggregate, would be reasonably likely to have a Material Adverse Effect, as soon as possible and in any event within 30 days after the Borrower knows or has obtained notice thereof;
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (e) promptly after receipt of notice or knowledge of any Loan Party thereof, of any unstayed action, suit, proceeding or claim alleging any Environmental Liability against or by such Loan Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect;
- (f) promptly after receipt of notice or knowledge of the Borrower thereof, of any accidents, explosions, implosions, collapses or flooding at or otherwise related to the Properties that result in (i) any fatality or (ii) the trapping of any Person in any mine for more than twenty-four hours;
- (g) promptly after receipt of notice or knowledge of the Borrower thereof, of the issuance of any closure order pursuant to any Environmental Law or pursuant to any Environmental Permit that could reasonably be expected to directly or indirectly result in the closure or cessation of operation of any mine for a period of more than 5 consecutive days; and
- (h) promptly after receipt of notice or knowledge of any Loan Party of any default by such Loan Party of any of its Subsidiaries under any Contractual Obligation with respect to Material Leased Real Property (except for non-material non-payment defaults and defaults which do not or, with the giving of any notice, the passage of time, or both, would not give rise a right of termination by the lessor).

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04. *Payment of Post-Petition Obligations.* In accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court, pay and discharge as the same shall become due and payable (a) all post-petition Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, except where failure to do so could not reasonably be expected to result in a Material Adverse Effect or (b) all lawful claims which, if unpaid, would by law become a Lien upon any material portion of the

Collateral, unless, in each of clause (a) or (b) above, such liabilities, assessments, governmental charges, levies or claims are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary.

Section 6.05. *Preservation of Existence, Etc.* With respect to the Borrower and each of its Subsidiaries, (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary for the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

Section 6.06. *Maintenance of Properties.* With respect to the Borrower and each of its Subsidiaries, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition (ordinary wear and tear and damage by fire or other casualty or taking by condemnation excepted); except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. The Loan Parties shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all applicable law.

Section 6.07. *Maintenance of Insurance.* Maintain with financially sound and reputable insurance companies which may be Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or Similar Business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried by companies engaged in Similar Businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates. Without limiting the generality of the foregoing, the Borrower and its Subsidiaries will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, (b) liability insurance, (c) business interruption insurance, and (d) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as would be carried or maintained under similar circumstances by Persons of established reputation engaged in Similar Businesses. Each such policy of insurance shall (i) name the Administrative Agent, on behalf of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Administrative Agent, on behalf of the Secured Parties, as the loss payee thereunder and provide for at least thirty days' prior written notice to the Administrative Agent of any modification or cancellation of such policy.

Section 6.08. *Compliance with Laws.* Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its

business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted; (b) the failure to comply therewith, in addition to the risk thereof, is disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedules 5.09, or (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

Section 6.09. *Books and Records.* (a) Maintain proper books of record and account, in which in all material respects full, true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Subsidiary, as the case may be; and (c) each Loan Party shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions.

Section 6.10. *Inspection Rights; Field Exams.* (a) Permit representatives and independent contractors of the Administrative Agent and each Lender to, at the Borrower's expense, visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (except to the extent (i) any such access is restricted by a Requirement of Law or (ii) any such agreements, contracts or the like are subject to a written confidentiality agreement with a non-Affiliate that prohibits the Borrower or any of its Subsidiaries from granting such access to the Administrative Agent or the Lenders; *provided*, that with respect to such confidentiality restrictions affecting the Borrower or any of its Subsidiaries, a Responsible Officer is made available to such Lender to discuss such confidential information to the extent permitted), and to discuss the business, finances and accounts with its officers and independent public accountants at such reasonable times during normal business hours and as often as may be reasonably desired, *provided*, that the Administrative Agent or such Lender shall give Borrower reasonable advance notice prior to any contact with such accountants and give the Borrower the opportunity to participate in such discussions.

(b) At any reasonable time and from time to time during regular business hours, upon reasonable notice, permit representatives and independent contractors of the Administrative Agent or any of the Revolving Lenders to visit the properties of the Loan Parties and their Subsidiaries to, at the Borrower's expense, conduct field examinations, evaluations, appraisals, environmental assessments and ongoing maintenance and monitoring in connection with the Borrower's computation of the Borrowing Base and the assets included in the Borrowing Base and such other assets and properties of the Loan Parties or their Subsidiaries as the Administrative Agent may reasonably require, and to monitor the Collateral and all related systems; *provided* that such field exams and appraisals may be conducted at the Borrower's expense not more than twice per twelve-month period or, at any time that Excess Availability is less than \$37,500,000, once per quarter. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default such field examinations and appraisals may be conducted at the Borrower's expense as many times as the Administrative Agent shall consider reasonably necessary.

(c) At any reasonable time and from time to time during regular business hours, upon reasonable notice, permit representatives and independent contractors of the Administrative Agent or any of the Arrangers to visit the Real Property of the Borrower and its Subsidiaries to conduct evaluations, appraisals, surveys and environmental assessments in connection with monitoring the Term Collateral and, after the occurrence and during the continuance of an Event of Default, in order to market any Real Property (including any Leased Real Property) for sale.

Section 6.11. *Use of Proceeds.* Use the proceeds of the Credit Extensions to refinance the Existing Swingline Obligations and all obligations outstanding under the Existing Securitization Facility and for working capital, capital expenditures and other general corporate purposes.

Section 6.12. *Covenant to Guarantee Obligations and Give Security.* (a) Upon the formation or acquisition of any new direct or indirect Guarantor Subsidiary by any Loan Party, then the Borrower shall, at the Borrower's expense:

(i) within 10 days (or such longer period as the Administrative Agent may agree) after such formation or acquisition, cause such Guarantor Subsidiary, to duly execute and deliver to the Administrative Agent a supplement to this Agreement and to the Security Agreement, in each case in form and substance reasonably satisfactory to the Administrative Agent, whereby such Guarantor Subsidiary shall (A) become a party to this Agreement and the Security Agreement upon execution and delivery by such Guarantor Subsidiary of an Assumption Agreement in the form of Exhibit K hereto, and any supplements to the Security Agreement or Intellectual Property Security Agreements or other security and pledge agreements, in all such cases, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all Pledged Equity Interests and Pledged Debt in and of such Guarantor Subsidiary, and other instruments representing the Pledged Equity Interests in certificated form accompanied by undated stock powers executed in blank or the Pledged Debt indorsed in blank to the extent required by the Security Agreement), in all such cases to the same extent that such documents and instruments would have been required to have been delivered by Persons that were Guarantor Subsidiaries on the Closing Date, securing payment of all the Obligations of such Guarantor Subsidiary under the Loan Documents (B) guarantee the other Loan Parties' obligations and become a Subsidiary Guarantor for all purposes under the Loan Documents and (C) grant a security interest in substantially all of its assets to secure such obligations; and

(ii) within 10 days (or such longer period as the Administrative Agent may agree) after such formation or acquisition, furnish to the Administrative Agent a description any Material Owned Real Property and Material Leased Real Property of such Guarantor Subsidiary, in detail reasonably satisfactory to the Administrative Agent.

(b) At the reasonable request of the Administrative Agent, each Loan Party shall, at the Borrower's expense:

(i) (A) with respect to Material Owned Real Property, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent within 45 days (or such longer period as the Administrative Agent may agree) after such request, deeds of trust, trust deeds, deeds to secure debt and/or mortgages, (B) with respect to Material Leased Real Property where the terms of the lease of such Material Leased Real Property (or applicable state law, if such lease is silent on the issue) do not prohibit a mortgage thereof, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent within 30 days (or such longer period as the Administrative Agent may agree) after such request, leasehold mortgages or leasehold deeds of trust, and (C) with respect to Material Leased Real Property where the terms of the lease of such Material Leased Real Property (or applicable state law, if such lease is silent on the issue) prohibit a mortgage thereof, (1) cause the applicable Loan Party to use commercially reasonable efforts to promptly obtain estoppel and consent agreements executed by the lessors of such Material Leased Real Property and duly execute and deliver to the Administrative Agent, leasehold mortgages or leasehold deeds of trust or (2) cause the applicable Loan Party to file the Interim Order with the government authority responsible for recording mortgages in the jurisdiction in which such Material Leased Real Property is located, in the case of clauses (A), (B) and (C), in form and substance satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents;

(ii) within 45 days (or such longer period as the Administrative Agent may agree) after such request take whatever additional action (including the recording of mortgages and the filing of Uniform Commercial Code financing statements) may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on any Material Owned Real Property or Material Leased Real Property, enforceable against all third parties;

(iii) within 45 days (or such longer period as the Administrative Agent may agree) after such request, cause the applicable Loan Party to provide the Administrative Agent with a legal description of any Material Owned Real Property or any Material Leased Real Property, as applicable, from which any As-Extracted Collateral will be severed or to which As-Extracted Collateral otherwise relates, together with the name of the record owner of such Material Owned Real Property or Material Leased Real Property, as applicable, the county in which such Material Owned Real Property or Material Leased Real Property, as applicable, is located, accurate real estate descriptions sufficient to locate such real property on the ground and such other information as may be necessary or desirable to file real property related financing statements, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and/or leasehold deeds of trust under Section 9-502(b) or 9-502(c) of the UCC or any similar legal requirements; and

(iv) within 45 days (or such longer period as the Administrative Agent may agree) after such request, cause the applicable Loan Party to provide the Administrative Agent with all geological data, reserve data, material existing mine maps, surveys, title insurance policies, title insurance, abstracts and other evidence of title, core

hole logs and associated data, Coal measurements, Coal samples, lithologic data, Coal reserve calculations or reports, washability analyses or reports, quality analyses, mine plans, mining permit applications and supporting data, engineering studies and all other information, maps, reports and data in the possession of such Loan Party and relating to or affecting the Real Property, including the Coal reserves, Coal ownership, Real Property Leases, mining conditions, mines, and mining plans of such Loan Party as prepared and utilized by such Loan Party in its ordinary course of business.

Section 6.13. *Compliance With Environmental Laws.* Except as otherwise excused by the Bankruptcy Court, (a) comply, and use commercially reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits and obtain, to the extent necessary based on its current operations, and renew all Environmental Permits for its operations and properties, except in such instances in which (i) the requirement of an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted, or (ii) the failure to so comply, obtain or renew, in addition to the risk thereof, has been disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedule 5.09; and (b) undertake and perform any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws, except in such instances in which (i) the requirement to undertake or perform is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted, or (ii) the failure to so undertake or perform has been, in addition to the risk thereof, disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedule 5.09.

Section 6.14. *Preparation of Environmental Reports.* Not more often than once per Property during the term of this Agreement (or more frequently during the continuance of an Event of Default), at the reasonable request of the Administrative Agent, the Borrower shall provide to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental or mining site assessment or audit report for any of its Properties described in such request, prepared by an environmental or mining consulting firm reasonably acceptable to the Administrative Agent describing the presence or absence of Hazardous Materials and information otherwise reasonably requested by the Lenders.

Section 6.15. *Further Assurances.* Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments (including Mortgages) as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by law, subject the Borrower's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents or the Orders, and (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and by the Orders.

Section 6.16. *Compliance with Terms of Leaseholds and Related Documents.* (a) Except as otherwise excused by the Bankruptcy Court, make all payments and otherwise perform all obligations in respect of all Real Property Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Real Property Leases in full force and effect and not allow such Real Property Leases to lapse or be terminated or any rights to renew such Real Property Leases to be forfeited or cancelled, except in connection with the rejection of any unexpired lease pursuant to Section 8.01.

(b) Except as otherwise excused by the Bankruptcy Court, make all payments and otherwise perform all obligations in respect of all Related Documents, keep such Related Documents in full force and effect and not allow such Related Documents to lapse or be terminated or any rights to renew such Related Documents to be forfeited or cancelled, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

Section 6.17. *Ratings.* The Borrower shall use commercially reasonable efforts to obtain within 30 days after the Closing Date a public credit rating from each of Moody's and S&P with respect to the Term Loans.

Section 6.18. *First Day Orders.* Cause all proposed "first day" orders submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement in all respects, it being understood and agreed that the forms of orders approved by the Arrangers prior to the Petition Date are in accordance with and permitted by the terms of this Agreement in all respects.

Section 6.19. *Mining Financial Assurances.* Maintain all material Mining Financial Assurances to the extent required pursuant to any Environmental Law.

Section 6.20. *Post-Closing Obligations.* Perform the obligations set forth on Schedule 6.21, as and when set forth therein.

Section 6.21. *Administration of Accounts and Inventory.* (a) If an Account of any Loan Party includes a charge for any taxes, the Administrative Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Loan Party if such Loan Party does not do so and to charge the Borrower therefor; *provided, however,* that neither the Administrative Agent nor the Lenders shall be liable for any taxes that may be due from the Loan Parties or with respect to any Collateral.

(b) Whether or not a Default exists, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or any Loan Party, to verify the validity, amount or any other matter relating to any Accounts of the Loan Party by mail, telephone or otherwise. The Loan Parties shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

Section 6.22. *Cash Management System.*

(a) Within 30 days after the Closing Date (or such later date as the Administrative Agent may specify in its sole discretion), and at all times thereafter, the applicable Loan Parties shall enter into and maintain a Blocked Account Agreement, satisfactory in form and substance to the Administrative Agent and the Arrangers in their reasonable discretion, with respect to each Deposit Account into which payments in respect of the Accounts of the Loan Parties are remitted (each such Deposit Account, a “**Collection Account**”), which Blocked Account Agreements shall require the ACH or wire transfer by the end of each Business Day of all ledger or available, as applicable, cash receipts held in such Collection Accounts to the Revolving Collateral Account. No Loan Party shall direct any Account Debtor, or any customer, to make payments on Accounts to any Deposit Account other than the Collection Accounts which, 30 days after the Closing Date (or such later date as the Administrative Agent may specify in its sole discretion), are subject to Blocked Account Agreements, and the Revolving Collateral Account.

(b) Each Loan Party shall (i) deposit in the Term Cash Collateral Account (A) all Term Collateral (other than the L/C Cash Collateral Account) constituting cash and Cash Equivalents and (B) all cash Proceeds they receive from any disposition of Term Collateral, (ii) except as provided in clause (a) above, deposit in the Revolving Collateral Account all other cash they receive and (iii) not establish or maintain any Securities Account, Commodities Account or Deposit Account that is not a Control Account, other than Excluded Accounts. Each Loan Party shall instruct each Person obligated to make a payment to any of them to make payment, or to continue to make payment, to the appropriate Control Account as required by this Section 6.22.

(c) Each Loan Party hereby acknowledges and agrees that (i) it has no right of withdrawal from the Control Accounts, (ii) the funds on deposit in the Control Accounts shall at all times continue to be collateral security for all of the Obligations, and (iii) the funds on deposit in any Control Account shall be applied as provided in Section 9.03 of this Agreement, subject to Article 11 the Security Agreement. In the event that, notwithstanding the provisions of this Section 6.22, a Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, shall not be commingled with any of such Loan Party’s other funds or deposited in any account of such Loan Party and shall promptly be deposited into the appropriate Control Account or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(d) Without limiting the foregoing, funds on deposit in any Deposit Account or Securities Account under the sole dominion and control of the Administrative Agent may be invested (but the Administrative Agent shall be under no obligation to make any such investment) in Cash Equivalents at the direction of the Administrative Agent and, except during the continuance of an Event of Default, the Administrative Agent agrees with the Borrower to issue Entitlement Orders for such investments in Cash Equivalents as requested by the Borrower; *provided, however*, that the Administrative Agent shall not have any responsibility for, or bear any risk of loss of, any such investment or income thereon.

(e) Any amounts received (i) in the Term Cash Collateral Account shall be applied to payment of the Term Loans pursuant to Sections 2.06(b) or 2.08(c) as and when due and (ii) in the Revolving Facility Collateral Account and each other Control Account (other than the L/C Cash Collateral Account, the Term Cash Collateral Account and any Cash Collateral Account) shall be applied, *first* to payment of all Revolving Credit Loans then due, *second* to the extent otherwise required by the Agreement, to Cash Collateralize all outstanding Revolving Letters of Credit, and *then* as directed by the Borrower; *provided* that, if an Event of Default has occurred and is continuing, all amounts in Control Accounts shall be applied pursuant to Section 9.03 and Article 10 of the Security Agreement.

Section 6.23. *Financial Restructuring Officer and Advisor.* The Borrower shall retain a restructuring advisor reasonably acceptable to the Arrangers to provide restructuring advice and assistance during the pendency of the Cases (it being understood and agreed that AlixPartners LLP is acceptable to the Arrangers). The Borrower shall appoint a Chief Restructuring Officer satisfactory to the Arrangers (it being understood and agreed that Ted Stenger is acceptable to the Arrangers) and file a motion for such appointment as soon as is practicable after the Petition Date but in any event on or before the Final Order Entry Date. The Chief Restructuring Officer shall report to the Chairman of the board of directors of the Borrower.

ARTICLE 7 NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and costs and expenses related thereto not then payable or in existence as of the later of the Termination Date or the Letter of Credit Expiration Date), or any Letter of Credit shall remain outstanding, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

Section 7.01. *Liens.* Create, incur, assume or suffer to exist any Lien upon, or exception to title to, any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

- (a) Liens pursuant to any Loan Document or an Order;
- (b) Liens on the property of the Borrower or any of its Subsidiaries existing on the date hereof and listed on Schedule 7.01;
- (c) Liens for (i) pre-petition Taxes that were not yet due on the Petition Date or which are being contested in good faith and by appropriate proceedings and (ii) post-petition Taxes not to exceed the Threshold Amount not yet due or which are being contested in good faith and by appropriate proceedings, *provided* that, adequate reserves with respect to both pre-petition and post-petition taxes are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person.

(e) easements, covenants, conditions, rights-of-way, zoning restrictions, other restrictions and other similar encumbrances which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(f) Liens securing attachments or judgments for the payment of money not constituting an Event of Default under Section 9.01(h) or securing appeal or surety bonds related to such attachments or judgments;

(g) Liens securing Indebtedness of the Borrower and its Subsidiaries permitted by Section 7.02(e) incurred to finance the acquisition of fixed or capital assets; *provided*, that (i) such Liens shall be created substantially simultaneously with the acquisition such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (other than after-acquired title in or on such property and proceeds of the existing collateral in accordance with the instrument creating such Lien), (iii) the principal amount of Indebtedness secured by any such Lien shall at no time exceed 100% of the original purchase price of such property at the time it was acquired, and (iv) if the terms of such Indebtedness require any Lien hereunder to be subordinated to such Liens, then the Lien hereunder shall be subordinated on terms reasonably acceptable to the Administrative Agent;

(h) *[Reserved]*;

(i) Liens on the property of the Borrower or any of its Subsidiaries, as a tenant under a lease or sublease entered into in the ordinary course of business by such Person, in favor of the landlord under such lease or sublease, securing the tenant's performance under such lease or sublease, as such Liens are provided to the landlord under applicable law and not waived by the landlord;

(j) Liens arising from precautionary Uniform Commercial Code financing statement filings with respect to operating leases or consignment arrangements entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(k) *[Reserved]*;

(l) Production Payments, royalties, dedication of reserves under supply agreements or similar rights or interests granted, taken subject to, or otherwise imposed on properties consistent with normal practices in the mining industry;

(m) leases, subleases, licenses, sublicenses and rights-of-use granted to others incurred in the ordinary course of business and that do not materially and adversely affect the use of the property encumbered thereby for its intended purpose;

(n) Liens in favor of a banking institution arising by operation of law or any contract encumbering deposits (including the right of set-off) held by such banking institutions incurred in the ordinary course of business and which are within the general parameters customary in the banking industry securing obligations not exceeding \$1,000,000;

(o) *[Reserved]*;

(p) *[Reserved]*;

(q) *[Reserved]*;

(r) rights of owners of interests in overlying, underlying or intervening strata and/or mineral interests not owned by Borrower or one of its Subsidiaries, with respect to tracts of real property where the Borrower or applicable Subsidiary's ownership is only surface or severed mineral or is otherwise subject to mineral severances in favor of one or more third parties; and

(s) other defects and exceptions to title of real property where such defects or exceptions are not material to the value of such real property.

Section 7.02. *Indebtedness.* Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02;

(c) Indebtedness under the Second Out Facility in a principal amount not to exceed \$302,000,000;

(d) Guarantees of the Borrower or any of its Subsidiaries in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Loan Party;

(e) Indebtedness in respect of Capital Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(g); *provided, however*, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$15,000,000;

(f) Indebtedness in respect of Swap Contracts approved by the Bankruptcy Court incurred in the ordinary course of business for non-speculative purposes and consistent with past business practice; *provided, however* that the notional amount of (i) such Swap Contracts shall not to exceed \$10,000,000 individually and \$25,000,000 in the aggregate;

(g) Indebtedness of the Borrower or any other Loan Party to any other Loan Party and of any non-Loan Party Subsidiary to any Loan Party or any other non-Loan Party Subsidiary; *provided*, that such Indebtedness must be subordinated to the Obligations on customary terms;

(h) Intercompany current liabilities between Loan Parties incurred in the ordinary course of business of such Loan Parties;

(i) *[Reserved]*;

(j) Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements in each case in connection with deposit accounts and in the ordinary course of business;

(k) Indebtedness representing deferred or equity compensation to employees of the Borrower or any of its Subsidiaries incurred in the ordinary course of business;

(l) *[Reserved]*; and

(m) Indebtedness in the form of bank guaranties, bid, performance and reclamation bonds, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, in an aggregate amount not to exceed (i) the amount of such Indebtedness outstanding on the date hereof and listed on Schedule 7.02 plus (ii) twenty-five percent (25%) of such amount; *provided* that such Indebtedness described in this clause (m) is not secured by any Lien.

Section 7.03. *Investments.* Make or hold any Investments, except:

(a) Investments held by the Borrower or any of its Subsidiaries in the form of Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$500,000 at any time outstanding subject to Bankruptcy Court approval, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Investments (including debt obligations and Equity Interests) received in satisfaction of judgments or in connection with the bankruptcy or reorganization of suppliers and customers of the Borrower and its Subsidiaries and in settlement of delinquent obligations of, and other disputes with, such customers and suppliers arising in the ordinary course of business;

(e) Investments in the nature of Production Payments, royalties, dedication of reserves under supply agreements or similar rights or interests granted, taken subject to, or otherwise imposed on properties with normal practices in the mining industry;

(f) Investments existing on the date hereof and set forth on Schedule 7.03;

(g) promissory notes and other similar non-cash consideration received by the Borrower and its Subsidiaries in connection with Dispositions not otherwise prohibited under this Agreement;

(h) Permitted Land Swaps, to the extent constituting Investments;

(i) Swap Contracts permitted under Section 7.02(f);

(j) Investments by the Borrower or its Subsidiaries in any Loan Party and Investments by any non-Loan Party in any other non-Loan Party; *provided*, that if the Investment is in the form of Indebtedness, such Indebtedness must be permitted pursuant to Section 7.02(g); and

(k) Investments by the Borrower or any of its Subsidiaries not otherwise permitted under this Section 7.03 in an aggregate amount not in excess of \$20,000,000.

Section 7.04. *Fundamental Changes.* Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower, provided, that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided, that when any Subsidiary that is a Loan Party is merging with another Subsidiary, the Loan Party shall be the continuing or surviving Person and the security interests granted by such Loan Party pursuant to the Orders and the Collateral Documents shall remain in full force and effect;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided, that if the transferor in such a transaction is a Loan Party, then the transferee must either be the Borrower or another Loan Party and the security interests granted by such Loan Party pursuant to the Orders and the Collateral Documents shall remain in full force and effect;

(c) the Borrower and any Subsidiary may merge or consolidate with any other Person in a transaction in which the Borrower is the surviving or continuing Person; and

(d) the Borrower and its Subsidiaries may consummate any transaction that would be permitted as an Investment under Section 7.03.

Section 7.05. *Dispositions.* Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of used, worn out, obsolete or surplus property by the Borrower or any of its Subsidiaries in the ordinary course of business or the abandonment or allowance to lapse or expire or other Disposition of Intellectual Property in the ordinary course of business that is, in the reasonable judgment of the Borrower, no longer economically

practicable to maintain or useful in the conduct of the Borrower and its Subsidiaries taken as a whole;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Permitted Land Swaps;

(e) *[Reserved]*;

(f) *[Reserved]*;

(g) Dispositions of assets by the Borrower and its Subsidiaries not otherwise permitted under this Section 7.05; *provided*, that (i) 100% of the consideration received in respect of any such Disposition shall be cash or Cash Equivalents, (ii) at the time of any such Disposition, no Default shall exist or would result from such Disposition, (iii) the consideration for such Disposition, when taken in the aggregate with the consideration for all such other Dispositions since the Closing Date, does not exceed \$100,000,000 and (iv) with respect to any such Disposition for consideration with a Fair Market Value greater than \$5,000,000, the Borrower shall first provide 30 days' prior written notice to the Administrative Agent (unless such notice provision is waived by the Administrative Agent) during which time the Administrative Agent, on behalf of the Secured Parties, shall be permitted to (x) credit bid forgiveness of a portion of the Indebtedness, in an amount up to half of the total consideration offered by the Administrative Agent, which total consideration shall be at least equal to the consideration offered by any other party in respect of such Disposition, outstanding under the Term Loans with respect to a Disposition of Term Collateral, or outstanding under the Revolving Loans, with respect to a Disposition of Revolving Collateral or (y) except with respect to Dispositions of Real Property Leases (which are governed by Section 8.01(a)), find an acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement purchaser offering an amount in excess of the consideration offered by any other party in respect of such Disposition;

(h) so long as no Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of this Section 7.05;

(i) assignments, licenses, sublicenses of Intellectual Property in the ordinary course of business and in accordance with the applicable Collateral Documents; *provided*, *however*, that any license or sublicense of intellectual property shall be on a non-exclusive basis;

(j) sales or discounts (without recourse) of accounts receivable arising in the ordinary course of business in connection with the compromise of collection thereof;

(k) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangement between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(l) transfers of property subject to casualty or condemnation events upon receipt of the Net Cash Proceeds constituting an Extraordinary Receipt.

provided, however, that any Disposition pursuant to Section 7.05(a), (b), (c), (g) and (l) and shall be for Fair Market Value.

Section 7.06. *Restricted Payments.* Declare or make, directly or indirectly, any Restricted Payment; except that each Subsidiary may make Restricted Payments to the Borrower and the Subsidiary Guarantors, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made; *provided* that no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom.

Section 7.07. *Change in Nature of Business.* Engage in any material line of business other than a Similar Business.

Section 7.08. *Transactions With Affiliates.* Enter into any transaction of any kind with any Affiliate, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, unless such transaction is (a) not prohibited by this Agreement and (b) upon fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate. The foregoing restrictions shall not apply to the following:

(c) transactions between or among the Borrower and any other Loan Parties or between and among any Loan Parties;

(d) the payment of reasonable and customary fees and reimbursement of expenses payable to directors of the Borrower or any Subsidiary or to any Plan, Plan administrator or Plan trustee;

(e) loans and advances to directors, officers and employees to the extent permitted by Section 7.03;

(f) arrangements with respect to the procurement of services of directors, officers, independent contractors, consultants or employees in the ordinary course of business and the payment of customary compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable reimbursement arrangements in connection therewith;

(g) payments to directors and officers of the Borrower and its Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the Organization Documents or other

corporate action of the Borrower or its Subsidiaries, respectively, or pursuant to applicable law;
 and

(h) Permitted Land Swaps between or among Loan Parties.

Section 7.09. *Burdensome Agreements.* Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Subsidiary Guarantor or to otherwise transfer property to or invest in the Borrower or any Subsidiary Guarantor, unless such Contractual Obligations could not reasonably be expected to materially hinder the Borrower's ability to meet its obligations under this Agreement.

Section 7.10. *Use of Proceeds.* Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

Section 7.11. *Minimum Consolidated EBITDA.* Permit Consolidated EBITDA of the Borrower and its Subsidiaries on a cumulative basis for each period beginning on June 1, 2012 and ending on each date set forth in the table below to be less than the amount set forth opposite such period:

Period Ending	Minimum Consolidated EBITDA (in millions)
October 31, 2012	\$48.0
November 30, 2012	\$49.0
December 31, 2012	\$53.0
January 31, 2013	\$61.0
February 28, 2013	\$60.0
March 31, 2013	\$67.0
April 30, 2013	\$81.0
May 31, 2013	\$94.0
June 30, 2013	\$98.0
July 31, 2013	\$110.0
August 31, 2013	\$134.0
September 30, 2013	\$148.0
October 31, 2013	\$176.0
November 30, 2013	\$190.0
December 31, 2013	\$205.0

Section 7.12. *Capital Expenditures.* Make or become legally obligated to make any Capital Expenditure, except for Capital Expenditures in the ordinary course of business not exceeding, in the aggregate for the Borrower and its Subsidiaries on a cumulative basis for each period beginning on June 1, 2012 and ending on each date set forth below, the amount set forth opposite such period:

Month	Amount (in millions)
July 31, 2012	\$66.0
August 31, 2012	\$73.0
September 30, 2012	\$77.0
October 31, 2012	\$91.0
November 30, 2012	\$96.0
December 31, 2012	\$106.0
January 31, 2013	\$118.0
February 28, 2013	\$121.0
March 31, 2013	\$135.0
April 30, 2013	\$145.0
May 31, 2013	\$164.0
June 30, 2013	\$188.0
July 31, 2013	\$192.0
August 31, 2013	\$196.0
September 30, 2013	\$215.0
October 31, 2013	\$229.0
November 30, 2013	\$236.0
December 31, 2013	\$245.0

Section 7.13. *Minimum Liquidity.* Permit Liquidity, as of the close of business on any day, to be less than the amount set forth opposite the period in which such day falls:

Period	Amount (in millions)
From July 1, 2012 until September 30, 2012	\$150.0
From October 1, 2012 until December 31, 2012	\$130.0
After January 1, 2013	\$100.0

; provided, however, that until the Final Order Entry Date, the Borrower shall not permit Liquidity, as of the close of business on any day, to be less than \$125,000,000.

Section 7.14. *Amendments of Organization Documents.* Amend any of its Organization Documents in any respect materially adverse to the Lenders.

Section 7.15. *Accounting Changes.* Make any change in (a) its accounting policies or reporting practices, except as required or permitted by GAAP, or (b) its fiscal year.

Section 7.16. *Prepayments, Etc. of Indebtedness.* Voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any (i) Indebtedness of any Loan Party incurred prior to the Petition Date except as contemplated by the Order, (ii) any Indebtedness under the Second Out Facility, except as contemplated by the Security Agreement and the Orders, (iii) any other Indebtedness that is subordinated to the Obligations or (iv) any other Indebtedness, except in the case of clause (iv) only, (x) the prepayment of the Credit Extensions in accordance with the terms of this Agreement or (b) as expressly provided for in the

orders of the Bankruptcy Court entered upon pleadings in the form and substance acceptable to the Administrative Agent.

Section 7.17. *Amendment, Etc. of Orders, Related Documents and Indebtedness.* (a) Amend, modify or change in any manner any First Day Order without the prior consent of the Arrangers or (b) (i) cancel or terminate any Related Document or consent to or accept any cancellation or termination thereof, other than in accordance with its terms, (ii) amend, modify or change in any manner any term or condition of any Related Document or give any consent, waiver or approval thereunder, (iii) waive any default under or any breach of any term or condition of any Related Document or (iv) take any other action in connection with any Related Document, in the case of each of clauses (i) through (iv), that would materially impair the value of the interest or rights of any Loan Party thereunder or that would materially impair the ability of the Lenders to be repaid hereunder.

Section 7.18. *Limitation on Negative Pledge Clauses.* Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) after the Petition Date that limits the ability of the Borrower or any Subsidiary Guarantor to create, incur, assume or suffer to exist any Lien upon any of its property to secure the Obligations hereunder; *provided, however,* that the foregoing clause shall not apply to Contractual Obligations which:

- (a) *[Reserved]*;
- (b) *[Reserved]*;
- (c) *[Reserved]*;
- (d) *[Reserved]*;
- (e) *[Reserved]*;
- (f) arise in connection with any Permitted Land Swap or other Disposition permitted by Section 7.05, with respect to the assets so Disposed;
- (g) *[Reserved]*;
- (h) Are customary restrictions on leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby, other than with respect to any Material Leased Real Property, so long as such restrictions relate to the assets subject thereto;
- (i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary, other than with respect to any Material Leased Real Property;
- (j) are customary limitations (including financial maintenance covenants) existing under or by reason of leases entered into in the ordinary course, other than with respect to any Material Leased Real Property;

(k) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business, other than with respect to any Material Leased Real Property; or

(l) are customary provisions restricting assignment of any, other than agreements with respect to any Material Leased Real Property.

ARTICLE 8
REAL PROPERTY LEASES

Section 8.01. *Special Rights with respect to Real Property Leases.* (a) No Loan Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, (x) reject a Real Property Lease or otherwise terminate a Real Property Lease (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code) or (y) sell or assign (I) any Material Lease, (II) any Real Property Lease for consideration that, when taken in the aggregate with the consideration for all such other sales or assignments since the Closing Date, exceeds \$20,000,000 or (III) any Real Property Lease during the continuance of an Event of Default, in each case, without first providing 30 days' prior written notice (or, if applicable, notice that such Loan Party will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code) to the Administrative Agent (unless such notice provision is waived by the Administrative Agent in its sole discretion) during which time the Administrative Agent shall be permitted to find an acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement lessee (which may include the Administrative Agent or its Affiliates) to whom such Real Property Lease may be assigned. If such a prospective assignee is timely found, the Loan Parties shall (i) not seek to reject such Real Property Lease, (ii) promptly withdraw any previously filed rejection motion, (iii) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Real Property Lease and assigning it to such prospective assignee and (iv) cure any defaults that have occurred and are continuing under such Real Property Lease; *provided* that this Section 8.01(a) shall not apply to Real Property Leases that are rejected, sold or assigned (A) pursuant to a filing which is acceptable to the Administrative Agent on the Petition Date or (B) on the effective date of an Acceptable Reorganization Plan. For the avoidance of doubt, it is understood and agreed that or prior to the 30th day prior to the Automatic Rejection Date, the Loan Parties shall have delivered (and hereby agree to deliver) written notice to the Administrative Agent of each outstanding Real Property Lease that they intend to reject (including, without limitation, through automatic rejection on the Automatic Rejection Date) from and after the date of such notice (or, if applicable, notice that the Loan Parties will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code); *provided* that if the Loan Parties fail to deliver any such notice to the Administrative Agent prior to such date with respect to any such Real Property Lease (or a notice indicating that no such Real Property Leases shall be rejected), the Loan Parties shall be deemed, for all purposes hereunder, to have delivered notice to the Administrative Agent as of such date that it intends to reject all outstanding Real Property Leases.

(b) If an Event of Default shall have occurred and be continuing, the Administrative Agent may exercise any Debtor's rights pursuant to section 365(f) of the Bankruptcy Code with respect to any Real Property Lease or group of Real Property Leases and,

subject to the Bankruptcy Court's approval after notice and hearing, assign any such Real Property Lease in accordance with section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts. In connection with the exercise of such rights, the Administrative Agent may (x) find an acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement lessee (which may include the Administrative Agent or its Affiliates) to whom a Real Property Lease may be assigned, (y) hold, and manage all aspects of, an auction or other bidding process to find such reasonably acceptable replacement lessee, and (z) in connection with any such auction, agree, on behalf of the Loan Parties, to a break-up fee or to reimburse fees and expenses of any stalking horse bidder up to an amount not to exceed 3.00% of the purchase price of such Real Property Lease and may make any such payments on behalf of such Loan Party and any amount used by the Administrative Agent to make such payments shall, at the election of the Administrative Agent in its sole discretion and subject to satisfaction of the conditions in Section 4.02, be deemed a Revolving Credit Borrowing hereunder. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 8.01(b), the Loan Parties shall promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Real Property Lease and assigning it to such assignee and (iv) cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 8.01(b) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Reorganization Plan.

(c) If an Event of Default shall have occurred and be continuing, the Administrative Agent shall have the right to direct any Debtor that is a lessee under a Real Property Lease to assign such Real Property Lease to the Administrative Agent, on behalf of the Secured Parties, as collateral for the Obligations and to direct such Debtor lessee to assume such Real Property Lease to the extent assumption is required under the Bankruptcy Code as a prerequisite to such assignment. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 8.01(c), the Loan Parties shall (i) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of, if necessary, assuming such Real Property Lease and assigning it to the Administrative Agent and (ii) cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 8.01(c) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Reorganization Plan.

(d) Any order of the Bankruptcy Court approving the assumption of any Real Property Lease shall (i) specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code subsequent to the date of such assumption or (ii) provide for the assignment of such Real Property Lease, on the date of such order, to a reasonably acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement lessee (which may include the Administrative Agent or its Affiliates) designated by the Administrative Agent.

(e) No Loan Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, sell or assign a Real Property Lease without first providing 5 Business Days' prior written notice (the "**Initial Notice Period**") to the Administrative Agent (unless such notice provision is waived by the Administrative Agent in its sole discretion), which Initial Notice Period may be extended up to a further 25 days by the

Administrative Agent in its sole discretion by delivering written notice of such extension to such Loan Party prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the Administrative Agent and such Loan Party (such notice period being the “**Aggregate Notice Period**”). During such Aggregate Notice Period, the Administrative Agent, on behalf of the Secured Parties, shall be permitted to credit bid forgiveness of some or all of the outstanding Term Facility Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) as consideration in exchange for any such Real Property Lease. In connection with the exercise of any of the Administrative Agent’s rights under Sections 9.01 and 9.02(e) to direct or compel a sale or assignment of any Real Property Lease, the Administrative Agent, on behalf of the Secured Parties, shall be permitted to credit bid forgiveness of a portion of the Indebtedness (in an amount equal to at least the consideration offered by any other party in respect of such sale or assignment) outstanding under the Term Loans in exchange for such Real Property Lease. For the avoidance of doubt, the rights of the Administrative Agent under this Section 8.01(e) are in addition to any rights it may have under Section 7.05(g).

(f) If any Loan Party is required to cure any monetary default under any Real Property Lease under this Section 8.01, or otherwise in connection with any assumption of such Real Property Lease pursuant to section 365 of the Bankruptcy Code, and such monetary default is not cured within five Business Days of the receipt by such Loan Party of notice from the Administrative Agent under Section 8.01(a), (b) or (c) or any other notice from the Administrative Agent requesting the cure of such monetary default, then the Administrative Agent may cure any such monetary default on behalf of such Loan Party and any such payments shall, at the election of the Administrative Agent in its sole discretion and subject to satisfaction of the conditions in Section 4.02, be deemed a Revolving Credit Borrowing hereunder.

ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES

Section 9.01. *Events of Default.* Any of the following shall constitute an Event of Default:

(a) *Non-Payment.* The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) *Specific Covenants.* (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03, 6.05, 6.07, 6.08, 6.10, 6.11, 6.12, 6.15, 6.16, 6.18, 6.20, 6.222 or 6.23 or Articles 7 or 8, (ii) any of the Subsidiary Guarantors to perform or observe any term, covenant or agreement contained in Article 11 of this Agreement (but only to the extent it relates to a default under one of the covenants listed in clause (i) above), (iii) any representation, warranty, certification or statement of fact made or deemed made under Section 2.04(a) by or on behalf of the Borrower shall be incorrect or misleading in any material respect when made or deemed made or (iv) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in Section 10 of the Security Agreement; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 9.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default.* (i) The Borrower or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder, Indebtedness under Swap Contracts or Guarantees of the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date), in each case having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit agreement) of more than the Threshold Amount, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee was created or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; (ii) there occurs under any Swap Contract (excluding any Swap Contract that was entered into prior to the Petition Date) an Early Termination Date (as defined under such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or (iii) there occurs under any Liability Assumption Agreement an early termination of such agreement for any reason which could reasonably be expected to have an adverse effect on any Loan Party or that would impair the ability of the Lenders to be repaid in full hereunder; or

(f) *Second Out Facility.* The intercreditor and priority of payment provisions set forth in the Security Agreement and the Orders shall for any reason be revoked, invalidated, or otherwise cease to be in full force and effect, or the Second Out Agent or lenders constituting more than 50% in aggregate principal amount of the Second Out Obligations shall contest in any manner (including by filing any application or motion with the Bankruptcy Court) the validity or enforceability thereof, or any such application or motion commenced by any Second Out Secured Party shall be successful, or the Obligations shall otherwise cease to have the priority contemplated by the Security Agreement and the Orders; or

(g) *Challenges.* Any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent, any L/C Issuer, any Arranger or any Lender with respect to the Obligations; or

(h) *Judgments.* There is entered against the Borrower or any of its Subsidiaries one or more final judgments or orders with respect to any post-petition liability for the payment of money that arose post-petition in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance), and, such judgments or orders shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) *ERISA.* (i) The occurrence of any of the following events that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in an actual obligation to pay money of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(j) *Invalidity of Loan Documents.* Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) *Change of Control.* There occurs any Change of Control; or

(l) *Collateral Documents.* Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms hereof or thereof, including as a result of a transaction permitted by Section 7.04 or 7.05) cease to create a valid and perfected Lien, with the priority required hereby or thereby (subject to Liens permitted by Section 7.01), on the Collateral purported to be covered thereby, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied or failed to acknowledge coverage; or

(m) *[Reserved].*

(n) *Dismissal or Conversion of Cases.* (i) Any of the Cases of the Debtors shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal of any Case of any Debtor under Section 1112 of the Bankruptcy Code or otherwise, (ii) a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, an examiner with enlarged powers relating to the operation of the

business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Debtors and the order appointing such trustee or examiner shall not be reversed or vacated within 30 days after the entry thereof;

(o) *Superpriority Claims.* An order of the Bankruptcy Court shall be entered granting any Superpriority Claim or other claim or administrative expense (other than the Carve-Out) in any of the Cases of the Debtors that is *pari passu* with or senior to the claims of the Administrative Agent and the Lenders against any Borrower or any other Loan Party hereunder or under any of the other Loan Documents, or any Debtor takes any action seeking or supporting the grant of any such claim, except as expressly permitted hereunder; or

(p) *Relief from Automatic Stay.* The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$5,000,000 in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole); or

(q) *Certain Orders.* (i) The Final Order Entry Date shall not have occurred by the date that is 30 days (or 45 days, if entry of the Final Order is delayed by any requirements as a result of an evidentiary hearing or similar hearing or process associated with objections being made to entry of the Interim Order or the Final Order) following the Interim Order Entry Date; or

(ii) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying for a period of five days or more, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, or the Borrower or any Subsidiary of the Borrower shall apply for authority to do so, without the prior written consent of the Administrative Agent, the Arrangers or the Required Lenders, and such order is not reversed or vacated within 5 days after the entry thereof; or

(iii) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Loan Parties; or

(iv) the Interim Order or Final Order shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect; or

(v) any of the Loan Parties shall fail to comply with the Orders; or

(vi) a final non-appealable order in the Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the commencement of other actions that is materially adverse to the Administrative Agent, the Lenders or their respective rights and remedies under the Facilities in any of the Cases or inconsistent with any of the Loan Documents; or

(r) *Pre-Petition Payments.* Except as permitted by the Orders, any Debtor shall make any Pre-Petition Payment other than Pre-Petition Payments authorized by the Bankruptcy Court in accordance with “first day” orders of the Bankruptcy Court satisfactory to the Administrative Agent and the Arrangers or by other orders entered by the Bankruptcy Court with the consent of (or non-objection by) the Arrangers; *provided, however*, that in no event shall the Debtors make any Pre-Petition Payment in respect of: (i) critical vendors in an aggregate amount in excess of \$25,000,000, (ii) foreign vendors in an aggregate amount in excess of \$750,000 and (iii) the claims of common carriers and warehousemen in an aggregate amount in excess of \$18,000,000, without the prior written consent of the Administrative Agent and the Arrangers; or

(s) *Invalid Plan.* A Reorganization Plan that is not an Acceptable Reorganization Plan shall be confirmed in any of the Cases of the Debtors, or any order shall be entered which dismisses any of the Cases of the Debtors and which order does not provide for termination of the Commitments and payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable), or any of the Debtors shall seek, support or fail to contest in good faith confirmation of any such plan or entry of any such order; or

(t) *Supportive Actions.* Any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in paragraphs (n) through (s), above or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal; or

(u) Any Material Lease is terminated by the lessor of such Material Leased Real Property and such termination is not (a) being contested in good faith by appropriate proceedings diligently conducted or (b) stayed in its effectiveness by the Bankruptcy Code by virtue of the commencement of the Cases or by the Bankruptcy Court.

Section 9.02. *Remedies Upon Event of Default.* (a) If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Class Required Lenders of any Class, take any or all of the following actions:

(i) declare the commitment of each Lender of the applicable Class to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans of the applicable Class, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(iii) in the case of the Required Revolving Lenders, require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof);

(iv) subject to the provisions of Section 10 of the Security Agreement, exercise on behalf of itself, the Class of Lenders and the applicable L/C Issuer all rights and remedies available to it, such Lenders and such L/C Issuer under the Loan Documents or applicable law (including in respect of the Collateral);

(v) require any Loan Party to promptly complete, pursuant to Section 363 and 365 of the Bankruptcy Code, subject to the rights of the Secured Parties to credit bid, a Disposition of its Real Property Leases or any portion thereof in one or more parcels at public or private sales, at any of the Administrative Agent's offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable;

(vi) exercise any of its rights with respect to Real Property Leases under Section 8.01;

provided, however, that (y) with respect to a Single Class Default, only Lenders of the applicable Class shall be entitled to request that the Administrative Agent exercise remedies pursuant to this Section 9.02 (or to consent thereto) and (z) with respect to the enforcement of Liens or other remedies with respect to the Collateral of the Loan Parties under the preceding clause (iv), the Administrative Agent shall provide the Borrower (with a copy to counsel for the Creditors' Committee in the Cases and to the United States Trustee for the Southern District of New York) with seven (7) days' prior written notice prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing.

(b) Upon the occurrence of the Termination Date, (i) the Commitments of each Lender to make Loans and the Commitments of each Lender and Issuer to issue or participate in Letters of Credit shall each automatically be terminated, (ii) the Loans, all interest thereon and all other amounts and Obligations shall automatically become due and payable in cash, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower and the other Loan Parties.

Section 9.03. *Application of Funds.* Subject to the Security Agreement, on the Termination Date and after the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article 3) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Revolving Lenders, the Term Lenders, and the L/C Issuer with respect to

Letters of Credit (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) and amounts payable under Article 3, ratably among them in proportion to the respective amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Revolving Lenders, the Term Lenders and the L/C Issuer in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and amounts owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Revolving Lenders, Term Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law;

provided, that the application to the Obligations pursuant to this Section 9.03 of amounts received in respect of Collateral that is Revolving Collateral and in respect of Collateral that is Term Collateral is expressly subject to the priorities set forth in Section Article 10 of the Security Agreement and in the Interim Order (and, when entered, the Final Order), and all such amounts shall first be allocated in accordance with such priorities before being applied to the Obligations pursuant to this Section 9.03.

Subject to Section 2.04(d), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Fifth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE 10 ADMINISTRATIVE AGENT

Section 10.01. *Authorization and Action.* (a) (i) Each Term Lender Lender and L/C Issuer hereby appoints Citibank, N.A. as the Term Administrative Agent hereunder and (ii) each Revolving Lender and L/C Issuer hereby appoints Citibank, N.A. as the Revolving Administrative Agent hereunder and, in each case, each such Lender and L/C Issuer authorizes such Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to such Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and L/C Issuer hereby authorizes the applicable

Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents and, in the case of the Collateral Documents, to act as agent for the applicable Lenders, L/C Issuers and other Secured Parties under such Collateral Documents. The provisions of this Article 10 are solely for the benefits of the Administrative Agent, the Lenders and the L/C Issuers, and no Loan Party shall have rights as a third party beneficiary of any such provision

(b) As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, (or such other number or percentage of the Lenders as shall be necessary, or that the Administrative Agent shall believe in good faith to be necessary), and such instructions shall be binding upon all Revolving Lenders or Term Lenders, as applicable and the applicable L/C Issuers; *provided*, that the Administrative Agent shall be required to take any action that in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to the Loan Documents or applicable Requirements of Law, including, without limitation, any action that may be in violation of the automatic stay under any Requirement of Law relating to bankruptcy, insolvency or reorganization or relief of debtors. The Administrative Agent shall be deemed not to have knowledge of any Default or the event or events that give rise to any Default unless and until the Borrower, any Lender or any L/C Issuer shall have given written notice to the Administrative Agent describing such Default and such event or events. The Revolving Administrative Agent agrees to give to each Revolving Lender and applicable L/C Issuer, and the Term Administrative Agent agrees to give each Term Lender and applicable L/C Issuer, in each case, prompt notice of each notice given to it by any Loan Party pursuant to the terms of this Agreement or the other Loan Documents.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and L/C Issuers (except to the limited extent provided in Section 12.06(c)), and its duties are entirely ministerial and administrative in nature. The Administrative Agent does not assume and shall not be deemed to have assumed any duties or obligations other than as expressly set forth herein and in the other Loan Documents or any other relationship as the agent, fiduciary or trustee of or for any Lender, L/C Issuer or holder of any other Obligation. The Administrative Agent may perform any of its duties under any Loan Document by or through its agents or employees. It is understood and agreed that the use of the term "administrative agent" herein or in any other Loan Document (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(d) Neither the Administrative Agent may perform any and all of its functions and duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its functions and duties and exercise its rights and powers by or through their respective Affiliates. Each such sub-

and the Affiliates of the Administrative Agent and each such sub-agent shall be entitled to the benefits of all provisions of this Article 10 and Section 12.04 (as though such sub-agents were the “Administrative Agent” under the Loan Documents) as if set forth in full herein with respect thereto. Each such sub-agent shall be required to comply with the provisions of Article 3 to the same extent as if it were the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any of its sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction in a final, non-appealable judgment, in the selection of such sub-agent.

(e) The Administrative Agent nor any member of the Agent’s Group shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other information made or supplied in or in connection with this Agreement, any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Orders or the Collateral Documents or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Administrative Agent. Neither the Administrative Agent nor any member of the Agent’s Group shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for a failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by a Person serving as an agent or any of its Affiliates in any capacity.

(f) Nothing in this Agreement or any other Loan Document shall require the Administrative Agent or any of its Related Parties to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender or L/C Issuer and each Lender and L/C Issuer confirms to the Administrative Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Administrative Agent or any of its Related Parties.

(g) The Arrangers and the Syndication Agent shall have not have any obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity.

Section 10.02. *Administrative Agent’s Reliance, Etc.* Neither the Administrative Agent nor any of its Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Loan Documents, except for its, his, her or their gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment. Without limiting the foregoing, the Administrative Agent (a)

may treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 12.06(b) may rely on the Register to the extent set forth in Section 12.06(c), may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon, (d) may consult with legal counsel (including counsel to the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (e) makes no warranty or representation to any Lender or L/C Issuer and shall not be responsible to any Lender or L/C Issuer for any statements, warranties or representations made by or on behalf of any Loan Party in or in connection with this Agreement or any other Loan Document, (f) shall not have any duty to ascertain or to inquire either as to the performance or observance of any term, covenant or condition of this Agreement or any other Loan Document, as to the financial condition of any Loan Party or as to the existence or possible existence of any Default or Event of Default, (g) shall not be responsible to any Lender or L/C Issuer for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto or thereto and (h) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by relying on or acting upon any notice, request, statement, document, consent, certificate or other instrument or writing (including any electronic message, internet or intranet website posting or other distribution) or any telephone message believed by it to be genuine and signed, sent or otherwise authenticated by the proper party or parties. In determining compliance with any condition hereunder to the making of a Loan or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender unless an officer of the Administrative Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit, and in the case of a Borrowing, such Lender shall not have made available to the Administrative Agent, such Lender or such L/C Issuer's Ratable Portion of such Borrowing

Section 10.03. *Posting of Approved Electronic Communications.* (a) Each of the Lenders and L/C Issuers and each Loan Party agree that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders and the L/C Issuers by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “**Approved Electronic Platform**”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Closing Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the L/C Issuer and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits

afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lenders, the L/C Issuer and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) The Approved Electronic Platform and the Approved Electronic Communications are provided “as is” and “as available”. Neither the Administrative Agent nor any of its Affiliates or any of their respective officers, directors, employees, agents, advisors or representatives (each, an “**Agent Affiliate**”) warrant the accuracy, adequacy or completeness of the Approved Electronic Communications or the Approved Electronic Platform and each expressly disclaims liability for errors or omissions in the Approved Electronic Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Agent Affiliates in connection with the Approved Electronic Platform or the Approved Electronic Communications.

(d) Each of the Lenders, the L/C Issuers and each Loan Party agree that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally-applicable document retention procedures and policies.

(e) The Borrower hereby acknowledges that certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “**Public Lender**”). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “**Borrower Materials**”) that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, any Arranger, the L/C Issuers and the Lenders to treat the Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent the Borrower Materials constitute Information, they shall be treated as set forth in Section 12.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent and any Arranger shall be entitled to treat the Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.” Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark the Borrower Materials “PUBLIC.” In connection with the foregoing, each party hereto acknowledges and agrees that the foregoing provisions are not in derogation of their confidentiality obligations under Section 12.07.

Section 10.04. *The Administrative Agent Individually.* With respect to its Ratable Portion, Citibank shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The terms “*Lenders*”, “*Required Lenders*” and any similar terms shall, unless the context clearly otherwise indicates, include, without limitation, Citibank in its individual capacity as a Lender or as one of the Required Lenders. Citibank and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with, any Loan Party as if Citibank were not acting as the Administrative Agent.

Section 10.05. *Activities of Agent’s Group.* (a) Each Lender and L/C Issuer understands that Citibank, acting in its individual capacity, and its Affiliates (collectively, the “**Agent’s Group**”) are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 10.05(a) as “*Activities*”) and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent’s Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, other Loan Parties or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender and the L/C Issuer understands and agrees that in engaging in the Activities, the Agent’s Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders or the L/C Issuers that are not members of the Agent’s Group. Neither the Administrative Agent nor any member of the Agent’s Group shall have any duty to disclose to any Lender or L/C Issuer or use on behalf of the Lenders or the L/C Issuers and shall not be liable for the failure to so disclose or use any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Parties or any Affiliate of any Loan Parties) or to account for any revenue or profits obtained in connection with the Activities, except that the Administrative Agent shall deliver or otherwise make available to each Lender and L/C Issuer such documents as are expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders or the L/C Issuers.

(b) Each Lender and L/C Issuer further understands that there may be situations where members of the Agent’s Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders or the L/C Issuers (including the interests of the Lenders or the L/C Issuers hereunder and under the other Loan Documents). Each Lender and L/C Issuer agrees that no member of the Agent’s Group is or shall be required to restrict its activities as a result of the Person serving as the Administrative Agent being a member of the Agent’s Group, and that each member of the Agent’s Group may undertake any Activities without further consultation with or notification to any Lender or L/C Issuer. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the

Group of information (including Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) owing by the Administrative Agent or any member of the Agent's Group to any Lender or L/C Issuer including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

Section 10.06. *Lender Credit Decision.* (a) Each Lender and L/C Issuer confirms to the Administrative Agent, each other Lender and L/C Issuer and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Administrative Agent, any other Lender or L/C Issuer or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Loans and other extensions of credit hereunder and under the other Loan Documents and (z) taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender and L/C Issuer acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, (ii) that it has, independently and without reliance upon the Administrative Agent, any other Lender or L/C Issuer or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Administrative Agent, any other Lender or L/C Issuer or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Loan Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(i) the financial condition, status and capitalization of the Borrower and each other Loan Party;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(iii) determining compliance or non-compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition;

(iv) the adequacy, accuracy and/or completeness of the other information delivered by the Administrative Agent, any other Lender or L/C Issuer or by any of their respective Related Parties under or in connection with this Agreement or any other Loan Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

Section 10.07. *Indemnification.* Each Lender agrees to indemnify the Administrative Agent, the Arrangers and each of their respective Affiliates, and each of their respective directors, officers, employees, members, partners, agents, trustees, representatives, attorneys, consultants and advisors (to the extent not reimbursed by the Borrower and without affecting the Borrower's indemnification obligations hereunder), from and against such Lender's aggregate Ratable Portion of any Indemnified Matters; *provided, however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or such Affiliate's, director's, officer's, employee's, member's, partner's, agent's, trustee's, representative's, attorney's, consultant's and advisor's gross negligence or willful misconduct or as a result of material breach by such Indemnitee, in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment. Without limiting the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its Ratable Portion of any out-of-pocket expenses (including fees, expenses and disbursements of financial and legal advisors) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement or the other Loan Documents, to the extent that the Administrative Agent is not reimbursed for such expenses by the Borrower or another Loan Party; *provided*, that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; *provided, further*, that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof.

Section 10.08. *Successor Administrative Agent.* (a) The Revolving Administrative Agent or the Term Administrative Agent may at any time give notice of its resignation to the applicable Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the applicable Lenders, appoint a successor Administrative Agent; *provided, that* if the Administrative Agent notifies the Borrower, the applicable Lenders and the L/C Issuers that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the applicable Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed), and (b) all payments, communications and determinations provided to be made by, to or through

the Administrative Agent shall instead be made by or to each applicable Lender or L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 10.08). The fees payable by the Borrower to any successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article 10 and Section 12.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while such retiring Administrative Agent was Administrative Agent under this Agreement and the other Loan Documents.

(b) Any resignation pursuant to this Section 10.08 by a Person acting as Administrative Agent shall, unless such Person shall notify the Borrower and the applicable Lenders and the L/C Issuers otherwise, also act to relieve such Person and its Affiliates of any obligation to advance or issue new, or extend existing, or Letters of Credit where such advance, issuance or extension is to occur on or after the effective date of such resignation. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

(c) In addition to the foregoing, if a Revolving Lender becomes, and during the period it remains, a Defaulting Lender, any L/C Issuer may, upon prior written notice to the Borrower and the Revolving Administrative Agent, resign as L/C Issuer effective at the close of business New York time on a date specified in such notice (which date may not be less than 30 days after the date of such notice); provided that such resignation by such L/C Issuer will have no effect on the validity or enforceability of any Letter of Credit then outstanding or on the obligations of the Borrower or any Lender under this Agreement with respect to any such outstanding Letter of Credit or otherwise to such L/C Issuer.

Section 10.09. *Concerning the Collateral and the Collateral Documents.* (a) Each Lender and L/C Issuer agrees that any action taken by the Administrative Agent or the Required Lenders (or, where required by the express terms of this Agreement, a greater proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders, the L/C Issuers and other Secured Parties. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive right and authority to (i)

act as the disbursing and collecting agent for the Lenders and the L/C Issuers with respect to all payments and collections arising in connection herewith and with the Collateral Documents, (ii) execute and deliver each Collateral Document and accept delivery of each such agreement delivered by any Loan Party, (iii) act as Administrative Agent for the Lenders, the L/C Issuers and the other Secured Parties for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein, *provided, however*, that the Administrative Agent hereby appoints, authorizes and directs the Administrative Agent, each Lender and L/C Issuer to act as collateral sub-agent for the Administrative Agent, the Lenders and the L/C Issuers for purposes of the perfection of all security interests and Liens with respect to the Collateral, including any deposit or securities accounts maintained by a Loan Party with, and cash and Cash Equivalents held by, such Lender or such L/C Issuer, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Collateral Documents and (vi) except as may be otherwise specifically restricted by the terms hereof or of any other Loan Document, exercise all remedies given to the Administrative Agent, the Lenders, the L/C Issuer and the other Secured Parties with respect to the Collateral under the Loan Documents relating thereto, applicable law or otherwise.

(b) Each of the Lenders and L/C Issuers hereby consents to the release and hereby directs, in accordance with the terms hereof, the Administrative Agent to release (or, in the case of clause (ii) below, release or subordinate) any Lien held by the Administrative Agent for the benefit of the Lenders and the L/C Issuers against any of the following:

(i) all of the Collateral and all Loan Parties, upon termination of the Commitments and payment and satisfaction in full in cash of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (and, in respect of contingent L/C Obligations, with respect to which cash collateral has been deposited or a back-up letter of credit has been issued, in either case in the appropriate currency and on terms satisfactory to the Administrative Agent and the applicable L/C Issuer)

(ii) any assets that are subject to a Lien permitted by Section 7.01(g);
and

(iii) any part of the Collateral sold or disposed of by a Loan Party if such sale or disposition is permitted by this Agreement (or permitted pursuant to a waiver of or consent to a transaction otherwise prohibited by this Agreement), subject to approval by the Bankruptcy Court.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the L/C Issuer and each other Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance

with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Administrative Agent may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of Secured Parties shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

(d) Each of the Lenders and L/C Issuers hereby directs the Administrative Agent to execute and deliver or file such termination and partial release statements and do such other things as are necessary to release Liens to be released pursuant to this Section 10.09 promptly upon the effectiveness of any such release.

(e) Each of the Lenders and L/C Issuers hereby consents to the release of any Subsidiary Guarantor from its obligations under Article 11 if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(f) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under Article 11 pursuant to this Section 10.09.

(g) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 10.10. *Collateral Matters Relating to Related Obligations.* The benefit of the Loan Documents and of the provisions of this Agreement relating to the Collateral shall extend to and be available in respect of any Obligation arising under any Secured Hedge Agreement or Cash Management Agreement or that is otherwise owed to Persons other than the Administrative Agent, the Lenders and the L/C Issuers (collectively, "**Related Obligations**") solely on the condition and understanding, as among the Administrative Agent and all Secured Parties, that (a) the Related Obligations shall be entitled to the benefit of the Loan Documents and the Collateral to the extent expressly set forth in this Agreement and the other Loan Documents and to such extent the Administrative Agent shall hold, and have the right and power to act with respect to, the guaranty in Article 11 and the Collateral on behalf of and as agent for the holders of the Related Obligations, but the Administrative Agent is otherwise acting solely as agent for the Lenders and the L/C Issuers and shall have no fiduciary duty, duty of loyalty, duty of care, duty of disclosure or other obligation whatsoever to any holder of Related Obligations, (b) all matters, acts and omissions relating in any manner to the guaranty in Article 11, the Collateral, or the omission, creation, perfection, priority, abandonment or release of any Lien, shall be governed

solely by the provisions of this Agreement and the other Loan Documents and no separate Lien, right, power or remedy shall arise or exist in favor of any Secured Party under any separate instrument or agreement or in respect of any Related Obligation, (c) each Secured Party shall be bound by all actions taken or omitted, in accordance with the provisions of this Agreement and the other Loan Documents, by the Administrative Agent and the Required Lenders, each of whom shall be entitled to act at its sole discretion and exclusively in its own interest given its own Commitments and its own interest in the Loans, L/C Obligations and other Obligations to it arising under this Agreement or the other Loan Documents, without any duty or liability to any other Secured Party or as to any Related Obligation and without regard to whether any Related Obligation remains outstanding or is deprived of the benefit of the Collateral or becomes unsecured or is otherwise affected or put in jeopardy thereby, (d) no holder of Related Obligations and no other Secured Party (except the Administrative Agent, the Lenders and the L/C Issuers, to the extent set forth in this Agreement) shall have any right to be notified of, or to direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under this Agreement or the Loan Documents and (e) no holder of any Related Obligation shall exercise any right of setoff, banker's lien or similar right except to the extent provided in Section 12.08 and then only to the extent such right is exercised in compliance with Section 2.14.

Section 10.11. *Delivery of Certain Financial Information.* The Borrower agrees and shall cause each other Loan Party to agree, that the Administrative Agent may make available to the Lenders and the L/C Issuers all Approved Electronic Communications provided to the Administrative Agent pursuant to Section 6.01. The Borrower further agrees, and shall cause each other Loan Party to further agree, that the Administrative Agent may make available to the Lenders such other Approved Electronic Communications provided to the Administrative Agent, upon such Lenders' request.

Section 10.12. *L/C Issuers.* Each L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Article 10 with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and L/C Documents pertaining to such Letters of Credit fully as if the term "Administrative Agent" as used in this Article and the definition of "Agent Affiliate" included such L/C Issuer with respect to such acts or omissions, and (b) as additionally provided herein with respect to each L/C Issuer.

ARTICLE 11

GUARANTEE

Section 11.01. *Guarantee.* (a) Subject to the provisions of Section 11.01(b), each of the Subsidiary Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and each other Loan Party when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Subsidiary Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Subsidiary Guarantor under the Bankruptcy Code, or any other applicable federal and state laws relating to fraudulent conveyances, fraudulent transfers, or the insolvency of debtors (after giving effect to the right of contribution established in Section 11.02).

(c) Each Subsidiary Guarantor agrees that the Obligations may at any time and from time to time exceed the maximum amount of the liability of such Subsidiary Guarantor under Section 11.01(b) without impairing the guarantee contained in this Article 11 or affecting the rights and remedies of the Secured Parties hereunder.

(d) The guarantee contained in this Article 11 shall remain in full force and effect until all the Obligations (other than any contingent indemnification obligations not then due) shall have been satisfied by payment in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with "back to back" letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments shall be terminated, notwithstanding that from time to time during the term of the Credit Agreement the Borrower may be free from any Borrower Obligations.

(e) No payment made by the Borrower, any of the Subsidiary Guarantors, any other Subsidiary Guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Subsidiary Guarantors, any other Subsidiary Guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to reduce, release, modify or otherwise affect the liability of any Subsidiary Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Subsidiary Guarantor in respect of the Obligations or any payment received or collected from such Subsidiary Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Subsidiary Guarantor hereunder until the Obligations (other than any contingent indemnification obligations not then due) are paid in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with "back to back" letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments are terminated.

Section 11.02. *Right of Contribution.* Each Subsidiary Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder (including by way of set-off rights being exercised against it), such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Subsidiary Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 11.03. The provisions of this Section 11.02 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Secured Parties, and each Subsidiary Guarantor shall remain jointly and severally liable to the Secured Parties for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.03. *No Subrogation.* Notwithstanding any payment made by any Subsidiary Guarantor hereunder or any set-off or application of funds of any Subsidiary Guarantor by any Secured Party, no Subsidiary Guarantor shall be entitled to be subrogated to any of the rights of any Secured Party against the Borrower or any Subsidiary Guarantor or any collateral security or guarantee or right of offset held by any Secured Party for the payment of the Obligations, nor shall any Subsidiary Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Subsidiary Guarantor in respect of payments made by such Subsidiary Guarantor hereunder, until all amounts owing to the Secured Parties by the Borrower on account of the Obligations (other than any contingent indemnification obligations not then due) are paid in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments are terminated. If any amount shall be paid to any Subsidiary Guarantor on account of such subrogation rights at any time when all of the Obligations (other than any contingent indemnification obligations not then due) shall not have been paid in full, such amount shall be held by such Subsidiary Guarantor in trust for the Secured Parties, segregated from other funds of such Subsidiary Guarantor, and shall, forthwith upon receipt by such Subsidiary Guarantor, be turned over to the Administrative Agent in the exact form received by such Subsidiary Guarantor (duly indorsed by such Subsidiary Guarantor to the Administrative Agent, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

Section 11.04. *Amendments, etc. with Respect to the Borrower Obligations.* Each Subsidiary Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Subsidiary Guarantor and without notice to or further assent by any Subsidiary Guarantor, any demand for payment of any of the Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, increased, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and this Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Obligations or for the guarantee contained herein or any property subject thereto.

Section 11.05. *Guarantee Absolute and Unconditional.* Each Subsidiary Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or a surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Subsidiary Guarantor agrees as follows:

(a) The guarantee under this Article 11 is a guaranty of payment when due and not of collectability, and is a primary obligation of each Subsidiary Guarantor and not merely a contract of surety.

(b) The Administrative Agent may enforce the guarantee under this Article 11 upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default.

(c) Each Subsidiary Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Article 11 or acceptance of the guarantee contained in this Article 11.

(d) The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Article 11 and all dealings between the Borrower and any of the Subsidiary Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Article 11.

(e) To the fullest extent permitted by applicable law, each Subsidiary Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Subsidiary Guarantors with respect to the Obligations.

(f) Each Subsidiary Guarantor understands and agrees that the guarantee contained in this Article 11 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to

(i) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party,

(ii) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party,

(iii) any acts of any legislative body or governmental authority affecting the Borrower, including but not limited to, any restrictions on the conversion of currency or repatriation or control of funds or any total or partial expropriation of the Borrower's property, or by economic, political, regulatory or other events in the countries where the Borrower is located, or

(iv) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Subsidiary Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the

Obligations, or of such Subsidiary Guarantor under the guarantee contained in this, in bankruptcy or in any other instance.

(g) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Subsidiary Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Subsidiary Guarantor or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Subsidiary Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Subsidiary Guarantor or any other Person or any such collateral security or guarantee or right of offset, shall not relieve any Subsidiary Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Secured Parties against any Subsidiary Guarantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

Section 11.06. *Waiver by Subsidiary Guarantors.* Each Subsidiary Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Subsidiary Guarantor, to (i) proceed against Borrower, any other Subsidiary Guarantor of the Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other Subsidiary Guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Subsidiary Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Subsidiary Guarantor from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party’s errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Subsidiary Guarantor’s obligations hereunder, (ii) the benefit of any statute or limitations affecting such Subsidiary Guarantor’s liability hereunder or the enforcement hereof, (iii) any rights of set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including the acceptance hereof, notices of default hereunder, the Secured Hedge Agreements or any agreement or instrument related thereto, the Secured Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of extension of credit to Borrower; and (g) any defenses or benefits that

may be derived from or afforded by law which limit the liability of or exonerate Subsidiary Guarantors or sureties, or which may conflict with the terms hereof.

Section 11.07. *[Reserved.]*

Section 11.08. *Releases.* (a) At such time as the Obligations shall have been paid in full (other than any contingent indemnification obligations not then due), the Commitments have been terminated and no Letters of Credit shall be outstanding (except to the extent that the Letters of Credit that have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Subsidiary Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of any Subsidiary Guarantor following any such termination, the Administrative Agent shall execute and deliver to such Subsidiary Guarantor such documents as such Subsidiary Guarantor shall reasonably request to evidence such termination.

(b) A Subsidiary Guarantor shall automatically be released from its obligations hereunder and the Guarantee of such Subsidiary Guarantor shall automatically be released under the circumstances described in Section 10.10(b).

Section 11.09. *Subordination of Other Obligations.* Any Indebtedness of the Borrower or any Subsidiary Guarantor held as of the Closing Date or thereafter by any Subsidiary Guarantor (the “**Obligee Guarantor**”) is hereby subordinated in right of payment to the Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be credited and applied against the Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

Section 11.10. *Authority of Subsidiary Guarantors or Borrower.* It shall not be necessary for any Beneficiary to inquire into the capacity or powers of any Subsidiary Guarantor or Borrower or the officers, directors or agents acting or purporting to act on behalf of any of them.

Section 11.11. *Financial Condition of Borrower.* Any Credit Extension may be made to the Borrower or continued from time to time, without notice to or authorization from any Subsidiary Guarantor regardless of the financial or other condition of Borrower at the time of such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Subsidiary Guarantor its assessment, or any Subsidiary Guarantor’s assessment, of the financial condition of the Borrower. Each Subsidiary Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Loan Documents, and each Subsidiary Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and all circumstances bearing upon the risk of nonpayment of the Obligations. Each Subsidiary Guarantor hereby waives and relinquishes any duty on the part of

any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower known as of the Closing Date or thereafter known by any Beneficiary.

Section 11.12. *Taxes and Payments.* The provisions of Section 3.01(a)-(d) shall apply *mutatis mutandis* to the Subsidiary Guarantors and payments thereby.

Section 11.13. *Assignments.* Each Subsidiary Guarantor acknowledges that the Administrative Agent or any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, the Loans owing to it and any Note or Notes held by it) and such assignee, transferee or participant shall thereupon become vested with all the benefits in respect thereof granted to such party herein or otherwise, in each case as and to the extent provided in Section 12.06. No Subsidiary Guarantor shall have the right to assign its rights hereunder or any interest herein except in accordance with Section 12.06.

Section 11.14. *Reinstatement.* Each Subsidiary Guarantor agrees that if (a) any payment made by the Borrower or any other Person and applied to the Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or (b) the proceeds of Collateral are required to be returned by any Beneficiary to the Borrower or its estate, trustee, receiver or any other Party including any Subsidiary Guarantor or its estate, trustee, or receiver under any Requirement of Law, then, to the extent of such payment or repayment, any such Subsidiary Guarantors liability hereunder shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, the guarantee under this Article 11 shall have been cancelled or surrendered (and, if any Lien or other Collateral securing such Subsidiary Guarantor's liability hereunder shall have been released or terminated by virtue of such cancellation or surrender), the guarantee under this Article 11 (and such Lien or other Collateral) shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Subsidiary Guarantor in respect of the amount of such payment (or any lien or other Collateral securing such obligation).

ARTICLE 12 MISCELLANEOUS

Section 12.01. *Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments hereunder without the written consent of each Lender directly adversely affected thereby;

(c) reduce the principal of, or the stated rate of interest specified herein on, any Loan or Unreimbursed Amount, or (subject to clause (iv) of the second proviso to this Section 12.01) any fees or other amounts payable hereunder without the written consent of each Lender entitled to such amount; *provided, however*, that only the consent of the Class Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(d) change Sections 2.07, 2.17 or 9.03 in a manner that would alter the pro rata sharing of payments or payment priorities required thereby without the written consent of each Lender adversely affected thereby;

(e) change any provision of this Section 12.01 or the definition of “Required Lenders”; “Class Required Lenders”, “Required Revolving Lenders”, “Required Term Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender adversely affected thereby;

(f) other than as permitted by Section 11.08, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(g) release all or substantially all of the Subsidiary Guarantors, without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 11.08 (in which case such release may be made by the Administrative Agent acting alone);

(h) amend or modify the Superpriority Claim status of the Lenders under the Orders or under any other Loan Document without the written consent of each Lender affected thereby;

(i) grant any Lien on the Collateral which is senior to the Liens created by the Loan Documents or *pari passu* with such Liens without the written consent of each Lender;

(j) affect the relative priority of Liens created under the Loan Documents, without the written consent of each Lender;

(k) directly or indirectly, whether by amendment, waiver or otherwise, increase the advance rates set forth in the definition of the term Borrowing Base, add new asset categories to the Borrowing Base or otherwise cause the Borrowing Base or availability under the Revolving Credit Facility provided for herein to be increased (other than changes in Reserves

implemented by the Administrative Agent in its reasonable discretion) without the written consent of the Supermajority Revolving Lenders, *provided* that any such amendment, waiver or consent described in this clause (k) shall be effective without the consent of any Lenders other than the Supermajority Revolving Credit Lenders;

and *provided, further*, that any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of one Class of Lenders (but not of any other Class of Lenders), including (i) any waiver of conditions set forth in Section 4.02 with respect to a Borrowing of Loans or an issuance of a Letter of Credit of such Class and (ii) any amendment, waiver or modification relating to a Single Class Default applicable to such Class, in each case, shall be effective with the consent of the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; and (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace each non-consenting Lender in accordance with Section 12.13; *provided*, that such amendment, waiver, consent or release can be effected as a result of all such assignments.

Any such waiver and any such amendment or modification pursuant to this Section 12.01 shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the L/C Issuers, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Borrower, the Lenders, the L/C Issuers and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 12.01 shall be deemed to be cured and not continuing during the period of such waiver.

Section 12.02. *Notices; Effectiveness; Electronic Communications.* (a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 12.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or on Schedule 1 to the Lender Addendum to which such Lender is a party.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided*, that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article 2 if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided*, that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to the Lenders and the L/C Issuers to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided*, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Each Lender agrees that notice to it specifying that any Borrower Materials or other notices or communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; *provided* that if requested by any Lender, the Administrative Agent shall deliver a copy of the Borrower Materials, notices or other communications to such Lender by email or fax.

(c) *The Platform.* THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE

ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower, any Lender, L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party as determined by a court of competent jurisdiction in a final, non-appealable judgment; *provided, however*, that in no event shall the Agent Party have any liability to the Borrower, any Lender, L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address, Etc.* Each of the Borrower, the Administrative Agent and each L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) *Reliance by Administrative Agent, L/C Issuers and Lenders.* The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 12.03. *No Waiver; Cumulative Remedies.* None of the Secured Parties shall by any act (except by a written instrument pursuant to Section 12.01), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure by any Lender, L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party

would otherwise have on any future occasion. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 12.04. *Expenses; Indemnity; Damage Waiver.* (a) *Costs and Expenses.* The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of counsel and industry advisors for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery, administration and enforcement of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such all reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Each Subsidiary Guarantor agrees to pay or reimburse each Secured Party for all its reasonable and documented out-of-pocket expenses incurred in collecting against such Subsidiary Guarantor under the guarantee contained in Article 10 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Subsidiary Guarantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Administrative Agent.

(b) *Indemnification by the Loan Parties.* The Borrower and each Subsidiary Guarantor shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable out-of-pocket costs and expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries,

or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided*, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) have resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction in a final, non-appealable judgment or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction.

(c) *Reimbursement by Lenders.* To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's pro rata share (based on the Loans and unused Commitments held by such Lender relative to the total Loans and unused Commitments then outstanding) of such unpaid amount, *provided*, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or such L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.13(d).

(d) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages result from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction.

(e) *Payments.* All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival.* The agreements in this Section shall survive the resignation of the Administrative Agent or any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 12.05. *Payments Set Aside.* To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, any L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 12.06. *Successors and Assigns.* (a) *Successors and Assigns Generally.* provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 12.06(b), (ii) by way of participation in accordance with the provisions of Section 12.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.06(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders.* Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Commitments of a Class, Loans or Loans of a Class (including for purposes of this Section 12.06(b), participations in L/C Obligations) at the time owing to it); *provided*, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date, shall not be less than

\$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) *[Reserved]*.

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 12.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.06(d).

(c) *Register.* The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the

Borrower and the L/C Issuer, at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations.* Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); *provided*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided*, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), (b), (c) and (f) of the first proviso to Section 12.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment; *provided, further*, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) *Limitations upon Participant Rights.* A Participant shall not be entitled receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits

of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) *Certain Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Electronic Execution of Assignments.* The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

(h) *Resignation as L/C Issuer.* Notwithstanding anything to the contrary contained herein, Citibank, Barclays, Bank of America or any L/C Issuer may, (i) upon 30 days’ notice to the Borrower, the Lenders and other L/C Issuers, resign as L/C Issuer or (ii) upon 10 days’ notice to Borrower, the Lenders and other L/C Issuers, appoint an Affiliate of such L/C Issuer as a successor L/C Issuer hereunder. In the event of any such resignation as L/C Issuer pursuant to clause (i) of the preceding sentence, the Borrower shall be entitled to appoint from among the Lenders and their Affiliates a successor L/C Issuer hereunder; *provided, however*, that no failure by the Borrower to appoint any such successor shall affect the resignation of such L/C Issuer. If Citibank, Barclays and Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(d)). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to such L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

Section 12.07. *Treatment of Certain Information; Confidentiality.* Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory

authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section.

For purposes of this Section, “**Information**” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, *provided*, that in the case of information received from the Borrower or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care to protect such Information, and in no event less than the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities laws.

Section 12.08. *Right of Setoff.* Subject to the Orders, upon any amount becoming due and payable hereunder (whether at stated maturity, by acceleration or otherwise), each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, such L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any

such setoff and application, *provided*, that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09. *Interest Rate Limitation.* Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 12.10. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or of a Lender Addendum by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 12.11. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 12.12. *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or

unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 12.13. *Replacement of Lenders.* If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a Nonconsenting Lender (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided*, that:

(e) the Administrative Agent shall have received the assignment fee specified in Section 12.06(b);

(f) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(g) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(h) such assignment does not conflict with applicable Laws; and

(i) neither the Administrative Agent nor any Lender shall be obligated to be or to find the assignee.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. In the event that (x) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto and (y) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Nonconsenting Lender.**” Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

Section 12.14. *Governing Law; Jurisdiction; Etc.* (a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(b) *SUBMISSION TO JURISDICTION.* THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *WAIVER OF VENUE.* THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *SERVICE OF PROCESS.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 12.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 12.15. *Waiver of Jury Trial.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS

REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 12.16. *Designation of Secured Agreements.* (a) The Borrower and any Cash Management Bank or Hedge Bank may from time to time designate a Cash Management Agreement or Swap Contract permitted hereunder as a Secured Agreement upon written notice (a “**Designation Notice**”) to the Administrative Agent from the Borrower and such Cash Management Bank or Hedge Bank, in form reasonably acceptable to the Administrative Agent, which Designation Notice shall include a description of such Secured Agreement and the maximum amount of obligations thereunder which are to constitute Obligations (each, a “**Designated Amount**”); *provided* that (x) no such Designated Amount with respect to any Secured Agreement shall constitute Obligations to the extent that, at the time of delivery of the applicable Designation Notice and after giving effect to such Designated Amount (including to the reserve for Secured Agreements to be established by the Administrative Agent in connection therewith), the Excess Availability would be less than zero and (y) any such Designated Amount shall constitute Obligations only to the extent that such Designated Amount, together with all other Designated Amounts under Secured Agreements theretofore designated hereunder and constituting Obligations, does not exceed, \$10,000,000.

(b) The Borrower and any counterparty to a Secured Agreement may increase, decrease or terminate any Designated Amount in respect of such Secured Agreement upon written notice to the Administrative Agent; *provided* that any increase in a Designated Amount shall be deemed to be a new designation of a Designated Amount pursuant to a new Designation Notice and shall be subject to the limitations set forth in Section 12.16(a). No obligations under any Secured Agreement in excess of the applicable Designated Amount shall constitute Obligations hereunder or the other Loan Documents.

(c) No counterparty to a Secured Agreement that obtains the benefits of Section 9.03, Article 11, or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable counterparty to a Secured Agreement.

Section 12.17. *No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and the other Loan Parties acknowledge and agree that: (i) (A) the arranging and other services regarding this

Agreement provided by the Administrative Agent and any Arranger are arm's-length commercial transactions between the Borrower, the other Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent and any Arranger, on the other hand, (B) the Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent deemed appropriate by such Loan Parties, and (C) the Borrower and the other Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and any Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, the other Loan Parties, their respective Affiliates or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower, the other Loan Parties or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and any Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent and any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.


Section 12.18. *USA Patriot Act Notice.* Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

Section 12.19. *Time of the Essence.* Time is of the essence of the Loan Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
duly executed as of the date first above written.

PATRIOT COAL CORPORATION

By: 
Name: Mark N. Schroeder
Title: Senior Vice President &
Chief Financial Officer

Subsidiary Guarantors:

AFFINITY MINING COMPANY
APOGEE COAL COMPANY, LLC
APPALACHIA MINE SERVICES, LLC
BEAVER DAM COAL COMPANY, LLC
BIG EAGLE, LLC
BIG EAGLE RAIL, LLC
BLACK STALLION COAL COMPANY, LLC
BLACK WALNUT COAL COMPANY
BLUEGRASS MINE SERVICES, LLC
BROOK TROUT COAL, LLC
CATENARY COAL COMPANY, LLC
CENTRAL STATES COAL RESERVES OF
KENTUCKY, LLC
CHARLES COAL COMPANY, LLC
CLEATON COAL COMPANY
COAL CLEAN LLC
COAL PROPERTIES, LLC
COAL RESERVE HOLDING LIMITED
LIABILITY COMPANY NO. 2
COLONY BAY COAL COMPANY
COOK MOUNTAIN COAL COMPANY, LLC
CORYDON RESOURCES LLC
COVENTRY MINING SERVICES, LLC
COYOTE COAL COMPANY LLC
CUB BRANCH COAL COMPANY LLC
DAKOTA LLC
DAY LLC
DIXON MINING COMPANY, LLC
DODGE HILL HOLDING JV, LLC
DODGE HILL MINING COMPANY, LLC
DODGE HILL OF KENTUCKY, LLC
EASTERN ASSOCIATED COAL, LLC
EASTERN COAL COMPANY, LLC
EASTERN ROYALTY, LLC
EMERALD PROCESSING, L.L.C.
GATEWAY EAGLE COAL COMPANY, LLC
GRAND EAGLE MINING, LLC
HERITAGE COAL COMPANY LLC
HIGHLAND MINING COMPANY, LLC
HILLSIDE MINING COMPANY
HOBET MINING, LLC
INDIAN HILL COMPANY LLC
INFINITY COAL SALES, LLC
INTERIOR HOLDINGS, LLC

IO COAL LLC
JARRELL'S BRANCH COAL COMPANY
JUPITER HOLDINGS LLC
KANAWHA EAGLE COAL, LLC
KANAWHA RIVER VENTURES I, LLC
KANAWHA RIVER VENTURES II, LLC
KANAWHA RIVER VENTURES III, LLC
KE VENTURES, LLC
LITTLE CREEK LLC
LOGAN FORK COAL COMPANY
MAGNUM COAL COMPANY LLC
MAGNUM COAL SALES LLC
MARTINKA COAL COMPANY, LLC
MIDLAND TRAIL ENERGY LLC
MIDWEST COAL RESOURCES II, LLC
MOUNTAIN VIEW COAL COMPANY, LLC
NEW TROUT COAL HOLDINGS II, LLC
NEWTOWN ENERGY, INC.
NORTH PAGE COAL CORP.
OHIO COUNTY COAL COMPANY, LLC
PANTHER LLC
PATRIOT BEAVER DAM HOLDINGS, LLC
PATRIOT COAL COMPANY, L.P.
PATRIOT COAL SALES LLC
PATRIOT COAL SERVICES LLC
PATRIOT LEASING COMPANY LLC
PATRIOT MIDWEST HOLDINGS, LLC
PATRIOT RESERVE HOLDINGS, LLC
PATRIOT TRADING LLC
PATRIOT VENTURES LLC
PCX ENTERPRISES, INC.
PINE RIDGE COAL COMPANY, LLC
POND CREEK LAND RESOURCES, LLC
POND FORK PROCESSING LLC
REMINGTON HOLDINGS LLC
REMINGTON II LLC
REMINGTON LLC
RIVERS EDGE MINING, INC.
ROBIN LAND COMPANY, LLC
SENTRY MINING, LLC
SNOWBERRY LAND COMPANY
SPEED MINING LLC
STERLING SMOKELESS COAL COMPANY, LLC
TC SALES COMPANY, LLC
THE PRESIDENTS ENERGY COMPANY LLC
THUNDERHILL COAL LLC

TROUT COAL HOLDINGS, LLC
UNION COUNTY COAL CO., LLC
VIPER LLC
WEATHERBY PROCESSING LLC
WILDCAT ENERGY LLC
WILDCAT, LLC
WILL SCARLET PROPERTIES LLC
WINCHESTER LLC
WINIFRED DOCK LIMITED LIABILITY
COMPANY
YANKEETOWN DOCK, LLC

as Subsidiary Guarantors

Executing this Agreement as an authorized officer of
each of the 98 foregoing entities on behalf of and so as to
bind the entities named above under the caption
“Subsidiary Guarantors”

By:

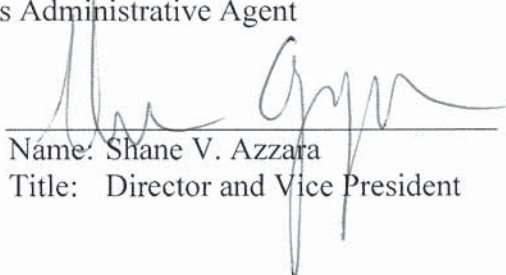


Name: Robert L. Mead

Title: Vice President and Treasurer

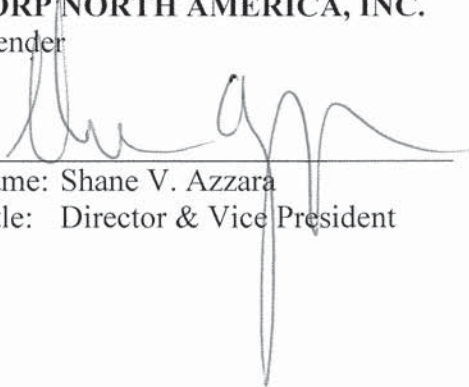
CITIBANK, N.A.,
as Administrative Agent

By:


Name: Shane V. Azzara
Title: Director and Vice President

CITICORP NORTH AMERICA, INC.
as Lender

By:

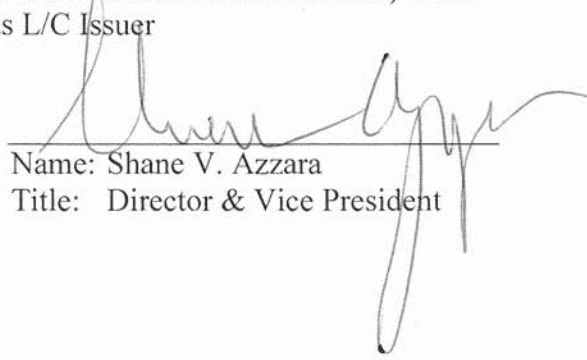


Name: Shane V. Azzara
Title: Director & Vice President

CITICORP NORTH AMERICA, INC.

as L/C Issuer

By:


Name: Shane V. Azzara

Title: Director & Vice President

BARCLAYS BANK PLC
as Lender

By:

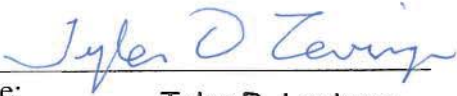

Name: J Jeffcott Ogden
Title: MD

BARCLAYS BANK PLC, NEW YORK
BRANCH
as L/C Issuer

By: 

Name: J Jeffcott Ogden
Title: MD

BANK OF AMERICA, N.A.,
as Lender

By: 
Name: Tyler D. Levings
Title: Director

BANK OF AMERICA, N.A.
as L/C Issuer

By: Tyler D Levings
Name:
Title:

Tyler D. Levings
Director

Patriot Thirteen Week Cash Flow Forecast

<i>Week Ending</i>	Actual 07/07/12	Projected 07/14/12	Projected 07/21/12	Projected 07/28/12	Projected 08/04/12	Projected 08/11/12	Projected 08/18/12	Projected 08/25/12	Projected 09/01/12	Projected 09/08/12	Projected 09/15/12	Projected 09/22/12	Projected 09/29/12	Projected 10/06/12	Total
BEGINNING CASH (Book)	\$ 40,106	\$ 33,069	\$ 243,770	\$ 231,986	\$ 228,525	\$ 330,181	\$ 342,358	\$ 346,072	\$ 333,085	\$ 310,468	\$ 302,807	\$ 298,067	\$ 305,251	\$ 300,509	\$ 40,106
<u>OPERATING CASH FLOW</u>															
Operating Cash Receipts:															
Coal Sales	41,076	38,100	20,672	43,329	35,070	50,000	50,035	35,000	35,000	45,000	40,000	45,000	40,000	42,500	560,781
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Operating Cash Receipts	41,076	38,100	20,672	43,329	35,070	50,000	50,035	35,000	35,000	45,000	40,000	45,000	40,000	42,500	560,781
Operating Disbursements:															
Payroll	(5,296)	(8,199)	(1,876)	(3,590)	(10,490)	(3,623)	(10,591)	(3,637)	(10,549)	(3,611)	(10,539)	(3,616)	(10,542)	(3,622)	(89,781)
Accounts Payable	(25,090)	(11,700)	(15,330)	(36,700)	(27,830)	(29,100)	(30,230)	(38,100)	(34,230)	(34,100)	(34,100)	(28,100)	(34,100)	(33,000)	(411,710)
Other	(5,996)	(5,100)	(14,000)	(5,250)	(13,300)	(5,100)	(5,500)	(6,250)	(8,300)	(100)	(100)	(6,100)	(100)	(7,000)	(82,196)
Subtotal Operating Disbursements	(36,382)	(24,999)	(31,206)	(45,540)	(51,620)	(37,823)	(46,321)	(47,987)	(53,079)	(37,811)	(44,739)	(37,816)	(44,742)	(43,622)	(583,688)
OPERATING CASH FLOW	4,693	13,101	(10,534)	(2,211)	(16,550)	12,177	3,714	(12,987)	(18,079)	7,189	(4,739)	7,184	(4,742)	(1,122)	(22,907)
DIP Interest	-	-	-	-	(2,404)	-	-	-	(4,538)	-	-	-	-	-	(4,538)
Other Restructuring Disbursements	(11,731)	(27,400)	(1,250)	(1,250)	(4,390)	-	-	-	-	(14,850)	-	-	-	(4,765)	(65,636)
Draw/(Paydown)	-	(25,000)	-	-	-	-	-	-	-	-	-	-	-	-	(25,000)
DIP Term Loan Funding	-	250,000	-	-	125,000	-	-	-	-	-	-	-	-	-	375,000
TOTAL CASH FLOW	(7,037)	210,701	(11,784)	(3,461)	101,656	12,177	3,714	(12,987)	(22,617)	(7,661)	(4,739)	7,184	(4,742)	(10,424)	249,979
ENDING CASH (Book)	\$ 33,069	\$ 243,770	\$ 231,986	\$ 228,525	\$ 330,181	\$ 342,358	\$ 346,072	\$ 333,085	\$ 310,468	\$ 302,807	\$ 298,067	\$ 305,251	\$ 300,509	\$ 290,085	\$ 290,085

SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of July 9, 2012
among

PATRIOT COAL CORPORATION,
a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as the Borrower,

CITIBANK, N.A.,
as Administrative Agent

CITICORP NORTH AMERICA, INC.,
BARCLAYS BANK PLC, NEW YORK BRANCH
and
BANK OF AMERICA, N.A.,
as L/C Issuers

and

The Lenders Party Hereto

CITIGROUP GLOBAL MARKETS INC.,
BARCLAYS BANK PLC
and
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arrangers and Joint Bookrunners

and

BARCLAYS BANK PLC,
as Syndication Agent

TABLE OF CONTENTS

	<u>PAGE</u>	
ARTICLE 1	DEFINITIONS AND ACCOUNTING TERMS	1
Section 1.01.	Defined Terms	1
Section 1.02.	Other Interpretive Provisions	40
Section 1.03.	Accounting Terms	40
Section 1.04.	Times of Day	41
Section 1.05.	Letter of Credit Amounts	41
Section 1.06.	Reserves	41
ARTICLE 2	THE COMMITMENTS AND CREDIT EXTENSIONS	41
Section 2.01.	The Loans	41
Section 2.02.	Borrowings, Conversions and Continuations of Loans	42
Section 2.03.	L/C Cash Collateral Account	44
Section 2.04.	Letters of Credit	45
Section 2.05.	[Reserved]	54
Section 2.06.	Prepayments	54
Section 2.07.	Termination or Reduction of Commitments	56
Section 2.08.	Repayment of Loans	57
Section 2.09.	Interest	57
Section 2.10.	Fees	58
Section 2.11.	Computation of Interest and Fees	59
Section 2.12.	Evidence of Debt	59
Section 2.13.	Payments Generally; Administrative Agent's Clawback	59
Section 2.14.	Sharing of Payments by Lenders	61
Section 2.15.	Defaulting Lender	62
Section 2.16.	Priority and Liens	64
Section 2.17.	No Discharge; Survival of Claims	65
ARTICLE 3	TAXES, YIELD PROTECTION AND ILLEGALITY	65
Section 3.01.	Taxes	65
Section 3.02.	Illegality	68

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 3.03. Inability to Determine Rates	68
Section 3.04. Increased Costs; Reserves on Eurocurrency Rate Loans	69
Section 3.05. Compensation for Losses	70
Section 3.06. Mitigation Obligations; Replacement of Lenders	71
Section 3.07. Survival	72
ARTICLE 4 CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	72
Section 4.01. Conditions of Initial Credit Extension	72
Section 4.02. Conditions to All Credit Extensions	75
ARTICLE 5 REPRESENTATIONS AND WARRANTIES	76
Section 5.01. Existence, Qualification and Power	76
Section 5.02. Authorization; No Contravention	77
Section 5.03. Governmental Authorization; Other Consents	77
Section 5.04. Binding Effect	77
Section 5.05. Financial Statements; No Material Adverse Effect	77
Section 5.06. Litigation	78
Section 5.07. No Default	79
Section 5.08. Ownership of Property; Liens; Investments	79
Section 5.09. Environmental Compliance	79
Section 5.10. Mining	81
Section 5.11. Insurance	81
Section 5.12. Taxes	81
Section 5.13. ERISA Compliance	81
Section 5.14. Subsidiaries; Equity Interests; Loan Parties	82
Section 5.15. Margin Regulations; Investment Company Act	82
Section 5.16. Disclosure	82
Section 5.17. Compliance With Laws	83
Section 5.18. Intellectual Property; Licenses, Etc	83
Section 5.19. [Reserved]	83
Section 5.20. Casualty, Etc	83
Section 5.21. Labor Matters	83
Section 5.22. Collateral Documents	83

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 5.23. Use of Proceeds	84
Section 5.24. Coal Act; Black Lung Act	84
Section 5.25. Activities and Liabilities of EACC Camps, Inc	84
Section 5.26. Anti-Terrorism Laws	84
ARTICLE 6 AFFIRMATIVE COVENANTS	85
Section 6.01. Financial Statements	85
Section 6.02. Certificates; Other Information	86
Section 6.03. Notices	90
Section 6.04. Payment of Post-Petition Obligations	90
Section 6.05. Preservation of Existence, Etc	91
Section 6.06. Maintenance of Properties	91
Section 6.07. Maintenance of Insurance	91
Section 6.08. Compliance with Laws	91
Section 6.09. Books and Records	92
Section 6.10. Inspection Rights; Field Exams	92
Section 6.11. Use of Proceeds	93
Section 6.12. Covenant to Guarantee Obligations and Give Security	93
Section 6.13. Compliance With Environmental Laws	95
Section 6.14. Preparation of Environmental Reports	95
Section 6.15. Further Assurances	95
Section 6.16. Compliance with Terms of Leaseholds and Related Documents	95
Section 6.17. Ratings	96
Section 6.18. First Day Orders	96
Section 6.19. Mining Financial Assurances	96
Section 6.20. Post-Closing Obligations	96
Section 6.21. Administration of Accounts and Inventory	96
Section 6.22. Cash Management System	96
Section 6.23. Financial Restructuring Officer and Advisor	98
ARTICLE 7 NEGATIVE COVENANTS	98
Section 7.01. Liens	98
Section 7.02. Indebtedness	100

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 7.03. Investments	101
Section 7.04. Fundamental Changes	102
Section 7.05. Dispositions	102
Section 7.06. Restricted Payments	104
Section 7.07. Change in Nature of Business	104
Section 7.08. Transactions With Affiliates	104
Section 7.09. Burdensome Agreements	104
Section 7.10. Use of Proceeds	105
Section 7.11. Minimum Consolidated EBITDA	105
Section 7.12. Capital Expenditures	105
Section 7.13. Minimum Liquidity	106
Section 7.14. Amendments of Organization Documents	106
Section 7.15. Accounting Changes	106
Section 7.16. Prepayments, Etc. of Indebtedness	106
Section 7.17. Amendment, Etc. of Orders, Related Documents and Indebtedness	106
Section 7.18. Limitation on Negative Pledge Clauses	107
ARTICLE 8 REAL PROPERTY LEASES	108
Section 8.01. Special Rights with respect to Real Property Leases	108
ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES	110
Section 9.01. Events of Default	110
Section 9.02. Remedies Upon Event of Default	114
Section 9.03. Application of Funds	115
ARTICLE 10 ADMINISTRATIVE AGENT	116
Section 10.01. Authorization and Action	116
Section 10.02. Administrative Agent's Reliance, Etc	118
Section 10.03. Posting of Approved Electronic Communications	119
Section 10.04. The Administrative Agent Individually	120
Section 10.05. Activities of Agent's Group	121
Section 10.06. Lender Credit Decision	122
Section 10.07. Indemnification	123

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 10.08. Successor Administrative Agent	123
Section 10.09. Concerning the Collateral and the Collateral Documents	124
Section 10.10. Collateral Matters Relating to Related Obligations	126
Section 10.11. Delivery of Certain Financial Information	127
Section 10.12. L/C Issuers	127
ARTICLE 11 GUARANTEE	127
Section 11.01. Guarantee	127
Section 11.02. Right of Contribution	128
Section 11.03. No Subrogation	128
Section 11.04. Amendments, etc. with Respect to the Borrower Obligations	129
Section 11.05. Guarantee Absolute and Unconditional	129
Section 11.06. Waiver by Subsidiary Guarantors	131
Section 11.07. [Reserved.]	131
Section 11.08. Releases	131
Section 11.09. Subordination of Other Obligations	132
Section 11.10. Authority of Subsidiary Guarantors or Borrower	132
Section 11.11. Financial Condition of Borrower	132
Section 11.12. Taxes and Payments	132
Section 11.13. Assignments	132
Section 11.14. Reinstatement	133
ARTICLE 12 MISCELLANEOUS	133
Section 12.01. Amendments, Etc	133
Section 12.02. Notices; Effectiveness; Electronic Communications	135
Section 12.03. No Waiver; Cumulative Remedies	137
Section 12.04. Expenses; Indemnity; Damage Waiver	137
Section 12.05. Payments Set Aside	139
Section 12.06. Successors and Assigns	140
Section 12.07. Treatment of Certain Information; Confidentiality	143
Section 12.08. Right of Setoff	144
Section 12.09. Interest Rate Limitation	144
Section 12.10. Counterparts; Integration; Effectiveness	145

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
Section 12.11. Survival of Representations and Warranties	145
Section 12.12. Severability	145
Section 12.13. Replacement of Lenders	145
Section 12.14. Governing Law; Jurisdiction; Etc	146
Section 12.15. Waiver of Jury Trial	147
Section 12.16. Designation of Secured Agreements	147
Section 12.17. No Advisory or Fiduciary Responsibility	148
Section 12.18. USA Patriot Act Notice	149
Section 12.19. Time of the Essence	149

SCHEDULES

1.01(a)	Subsidiary Guarantors
1.01(b)	Existing Secured Agreements
2.01(a)	Revolving Credit Commitments
2.01(b)	Term Commitments
5.06	Litigation
5.08(a)	Material Owned Real Property
5.08(b)	Material Leased Real Property
5.08(c)	Real Property
5.09	Environmental Matters
5.14	Subsidiaries and Other Equity Investments; Loan Parties
5.18	Intellectual Property Matters
5.21	Labor Matters
6.21	Post-Closing Obligations
7.01	Existing Liens
7.02	Existing Indebtedness
7.03	Existing Investments
7.17	Negative Pledges
12.02	Agents' Offices, Certain Addresses for Notices

EXHIBITS

Form of

A	Borrowing Notice
B	Notice of Conversion or Continuation
C-1	Term Note
C-2	Revolving Note
D	Compliance Certificate
E	Assignment and Acceptance
F	13-Week Projection
G	Borrowing Base Certificate

TABLE OF CONTENTS

(continued)

	<u>PAGE</u>
H Security Agreement	
I Perfection Certificate	
J Interim Order	
K Assumption Agreement	

SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT (“**Agreement**”) is entered into as of July 9, 2012, among PATRIOT COAL CORPORATION, a Delaware corporation and a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code (the “**Borrower**”), the subsidiaries of the Borrower listed on Schedule 1.01(a), and each other subsidiary of the Borrower that from time to time becomes party hereto pursuant to Section 6.12 (collectively, the “**Subsidiary Guarantors**” and individually, a “**Subsidiary Guarantor**”), each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), CITIBANK, N.A., as administrative agent for the Revolving Lenders and L/C Issuers and collateral agent for the Revolving Secured Parties (in such capacities, the “**Revolving Administrative Agent**”), CITIBANK, N.A., as administrative agent for the Term Lenders and collateral agent for the Term Secured Parties (in such capacities, the “**Term Administrative Agent**”, and, together with the Revolving Administrative Agent, the “**Administrative Agent**”) CITICORP NORTH AMERICA, INC., as L/C Issuer, BARCLAYS BANK PLC, NEW YORK BRANCH, as L/C Issuer and BANK OF AMERICA, N.A., as L/C Issuer.

INTRODUCTORY STATEMENT

On July 9, 2012 (the “**Petition Date**”), the Borrower, EACC Camps, Inc. and the Subsidiary Guarantors other than Patriot Ventures LLC (collectively, the “**Debtors**”) filed voluntary petitions with the Bankruptcy Court initiating cases pending under Chapter 11 of the Bankruptcy Code (collectively, the “**Cases**” and each a “**Case**”) and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

The Borrower has applied to the Lenders for (i) a revolving credit facility in an aggregate principal amount of \$125,000,000 (the “**Revolving Credit Facility**”) and (ii) a term loan facility in an aggregate principal amount of \$375,000,000 (the “**Term Facility**”; the Term Facility and the Revolving Facility, collectively, the “**Facilities**” and each a “**Facility**”). All of the Borrower’s obligations under the Facilities are to be guaranteed by the Subsidiary Guarantors. The Lenders are willing to extend or continue, as the case may be, such credit to the ~~Borrowers~~Borrower on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings set forth below:

“**13-Week Projection**” means a projected statement of sources and uses of cash for the Borrower and its Subsidiaries on a weekly basis for the following 13 calendar weeks, in

substantially the form of Exhibit F, which shall include (a) the anticipated uses of the Revolving Credit Facility for each week during such period, (b) a rolling comparative analysis of the actual cash flow for the prior week against the forecast for such week, (c) a cumulative comparative analysis of actual cash flow against the forecast, (d) an explanation for any significant variances between such results and the forecasts and (e) cash balances of all deposit accounts of the Loan Parties as of such date. As used herein, “**13-Week Projection**” shall initially refer to the “Budget” delivered to the Administrative Agent in connection with the initial borrowings under the Facilities authorized by the Interim Order and dated not more than 5 days prior to the Petition Date and, thereafter, the most recent 13-Week Projection delivered by the ~~Borrowers~~Borrower in accordance with Section 6.02(k).

“**Acceptable Reorganization Plan**” shall mean a Reorganization Plan that provides for (a) the termination of the Commitments, (b) payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable) upon the earlier of (i) substantial consummation of such Reorganization Plan or (ii) the effective date of such Reorganization Plan, and (c) the cancellation, cash collateralization, posting of backstop letters of credit or such other provision for outstanding Letters of Credit on the Consummation Date of such Reorganization Plan, and is otherwise reasonably acceptable to the Arrangers and the Required Lenders.

“**Account**” has the meaning specified in the UCC.

“**Account Debtor**” has the meaning given to such term in the UCC.

“**Accounting Change**” means a change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“**Activities**” has the meaning specified in Section 10.05(a).

“**Additional Credit**” has the meaning specified in Section 4.02(e).

“**Administrative Agent**” has the meaning specified in the introductory statement hereto.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 12.02, or such other address or account of the Administrative Agent as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Agent Affiliate**” has the meaning specified in Section 10.03(c).

“**Agent’s Group**” has the meaning specified in Section 10.05(a).

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Aggregate Commitments**” means all Revolving Credit Commitments and all Term Commitments.

“**Agreement**” has the meaning assigned in the introductory statement hereto.

“**Anti-Terrorism Laws**” has the meaning specified in Section 5.26.

“**Applicable Percentage**” means, with respect to any Lender, (a) with respect to the Revolving Credit Facility, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Lender’s Revolving Credit Commitment at such time (or, if the Revolving Credit Commitment of each Lender shall have been terminated or expired, then the percentage of Total Revolving Credit Outstandings represented by the aggregate Outstanding Amount of such Lender’s Revolving Credit Loans and L/C Obligations) and (b) with respect to the Term Facility, the percentage (carried out to the ninth decimal place) of the Term Facility represented by the aggregate of such Lender’s undrawn Term Commitment and Term Loans at such time. The initial Applicable Percentage of each Lender in respect of the each Facility is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable.

“**Applicable Rate**” means (a) with respect to Revolving Credit Loans, (i) 3.25% per annum, in the case of Eurocurrency Rate Loans and Letters of Credit, (ii) 2.25% per annum, in the case of Base Rate Loans and (iii) 0.75% per annum, in the case of Revolving Commitment Fees and (b) with respect to Term Loans, (i) 8.00% per annum, in the case of Eurocurrency Rate Loans and (ii) 7.00% per annum, in the case of Base Rate Loans and (iii) 0.75% per annum, in the case of Term Commitment Fees.

“**Appropriate Lender**” means (i) in respect of the Revolving Credit Facility, each Revolving Lender, and (ii) in respect of the Term Facility, each Term Lender.

“**Approved Electronic Communications**” means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, including (a) any supplement to the Agreement, any joinder to any Collateral Document and any other written Contractual Obligation delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and (b) any Financial Statement, financial and other report, notice, request, certificate and other information material; provided, however, that, “Approved Electronic Communication” shall exclude (i) any notice of Borrowing, conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to Section 2.06 and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and

other material required to be delivered to satisfy any of the conditions set forth in Article 3 or any other condition to any Borrowing hereunder or any condition precedent to the effectiveness of this Agreement.

“Approved Electronic Platform” has the meaning specified in Section 10.03(a).

“Approved Foreign Account Debtors” means Tata Steel Limited, Trafigura AG, Vitol Holding B.V., Arcelor Mittal Sourcing, Gerdau Acominas SA, ThyssenKrupp Stahl AG and any other Account Debtor designated as an “Approved Foreign Account Debtor” by the Administrative Agent in its sole discretion.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means, collectively, Citigroup Global Markets Inc., Barclays Bank PLC, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, each in its capacity as joint lead arranger and joint bookrunner under the Loan Documents.

“As-Extracted Collateral” has the meaning specified in the UCC.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required hereunder), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, changes in shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Automatic Rejection Date” means the final day of the 120-day period (or, if extended by the Bankruptcy Court, 210-day period) provided for in Section 365(d)(4) of the Bankruptcy Code for the Loan Parties to assume leases in the Cases.

“Availability Period” means the period from and including the Closing Date to but not including the Termination Date.

“Avoidance Action” means the Debtors’ claims and causes of action that constitute avoidance actions under Sections 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy

Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

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

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York or any appellate court having jurisdiction over the Cases from time to time.

“**Bank of America**” means Bank of America, N.A., a national banking association.

“**Barclays**” means Barclays Bank PLC, New York Branch.

“**Base Rate**” means, in relation to a Loan in Dollars, the highest of (a) the rate of interest in effect for such day publicly announced from time to time by the Administrative Agent as its “prime rate” in effect in New York, New York; each change in such prime rate shall be effective on the date such change is publicly announced as effective, (b) the Federal Funds Rate from time to time plus 0.50% and (c) the Eurodollar Rate applicable for an Interest Period of one month plus 1.00%; *provided* that, in the case of any Term Loan, the Base Rate shall not be less than 2.50%.

“**Base Rate Loan**” means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

“**Beneficiary**” means the Administrative Agent and each Arranger, Lender and L/C Issuer.

“**Black Lung Act**” means the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901, et seq., the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, et seq., the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95 (1978), and the Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, Title 11, 95 Stat. 1643, in each case as amended.

“**Black Lung Liability**” means any liability or benefit obligations related to black lung claims and benefits under the Black Lung Act, and liabilities and benefits related to pneumoconiosis, silicosis, exposure to isocyanates or other lung disease arising under any federal or state law, including any Mining Law.

“**Blocked Account Agreement**” means, with respect to any Deposit Account, Securities Account, Commodities Contract or Commodities Account of any Loan Party, an agreement among the Administrative Agent, such Loan Party and such depository bank, securities intermediary or commodity intermediary, as applicable, sufficient to grant “control” to the Administrative Agent (a) under 9-104 of the UCC with respect to any Deposit Account, (b) under 9-106 of the UCC with respect to any Commodities Contract or Commodities Account or (c) under 8-106 with respect to any Securities Account.

“**Borrower**” has the meaning specified in the introductory statement hereto.

“**Borrower Materials**” has the meaning specified in Section 10.03(e).

“**Borrower Obligations**” means the Obligations of the Borrower.

“**Borrowing**” means a Revolving Credit Borrowing or a Term Borrowing, as the context may require.

“**Borrowing Base**” means, at any time, (a) the sum of (i) 85% of the face amount of all Eligible Billed Receivables of the Loan Parties, (ii) 75% of the face amount of all Eligible Unbilled Receivables of the Loan Parties, and (iii) 100% of Qualified Cash maintained by any Loan Party in the Cash Collateral Account in an amount not to exceed the lesser of (x) \$50,000,000 and (y) the aggregate amount of L/C Obligations outstanding at such time *minus* (b) any Reserves then in effect.

“**Borrowing Base Certificate**” means a certificate in substantially the form of Exhibit G (with such changes therein as may be required by the Administrative Agent to reflect the components of, and Reserves against, the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of each Loan Party owning any Eligible Receivables included in the Borrowing Base, which shall include detailed calculations as to the Borrowing Base as reasonably requested by the Administrative Agent.

“**Borrowing Base Deficiency**” means, at any time, the existence of Total Revolving Credit Outstandings which are in excess of the Maximum Revolving Credit.

“**Borrowing Notice**” means a notice of (a) a Revolving Credit Borrowing or (b) a Term Borrowing which, in each case, shall be substantially in the form of Exhibit A.

“**Business**” has the meaning specified in Section 5.09(b).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurocurrency Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“**Capital Expenditures**” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations). For purposes of this definition, the purchase price of equipment that is purchased substantially concurrently with the trade-in of existing equipment or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time, the proceeds of such asset sale or the amount of such insurance proceeds, as the case may be.

“**Capital Lease Obligations**” means of any Person as of the date of determination, the aggregate liability of such Person under Financing Leases reflected on a balance sheet of such Person under GAAP.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing, but excluding any securities convertible into or exchangeable for shares of Capital Stock.

“**Carve-Out**” means (i) all fees and interest required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code, (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not exceeding \$75,000, (iii) any and all allowed and unpaid claims of any professional of the Debtors or the statutory committee of unsecured creditors appointed in the Cases (the “**Creditors’ Committee**”) whose retention is approved by the Bankruptcy Court during the Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses (and the reimbursement of out-of-pocket expenses allowed by the Bankruptcy Court incurred by any members of the Creditors’ Committee (but excluding fees and expenses of third party professionals employed by such members of the Creditors’ Committee)) incurred, subject to the terms of the Orders, (A) prior to the occurrence of an Event of Default and (B) at any time after the occurrence and during the continuance of an Event of Default in an aggregate amount not exceeding \$7,000,000, *provided* that (x) the dollar limitation in this clause (iii) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent or any Lender or any of the foregoing’s respective attorneys, advisors and agents, (y) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above and (z) cash or other amounts on deposit in the Cash Collateral Account shall not be subject to the Carve-Out.

“**Carve-Out Reserve**” means, at any time, a reserve in an amount equal to \$7,000,000.

“**Cases**” has the meaning specified in the introductory statement hereto.

“**Cash Collateral Account**” means a cash deposit account established and maintained at the Administrative Agent and over which the Administrative Agent has sole dominion and control, upon terms as may be reasonably satisfactory to the Administrative Agent.

“**Cash Collateralize**” has the meaning specified in Section 2.04(h).

“**Cash Equivalents**” means any of the following types of Investments:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the federal government of the United States of America or any agency or

instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof;

(b) time deposits or eurodollar time deposits with, or overnight bank deposits and bankers' acceptances of, any (i) (A) Lender or (B) commercial bank that is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, any foreign bank, or its branches or agencies (fully protected against currency fluctuations) that, at the time of acquisition, are rated at least "A-1" by S&P or "P-1" by Moody's, in each case with maturities of not more than twelve months from the date of acquisition thereof;

(c) (i) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) entered into with any financial institution meeting the qualifications specified in clause (b) above or (ii) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America, in each case maturing within 12 months or less from the date of acquisition, *provided*, that the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions With Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985;

(d) commercial paper issued by any Person rated at least "A-1" by S&P or "P-1" by Moody's, in each case with maturities of not more than 270 days from the date of acquisition thereof; and

(e) shares of any money market fund that (i) has at least 95% of its assets invested continuously in the types of investments referred to in clauses (a), (b), (c) and (d) above, (ii) has net assets whose value exceeds \$500,000,000 and (iii) is rated at least "A-1" by S&P or "P-1" by Moody's.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means (a) a Revolving Lender or an Affiliate of a Revolving Lender that is a party to a Secured Cash Management Agreement on the Closing Date or (b) any Person that, at the time it enters into a Secured Cash Management Agreement, is a Revolving Lender or an Affiliate of a Revolving Lender, in each case, in its capacity as a party to such Secured Cash Management Agreement.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or

application thereof by any Governmental Authority or (c) the making or issuance of any request or directive (whether or not having the force of law) by any Governmental Authority required to be complied with by any Lender; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means:

(a) an event or series of events by which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, directly or indirectly, of 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors).

“Citibank” means Citicorp North America, Inc., a Delaware corporation.

“Class” means (i) with respect to any Loans, whether such Loans are Revolving Credit Loans or Term Loans, (ii) with respect to any Commitments, whether such Commitments are Revolving Credit Commitments or Term Commitments and (iii) with respect to any Lenders, whether such Lenders are Revolving Lenders or Term Lenders.

“**Class Required Lenders**” means the Required Term Lenders or the Required Revolving Lenders, as the context requires.

“**Closing Date**” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 12.01.

“**Coal**” means coal owned by any Loan Party, or coal that any Loan Party has the right to extract, in each case located on, under or within, or produced or severed from the Real Property of any Loan Party.

“**Coal Act**” means the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701, et seq., as amended.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means all of the property of the Loan Parties that is under the terms of the Collateral Documents and the Orders, subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties as security for the Obligations.

“**Collateral Documents**” means, collectively, the Security Agreement, the Mortgages, the Existing Mortgages and each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties or as security for the Obligations or a Lien in favor of the First Out Agent for the benefit of the First Out Secured Parties as security for the Second Out Obligations. The Collateral Documents shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

“**Collection Account**” has the meaning specified in Section ~~6.23~~6.22.

“**Commitment**” means a Revolving Credit Commitment and/or a Term Commitment, as the context may require.

“**Commodities Account**” has the meaning specified in the UCC.

“**Commodities Contact**” has the meaning specified in the UCC.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit D.

“**Consolidated EBITDA**” means, as of the last day of any period, Consolidated Net Income for such period (excluding, without duplication, (a) Federal, state, local and foreign income tax expense or benefit for such period, (b) noncash compensation expenses related to common stock and other equity securities issued to employees, (c) extraordinary or non-recurring gains and losses in accordance with GAAP, (d) gains or losses on discontinued operations and (e) any FASB ASC 360-10 writedowns, in each case for such period), *plus* (i) consolidated interest expense, determined in accordance with GAAP, *plus* (ii) any minority interests share of income and losses for such period, *plus* (iii) to the extent deducted in

computing such Consolidated Net Income, the sum of all income taxes, depreciation, depletion and amortization of property, plant, equipment and intangibles, *plus* (iv) any debt extinguishment costs, *plus* (v) non-cash charges, including in respect of any pre-petition obligations, liabilities or claims and non-cash charges due to cumulative effects of changes in accounting principles (but excluding any such charge which requires an accrual of, or a cash reserve for, anticipated cash charges for any future period), *plus* (vi) reclamation and remediation obligation expenses, including such expenses relating to selenium (it being understood that reclamation and remediation obligation expenses may not be added back under any other clause in this definition), *plus* (vii) cash proceeds of asset sales or principal repayments in cash of notes receivables related to asset sales, so long as such cash proceeds and cash repayments in the aggregate do not exceed 20% of cumulative Consolidated EBITDA (from June 1, 2012) in any reporting period, *plus* (viii) cash received from any non-wholly owned subsidiary or joint venture, *plus* (ix) negative sales or purchase contract accretion, *plus* (x) costs and expenses (including legal, financial and other advisors) incurred in connection with the Cases and any related Reorganization Plan or any other transaction related thereto, *plus* (xi) past mining obligation expenses less past mining obligation cash payments *minus* (xii) gains and losses on asset sales, *minus* (xiii) Consolidated EBITDA of any non-wholly owned subsidiary, and equity earnings and losses from joint ventures, *minus* (xiv) cash dividends made to any minority interest holder, *minus* (xv) positive sales or purchase contract accretion. For the avoidance of doubt, for any period, to the extent that Consolidated Net Income has been increased for such period due to any sales or purchase contract accretion, the amount of such increase shall be subtracted from Consolidated Net Income (and not added back) in calculating Consolidated EBITDA for such period.

“Consolidated Net Income” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the net income of the Borrower and its Subsidiaries for that period, determined in accordance with GAAP.

“Consummation Date” means the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Reorganization Plan that is confirmed pursuant to an order of the Bankruptcy Court.

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

“Control” means 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 ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

“Control Account” means any Deposit Account, Securities Account or Commodities Account (a) with, and under the sole dominion and control of, the Administrative Agent or (b) that is subject to a Blocked Account Agreement.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Creditors’ Committee**” has the meaning specified in the definition of “Carve-Out”.

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

“**Debtors**” has the meaning specified in the introductory statement.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate *plus* (ii) the Applicable Rate, if any, applicable to Base Rate Loans *plus* (iii) 2% per annum; *provided, however*, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate *plus* 2% per annum.

“**Defaulting Lender**” means, subject to Section 2.15(b) any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business

or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) upon delivery of written notice of such determination to the Borrower, each L/C Issuer and each Lender.

“**Deposit Account**” has the meaning specified in the UCC.

“**Designated Amount**” has the meaning specified in Section 12.16.

“**Designation Notice**” has the meaning specified in Section 12.16.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any Real Property Leases, notes or accounts receivable or any rights and claims associated therewith.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” means any Subsidiary of the Borrower that is organized under the laws of any political subdivision of the United States or the District of Columbia.

“**Eligibility Reserves**” means such other reserves as the Administrative Agent, in its sole discretion, may from time to time establish to reflect risks or contingencies arising after the Closing Date that may affect any one or more class of such items and that have not already been taken into account in the calculation of the Borrowing Base.

“**Eligible Assignee**” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) except in the case of an assignment to an existing Lender or an Affiliate of an existing Lender, the Administrative Agent, (ii) in the case of an assignment of a Revolving Credit Commitment or Revolving Credit Loan, any L/C Issuer and, unless an Event of Default has occurred and is continuing, the Borrower and (iii) in the case of an assignment of a Term Commitment, unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed, *provided* that the Borrower shall be deemed to have consented to such Person if the Borrower has not responded within 10 Business Days of a request for such approval); *provided, further*, that in no event shall any Loan Party or Defaulting Lender be an “Eligible Assignee”.

“**Eligible Billed Receivables**” means Eligible Receivables for which an invoice has been sent to the applicable Account Debtor, calculated net of all finance charges, late fees and other fees that are unearned, sales, excise or similar taxes, and credits or allowances granted at such time.

“**Eligible Receivables**” means the aggregate gross outstanding balance of each Account of each Loan Party arising out of the sale of merchandise, goods or services in the ordinary course of business, that is made by such Loan Party to a Person that is not an Affiliate of any Loan Party and that constitutes Collateral in which the Administrative Agent has a fully perfected first priority Lien; *provided, however*, that an Account shall not be an “Eligible Receivable” if any of the following shall be true:

(a) such Account (i) is more than 60 days past due according to the original terms of sale, (ii) is due more than 90 days from the original invoice date thereof or (iii) has been invoiced at least twice; or

(b) any warranty contained in this Agreement or any other Loan Document with respect to such specific Account is not true and correct with respect to such Account; or

(c) the Account Debtor on such Account has disputed liability or made any claim with respect to any other Account due from such Account Debtor to any Loan Party but only to the extent of such dispute or claim; or

(d) the Account Debtor on such Account has (i) filed a petition for bankruptcy or any other relief under the Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization or relief of debtors, (ii) made an assignment for the benefit of creditors, (iii) had filed against it any petition or other application for relief under the Bankruptcy Code or any such other law, (iv) has failed, suspended business operations, become insolvent, called a meeting of its creditors for the purpose of obtaining any financial concession or accommodation or (v) had or suffered a receiver or a trustee to be appointed for all or a significant portion of its assets or affairs, unless such Account Debtor (A) is a debtor-in-possession in a case then pending under chapter 11 of the Bankruptcy Code, (B) has established debtor-in-possession financing satisfactory to the Administrative Agent in its sole discretion and (C) otherwise satisfies each of the requirements set forth in this definition of Eligible Receivables; or

(e) the Account Debtor on such Account or any of its Affiliates is also a supplier to or creditor of any Loan Party unless such supplier or creditor has executed a no-offset letter satisfactory to the Administrative Agent, in its sole discretion; or

(f) such Account is with an Approved Foreign Account Debtor and the total Accounts of all Approved Foreign Account Debtors to the Loan Parties represent more than 25% of the Eligible Receivables of the Loan Parties at such time, but only to the extent of such excess; or

(g) the sale represented by such Account is to an Account Debtor other than an Approved Foreign Account Debtor located outside the United States, unless the sale is on letter of credit or acceptance terms acceptable to the Administrative Agent, in its sole discretion and (i) such letter of credit names the Administrative Agent as beneficiary for the benefit of the Secured Parties or (ii) the issuer of such letter of credit has consented to the assignment of the proceeds thereof to the Administrative Agent; or

(h) the sale to such Account Debtor on such Account is on a bill-on-hold, guaranteed sale, sale-and-return, sale-on-approval or consignment basis or is made pursuant to an agreement providing for repurchase or return of any goods claimed to be defective or otherwise unsatisfactory; or

(i) such Account is subject to a Lien in favor of any Person other than the Administrative Agent for the benefit of the Secured Parties; or

(j) such Account is subject to any security deposit, deduction, offset, counterclaim, return privilege or other conditions other than volume sales discounts given in the ordinary course of the Loan Parties' business; *provided, however*, that such Account shall be ineligible pursuant to this clause (j) only to the extent of such security deposit, deduction, offset, counterclaim, return privilege or other condition; or

(k) the Account Debtor on such Account is a Governmental Authority, unless the Borrower has assigned its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, in the case of a federal Governmental Authority, and pursuant to applicable law, if any, in the case of any other Governmental Authority, and such assignment has been accepted and acknowledged by the appropriate government officers; or

(l) 50% or more of the outstanding Accounts of the Account Debtor have become, or have been determined by the Administrative Agent, in accordance with the provisions hereof, to be, ineligible; or

(m) the sale represented by such Account is denominated in a currency other than Dollars; or

(n) such Account is not evidenced by an invoice or other writing in form acceptable to the Administrative Agent, in its sole discretion; or

(o) (i) any Loan Party, in order to be entitled to collect such Account, is required to perform any additional service for, or perform or incur any additional obligation to, the Person to whom or to which it was made, (ii) such Account was invoiced in advance of goods sold or (iii) the revenue associated with such Account has not been earned; or

(p) the total Accounts of such Account Debtor to the Loan Parties represent more than 15% of the Eligible Receivables of the Loan Parties at such time, but only to the extent of such excess; or

(q) to the extent that the Loan Parties have received cash payment in respect of such Accounts but have not yet applied such payment to reduce the amount of such Account; or

(r) such Account is classified as “Laws” billing on the books of any Loan Party or, otherwise, represents Coal mining costs incurred by a Loan Party that may be charged to an Account Debtor; or

(s) such Account has been written off the books of a Loan Party or has otherwise been designated as uncollectible on such books; or

(t) such Account (i) represents any unpaid portion of any other Account with such Account Debtor or (ii) constitutes a chargeback, debit memo or other adjustment for unauthorized deductions; or

(u) to the extent that (i) a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment on such Account and returned uncollected for any reason or (ii) such Account is otherwise classified as a note receivable and the obligation with respect thereto is evidenced by a promissory note or other debt instrument or agreement; or

(v) the Administrative Agent, in accordance with its customary criteria, determines, in its sole discretion, that such Account might not be paid or is otherwise ineligible.

“**Eligible Unbilled Receivables**” means each Eligible Receivable (and each Account that would otherwise be an Eligible Receivable if not for clauses (i) and (ii) below), calculated net of all finance charges, late fees and other fees that are unearned, sales, excise or similar taxes, and credits or allowances granted at such time, for which (i) the sale represented by such Eligible Receivable was not more than 30 days prior to any date of determination, (ii) an invoice has not yet been sent to the applicable Account Debtor.

“**Environment**” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, natural resources such as flora or fauna or as otherwise defined in any Environmental Law.

“**Environmental Laws**” means any and all current and future federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, concessions, grants, franchises, agreements or other governmental restrictions or common law causes of action applicable to the Borrower’s properties and operations relating to (a) protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials, substances or wastes into the environment including ambient air, surface water, ground water, or land, (b) SMCRA, (c)

MSHA, (d) human health as affected by hazardous or toxic substances, (e) acid mine drainage and (f) mining operations and activities to the extent relating to environmental protection or reclamation; *provided*, that “**Environmental Laws**” do not include any laws relating to worker or retiree benefits, including benefits arising out of occupational diseases.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the Environment, (e) Reclamation or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permits**” means any and all permits, licenses, registrations, certifications, notifications, exemptions and any other authorization required under any applicable Environmental Law (including, without limitation, those necessary under any applicable Environmental Laws for the construction, maintenance and operation of any coal mine or related processing facilities or Reclamation).

“**Equity Interests**” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement

of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“**Eurocurrency Liabilities**” has the meaning assigned to that term in Regulation D of the Federal Reserve Board.

“**Eurodollar Base Rate**” means, with respect to any Interest Period for any Eurocurrency Rate Loan, the rate determined by the Administrative Agent to be the offered rate for deposits in Dollars for the applicable Interest Period appearing on the Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on the second full Business Day next preceding the first day of each Interest Period. In the event that such rate does not appear on the Reuters Screen LIBOR01 Page (or otherwise on the Reuters screen), the Eurocurrency Base Rate for the purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Administrative Agent.

“**Eurocurrency Rate**” means, with respect to any Interest Period for any Eurocurrency Rate Loan, an interest rate per annum equal to the rate per annum obtained by dividing (a) the Eurocurrency Base Rate by (b)(i) a percentage equal to 100% *minus* (ii) the reserve percentage applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the Eurocurrency Rate is determined) having a term equal to such Interest Period; *provided*, that, in the case of any Term Loans, in no event shall the Eurocurrency Rate be less than 1.50% per annum.

“**Eurocurrency Rate Loan**” means a Revolving Credit Loan or Term Loan that bears interest at a rate based on the Eurocurrency Rate.

“**Event of Default**” has the meaning specified in Section 9.01.

“**Excess Availability**” means, at any time the Maximum Revolving Credit at such time *minus* the Total Revolving Credit Outstandings at such time.

“**Excluded Account**” means (i) any deposit or concentration accounts funded in the ordinary course of business, the deposits in which shall not exceed \$100,000 individually, or \$500,000 in the aggregate and (ii) any payroll, trust and tax withholding funded in the ordinary course of business or required by applicable law.

“**Excluded Taxes**” means, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) branch profits taxes or taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it

(in lieu of net income taxes), as a result of a present or former connection between the Administrative Agent, such Lender or such L/C Issuer (or such other recipient) and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent, such Lender, or such L/C Issuer (or such other recipient) having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any Loan Document), (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 12.13), any United States withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or any tax that is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law after the date such Foreign Lender becomes a party hereto) to comply with Section 3.01(e); except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 3.01(a), or (c) any United States withholding Taxes imposed under FATCA.

“Executive Order” has the meaning specified in Section 5.26.

“Existing Convertible Notes” means the convertible notes of the Borrower issued pursuant to the Existing Convertible Notes Indenture as in effect on the Closing Date in an aggregate principal amount of \$200,000,000.

“Existing Convertible Notes Indenture” means the Indenture, dated as of May 28, 2008, among the Borrower, the subsidiaries party thereto and U.S. Bank National Association, as trustee.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement dated as of May 5, 2010 among the Borrower, the lenders party thereto and Bank of America, N.A., as administrative agent (as amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, supplemented or otherwise modified).

“Existing Mortgages” means the Mortgages in favor of the Second Out Agent entered into in connection with the Existing Credit Agreement.

“Existing Secured Agreements” means the agreements set forth on Schedule 1.01(b).

“Existing Securitization Facility” means (1) the Purchase and Sale Agreement by and among the Patriot Coal Sales LLC, Magnum Coal Sales LLC (together with Patriot Coal Sales LLC, the **“Originators”**), the Borrower and Patriot Coal Receivables (SPV) Ltd. (the **“SPV”**) (as amended, restated, supplemented or otherwise modified), (2) that certain Receivables Purchase Agreement by and among the SPV, the Borrower, the various conduit purchasers, related committed purchasers, L/C participants and purchaser agents from time to time party thereto and Fifth Third Bank, as administrator and as L/C bank (as amended, restated, supplemented or otherwise modified) and (3) that certain Performance Guaranty, by the

Borrower for the benefit of Fifth Third Bank, as administrator (on behalf of the beneficiaries) (as amended, restated, supplemented or otherwise modified).

“Existing Senior Notes” means the senior notes of the Borrower issued pursuant to the Senior Notes Indenture as in effect on the Closing Date in an aggregate principal amount of \$250,000,000.

“Existing Senior Notes Indenture” means the Indenture, dated as of May 5, 2010 among the Borrower, the subsidiaries party thereto and Wilmington Trust Company, as trustee.

“Existing Swing Line Obligations” obligations in an amount not to exceed \$25,000,000 in respect of Swing Line Loans (as defined in the Existing Credit Agreement) arising under the Existing Credit Agreement prior to the Petition Date.

“Extension Date” means the date at least ten Business Days prior to the then current Maturity Date on which all of the following conditions have been satisfied (a) no Default shall exist, or would result from any Credit Extension or from the occurrence of the Extension Date, (b) the representations and warranties of the Loan Parties contained in this Agreement and in each other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively, (c) an Acceptable Reorganization Plan shall have been filed in the Bankruptcy Court with respect to the Cases, (d) the “Extension Date” as defined in the Second Out Facility shall have occurred and the “Maturity Date” thereunder shall have been extended to December 31, 2013, (e) the Extension Fee and all other fees and expenses due and payable under the Loan Documents shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable, and (f) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying that the foregoing conditions have been satisfied.

“Extension Fee” has the meaning specified in Section 2.10(b)

“Extraordinary Receipt” means any cash received by the Borrower or any of its Subsidiaries as proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) or condemnation awards (and payments in lieu thereof).

“Facilities” has the meaning specified in the introductory statement hereto.

“Fair Market Value” means with respect to any asset or group of assets at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined in good faith by the Borrower or, if such asset shall have been the subject of a relatively contemporaneous appraisal by an independent third party

appraiser, the basic assumptions underlying which have not materially changed since its date, the value set forth in such appraisal; *provided, however* that if the value of the consideration obtainable in a sale of such asset would exceed \$25,000,000, such determination as to value shall be made by the Board of Directors of the Borrower and evidenced by a resolution of the Board of Directors certified by a Responsible Officer and delivered to the Administrative Agent.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Federal Reserve Board**” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Fee Letters**” means each fee letter, dated July 9, 2012, among the Arrangers and the Borrower.

“**Final Order**” has the meaning specified in Section 4.02(e).

“**Final Order Entry Date**” means the date on which the Final Order is entered by the Bankruptcy Court.

“**First Day Orders**” means all orders entered by the Bankruptcy Court on, or within five days of, the Petition Date or based on motions filed on or about the Petition Date.

“**Financial Statements**” means the financial statements of the Borrower and its Subsidiaries delivered in accordance with Section 4.01(e) and Section 6.01.

“**Financing Lease**” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

“**Foreign Lender**” means, with respect to the Borrower, any Lender that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

“**Foreign Subsidiary**” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia and any Subsidiary thereof.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender’s Ratable Portion of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination.

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

“**Grantor**” means each entity defined as a Grantor under the Security Agreement.

“**Guarantee**” means, as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to the extent the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation in order to induce the creation of such obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, reimbursement obligations under letters of credit and any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; *provided, however*, that the term Guarantee shall not include (i) ordinary course performance guarantees by any Loan Party of the obligations (other than for the payment of borrowed money) of any other Loan Party and (ii) endorsements of

instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor Subsidiary" means any Subsidiary of the Borrower that is (a) a debtor in a case then pending under chapter 11 of the Bankruptcy Code or any ancillary proceedings, (b) a Domestic Subsidiary and (c) a Foreign Subsidiary, in the case of clause (c) to the extent the Borrower determines in good faith and in its reasonable discretion that no material adverse tax consequences would result; *provided*, that such term shall not include (i) the SPV, (ii) EACC Camps Inc., a West Virginia corporation, so long as Section 5.25 continues to be true and correct in all respects or (iii) (A) WWMV, LLC, (B) Rhino Eastern LLC, (C) White Stallion Coal, LLC, (D) Squaw Creek Coal Company or (E) Tecumseh Coal Corporation, each of which is a non-wholly owned joint venture with a third party.

"Hazardous Materials" means (i) any explosive or radioactive substances or wastes and (ii) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

"Hedge Bank" means (a) a Revolving Lender or an Affiliate of a Revolving Lender that is a party to a Secured Hedge Agreement on the Closing Date or (b) any Person that, at the time it enters into a Secured Hedge Agreement, is a Revolving Lender or an Affiliate of a Revolving Lender, in each case, in its capacity as a party to such Secured Hedge Agreement.

"Honor Date" shall have the meaning specified in Section 2.04(d)(i).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, bid, performance and reclamation bonds, surety and appeal bonds and similar instruments issued for the account of such Person;

- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices and accrued expenses incurred in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) Capital Lease Obligations; and
- (g) all Guarantees of such Person in respect of any of the foregoing Indebtedness of any other Person.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such person is liable therefor as a result of such Person's ownership interest in such entity or otherwise, except (other than in the case of general partner liability) to the extent that the terms of such Indebtedness expressly provide that such person is not liable therefor. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"Indemnified Taxes" means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

"Indemnitees" has the meaning specified in Section 12.04(b).

"Information" has the meaning specified in Section 12.07.

"Intellectual Property Security Agreements" means the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, each as defined under the Security Agreement.

"Interest Payment Date" means, (a) as to any Eurocurrency Rate Loan, the last Business Day of each month, the last day of each Interest Period applicable to such Loan and the Termination Date; and (b) as to any Base Rate Loan, the last Business Day of each month and the Termination Date.

"Interest Period" means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two or three [months thereafter](#), as

selected by the Borrower in its Borrowing Notice or Notice of Conversion or Continuation, as applicable; *provided*, that:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date.

“Interim Order” means an interim order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in the form set forth as Exhibit J, with changes to such form as are reasonably satisfactory to each Arranger in its sole discretion, approving the Loan Documents, which Interim Order shall, among other things (i) have been entered on such prior notice to such parties as may be satisfactory to each Arranger in its sole discretion, (ii) authorize the extensions of credit in respect of the Revolving Facility and the Term Facility, each in the amounts and on the terms set forth herein, (iii) grant the Superpriority Claim status and other Collateral and Liens referred to herein and in the other Loan Documents, (iv) approve the payment by the ~~Borrowers~~Borrower of the fees provided for herein, (v) approve the repayment in full of the Existing Swingline Obligations and the Existing Securitization Facility, (vi) authorize the extensions of credit in respect of the Second Out Facility and the roll-up of the obligations under the Existing Credit Agreement and the Pre-Petition Letters of Credit, (vii) provide for the waiver of section 506(c) of the Bankruptcy Code by the Debtors as to the Collateral, subject only to and effective upon entry of the Final Order, (viii) provide for approval of certain intercreditor provisions governing priority of payments and liens and exercise remedies among the Secured Parties and Second Out Secured Parties and (ix) provide for approval of certain provisions and protections to the Secured Parties relating to Real Property Leases.

“Interim Order Entry Date” means the date on which the Interim Order is entered by the Bankruptcy Court.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock or other securities of another Person, (b) a loan, advance (excluding intercompany liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries) or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the

amount of any Investment shall be (i) the amount actually invested, as determined immediately prior to the time of each such Investment, without adjustment for subsequent increases or decreases in the value of such Investment *minus* (ii) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash, Cash Equivalents or short-term marketable debt securities.

“**Inventory**” has the meaning specified in the UCC.

“**IP Rights**” has the meaning specified in Section 5.18.

“**IRS**” means the United States Internal Revenue Service.

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

“**Issuer Documents**” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any L/C Issuer and the Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to any such Letter of Credit.

“**Joint Venture**” means any Person (other than a Subsidiary) in which the Borrower and its Subsidiaries collectively hold an ownership interest.

“**Laws**” means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**L/C Advance**” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“**L/C Cash Collateral Account**” means the account established by, and under the sole dominion and control of, the Administrative Agent maintained with the Administrative Agent and designated as the “Patriot L/C Cash Collateral Account”.

“**L/C Cash Collateral Deposit Amount**” means, at any time, the total amount on deposit in the L/C Cash Collateral Account pursuant to the terms of this Agreement. The L/C Cash Collateral Deposit Amount may be reduced or increased from time in accordance with the terms of this Agreement.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Issuer**” means, collectively, each of Citibank, Barclays and Bank of America in its respective capacities as issuer of Letters of Credit hereunder, and such other Lender or Lenders that agree to act as L/C Issuer at the request of the Borrower, and any successor issuer of Letters of Credit hereunder.

“**L/C Obligations**” means as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts with respect to Letters of Credit, including all L/C Borrowings *plus* the aggregate amount of Letter of Credit Fees then due and payable.

“**L/C Sublimit**” means (a) with respect to the L/C Issuers taken as a whole, \$100,000,000 and (b) (i) with respect to Citi, \$34,000,000, (ii) with respect to Barclays, \$33,000,000 and (iii) with respect to Bank of America, \$33,000,000 or (iv) with respect to Citi, Barclays, Bank of America and any other L/C Issuer, such other amounts as may be agreed from time to time among all L/C Issuers, the Borrower and the Administrative Agent; *provided* that the aggregate L/C Sublimit for the L/C Issuers shall not exceed the L/C Sublimit in clause (a). The L/C Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

“**Lender**” has the meaning specified in the introductory statement hereto.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire or Assignment and Acceptance by which it became a Lender or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means any letter of credit issued pursuant to Section 2.04(a).

“**Letter of Credit Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any L/C Issuer.”

“**Letter of Credit Expiration Date**” means the day that is five Business Days prior to the Maturity Date.

“**Letter of Credit Fee**” has the meaning specified in Section 2.04(kj).

“**Liability Assumption Agreements**” means (a) the Coal Act Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC and Peabody, (b) the NBCWA Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody, and (c) the Salaried Employee Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Financing Lease having substantially the same economic effect as any of the foregoing).

“**Liquidity**” means, on any date of determination, the sum of (a) the aggregate amount of Qualified Cash maintained by each Loan Party in a Control Account on such date *plus* (b) Excess Availability on such date.

“**Loan**” means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Term Loan, or a Revolving Credit Loan.

“**Loan Documents**” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) each Issuer Document, (e) each Secured Hedge Agreement, and (f) each Secured Cash Management Agreement.

“**Loan Parties**” means, collectively, the Borrower and each Subsidiary Guarantor.

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Material Adverse Effect**” means a material adverse effect upon (a) the business, assets, operations, property or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole, other than (i) as customarily would occur as a result of the filing of the Cases or the effect of bankruptcy or those circumstances and events leading up thereto specified in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 or (ii) as would occur as a result of non-cash impairment charges or a non-cash selenium charge, each as previously disclosed to the Arrangers or (b) the validity or enforceability of this or any of the other Loan Documents or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

“**Material Lease**” means any Real Property Lease or other Contractual Obligations in respect of Material Leased Real Property.

“**Material Leased Real Property**” means (a) all Real Property listed on Schedule 5.08(b) and (b) any other Real Property subject to a Real Property Lease with respect to which a Loan Party acquires an interest with Coal reserves having a fair market value reasonably estimated by the Borrower (or, at the reasonable request of the Administrative Agent, by an independent appraiser acceptable to the Administrative Agent) to be in excess of \$4,000,000.

“**Material Owned Real Property**” means (a) all Real Property listed on Schedule 5.08(a) and (b) any other Real Property owned in fee by any Loan Party having a fair market value reasonably estimated by the Borrower (or, at the reasonable request of the Administrative Agent, by an independent appraiser acceptable to the Administrative Agent) to be in excess of \$2,500,000.

“**Maturity Date**” means (i) the date that is 450 days after the Closing Date or (ii) if the Extension Date has occurred, December 31, 2013.

“**Maximum Revolving Credit**” means, at any time, (a) the lesser of (i) the Borrowing Base at such time *minus* the aggregate amount of Designated Amounts in respect of Secured Agreements and (ii) the Revolving Credit Commitments in effect at such time, (b) *minus* \$13,000,000, (c) *minus* the Carve-Out Reserve.

“**Mining Financial Assurances**” has the meaning specified in Section 5.10.

“**Mining Title**” means fee simple title to surface and/or Coal or an undivided interest in fee simple title thereto or a leasehold interest in all or an undivided interest in surface and/or Coal together with (A) for Real Property designated for surface mining, no less than those easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, and transport Coal by surface mining methods; (B) for Real Property designated for underground mining, no less than those easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, and transport Coal by underground mining methods; and (C) for Real Property where any Loan Party has facilities currently used in the Coal mining business, including office and administrative buildings, mine openings, air shafts, preparation and processing plants, slurries and gob disposal areas, retention and drainage ponds, unfinished reclamation areas, coal terminals, and coal loading and storage facilities, no less than those easements, licenses, privileges, rights, and appurtenances as are necessary to operate such facilities in the manner presently operated.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Mortgage**” means a deed of trust, trust deed, deed to secure debt, mortgage, leasehold mortgage and leasehold deed of trust in form and substance reasonably satisfactory to the Administrative Agent, in each case as amended, restated, supplemented or otherwise modified from time to time.

“**MSHA**” means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq., as amended.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Cash Proceeds**” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset

and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided, that if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary in connection therewith.

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

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing Term Loans or Revolving Credit Loans, as the case may be, made by such Lender, substantially in the form of Exhibit C-1 or Exhibit C-2, as applicable.

“Notice of Conversion or Continuation” means a notice by the Borrower to (i) convert Base Rate Loans or any portion thereof to Eurocurrency Rate Loans or (ii) at the end of any applicable Interest Period, convert Eurocurrency Rate Loans or any portion thereof into Base Rate Loans or to continue such Eurocurrency Rate Loans or any portion thereof for an additional Interest Period, in each case, substantially in the form of Exhibit B.

“Obligations” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, including without limitation, the Subsidiary Guarantor Obligations.

“Obligee Guarantor” shall have the meaning given to such term in Section 11.09.

“Operating Forecast” means a consolidated business plan and projected operating budget substantially in the form of the budget dated July 8, 2012, previously delivered to the Administrative Agent.

“Orders” means, collectively, the Interim Order and the Final Order.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the

partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Taxes**” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Outstanding Amount**” means (i) with respect to Term Loans on any date, the aggregate outstanding principal amount thereof, after giving effect to any prepayments or repayments thereof occurring on such date, (ii) with respect to Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans occurring on such date; and (iii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“**Overnight Rate**” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or any L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“**Participant**” has the meaning specified in Section 12.06(d).

“**PBGC**” means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA, or any successor thereto.

“**Peabody**” means Peabody Energy Corporation, a Delaware corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“**Perfection Certificate**” means a perfection certificate substantially in the form of Exhibit I or any other form approved by the Administrative Agent, as such perfection certificate may be amended, restated, supplemented or otherwise modified from time to time.

“**Permitted Land Swap**” means any transfer conducted in the ordinary course of business, consistent with past practice, of Real Property by a Loan Party in which at least 90% of the consideration received by the transferor consists of Real Property; *provided*, that, unless otherwise agreed by the Administrative Agent (i) the aggregate Fair Market Value of the Real

Property being received by the applicable Loan Party is approximately equal to or greater than the Fair Market Value of the Real Property being transferred by such Loan Party in such exchange, (ii) the Real Property received by such Loan Party will be used by such Loan Party in a line of business that the Loan Parties engaged in on the Closing Date, (iii) the exchange of assets by the parties to the transaction is substantially simultaneous, (iv) in evaluating any such transfer, such Loan Party shall use sound mining and business practices, including conducting engineering and geologic reviews of such property, internal or third-party appraisals and cash flow analyses or assessments of the impact of such transfer on the Borrower's five year business plan, (v) the Real Property received by such Loan Party shall not be subject to any Contractual Obligation that limits the ability of such Loan Party to create, incur, assume or suffer to exist any Lien on such Real Property except to the extent that the Real Property being transferred by such Loan Party is subject to such a Contractual Obligation and (vi) the aggregate Fair Market Value of all Real Property transferred since the Closing Date by the Loan Parties in any such transfer or transfers shall not exceed \$50,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" has the meaning specified in the introductory statement hereto.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, by any ERISA Affiliate.

"Pledged Debt" has the meaning specified in Section 1.1 of the Security Agreement.

"Pledged Equity Interests" has the meaning specified in Section 1.1 of the Security Agreement.

"Prepayment Date" means (i) the date that is 30 days after the Interim Order Entry Date if the Final Order has not been entered by the Bankruptcy Court prior to such date (*provided, however*, that such date shall be 45 days after the Interim Order Entry Date if entry of the Final Order is delayed by any requirements as a result of an evidentiary hearing or similar hearing or process associated with objections being made to the entry of the Interim Order or the Final Order) or (ii) such later date as approved by the Required Lenders.

"Pre-Petition Debt" means, collectively, the Indebtedness and any and all claims (as such term is defined in Section 101(5) of the Bankruptcy Code) of each Debtor outstanding and unpaid on the date on the Petition Date, or such later date on which such Person becomes a Debtor by commencing a Case.

"Pre-Petition Letters of Credit" mean, collectively, the letters of credit issued under the Existing Credit Agreement prior to the Petition Date.

"Pre-Petition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any (i) Pre-Petition Debt, (ii)

“critical or foreign vendor payments” or (iii) trade payables (including, without limitation, in respect of reclamation claims), or other pre-petition claims against any Debtor.

“**Production Payments**” means with respect to any Person, all production payment obligations and other similar obligations with respect to coal and other natural resources of such Person that are recorded as a liability or deferred revenue on the financial statements of such Person in accordance with GAAP.

“**Properties**” means the facilities and properties currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries.

“**Public Lender**” has the meaning specified in Section 10.03(e).

“**Qualified Cash**” means unrestricted cash or Cash Equivalents of the Loan Parties that are subject to the valid, enforceable and first priority perfected security interest of the Administrative Agent, and which cash and Cash Equivalents are not subject to any other Lien or claim, except to the extent that the holder of any of the same has entered into an intercreditor agreement with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent (other than customary Liens or rights of setoff of the institution maintaining such accounts permitted hereunder solely in its capacity as a depository, *provided*, that, for purposes of the amount of Qualified Cash included in the calculation of Borrowing Base, such amount may be reduced, at the Administrative Agent’s option, by any obligations owing to such institution and ~~Borrowers~~Borrower shall provide such information with respect to such obligations as the Administrative Agent may from time to time request).

“**Ratable Portion**” or (other than in the expression “equally and ratably”) “ratably” means, with respect to any (i) Revolving Lender, the percentage obtained by dividing (a) the Revolving Credit Commitment of such Revolving Lender by (b) the aggregate Revolving Credit Commitments of all Revolving Lenders (or, at any time after the Termination Date, the percentage obtained by dividing the aggregate outstanding principal balance of the Total Revolving Credit Outstandings owing to such Revolving Credit Lender by the aggregate outstanding principal balance of the Total Revolving Credit Outstandings owing to all Revolving Lenders) or (ii) Term Lender, the percentage obtained by dividing (a) the principal amount of such Term Lender’s Loans by (b) the aggregate Term Loans of all Term Lenders.

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all improvements, fixtures, easements, hereditaments, permits and appurtenances relating thereto, and including, with respect to the Loan Parties, all property listed on Schedule 5.08(a) and Schedule 5.08(b).

“**Real Property Lease**” means any lease, license, letting, concession, occupancy agreement, sublease, easement or right of way to which such Person is a party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract minerals from any portion of Real Property

not owned in fee by such Person) and every amendment or modification thereof including with respect to the Loan Parties, without limitation, the leases with respect to Real Property and other property listed on Schedule 5.08(b) and any Contractual Obligation with respect to any of the foregoing.

“**Reclamation**” means the reclamation and restoration of land, water and any future, current, abandoned or former mines, and of any other Environment affected by such mines, as required pursuant to SMCRA, any other Environmental Law or any Environmental Permit.

“**Register**” has the meaning specified in Section 12.06(c).

“**Related Documents**” means the Separation Agreement, the Tax Separation Agreement and the Liability Assumption Agreements.

“**Related Obligations**” has the meaning specified in Section 10.10.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and such Person’s and such Person’s Affiliates’ respective managers, administrators, trustees, members, partners, directors, officers, employees, agents, fund managers and advisors.

“**Reorganization Plan**” means a liquidation plan or plan of reorganization in any or all of the Cases of the Debtors.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, conversion or continuation of Revolving Credit Loans, a Borrowing Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“**Required Lenders**” means, as of any date of determination, Lenders holding (i) more than 50% of the sum of (a) the Total Revolving Credit Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Revolving Commitments and (ii) more than 50% of the sum of (a) the Outstanding Amount of Term Loans and (b) the aggregate unused Term Commitments; *provided*, in each case, that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Required Revolving Lenders**” means at any time Lenders that would constitute the Required Lenders without giving regard to clause (ii) of the definition thereof.

“**Required Term Lenders**” means at any time Lenders that would constitute the Required Lenders without giving regard to clause (i) of the definition thereof.

“**Requirement of Law**” means as to any Person, the Organizational Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court

or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Reserves**” means, at any time of determination, (a) any Eligibility Reserves and (b) such other reserves as determined from time to time in the reasonable discretion of the Administrative Agent.

“**Responsible Officer**” means the chief executive officer, president, or any vice president of the Borrower or, with respect to financial matters, the chief financial officer or treasurer of the Borrower.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Capital Stock, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“**Revolving Credit Borrowing**” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(a).

“**Revolving Credit Commitment**” means, as to each Revolving Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(a) and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth under the caption “Revolving Credit Commitment” opposite such Lender’s name on Schedule 2.01(a), or, as the case may be, opposite such caption in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate amount of the Revolving Credit Commitments as of the Closing Date is \$125,000,000.

“**Revolving Credit Commitment Fee**” has the meaning specified in Section 2.10(a).

“**Revolving Credit Facility**” has the meaning specified in the introductory statement.

“**Revolving ~~Credit Facility~~ Collateral**” has the meaning specified in the Security Agreement.

“**Revolving ~~Credit Facility~~ Collateral Account**” means the account established by, and under the sole dominion and control of, the Administrative Agent maintained with the Administrative Agent and designated as the “Patriot Revolving ~~Credit Facility~~ Collateral Account”.

“**Revolving Credit Facility Obligations**” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Revolving Credit Loan, Revolving Credit Commitment or Letter of Credit, whether

direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“**Revolving Credit Loan**” has the meaning specified in Section 2.01.

“**Revolving Lender**” means, at any time, a Lender that has a Revolving Credit Commitment or Revolving Credit Loan at such time.

“**Revolving Secured Parties**” means , collectively, the Administrative Agent (to the extent of any Secured Revolving Obligations owing to the Administrative Agent), the Revolving Lenders, each L/C Issuer (to the extent of any Secured L/C Obligations owing to such L/C Issuer), the Hedge Banks, the Cash Management Banks, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.08.

“**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Out Agent**” means Bank of America, N.A., in its capacity as administrative agent under the Second Out Facility, or any successor administrative agent.

“**Second Out Facility**” means that certain Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of the date hereof, among the Borrower, the lenders party thereto from time to time, and the Second Out Agent.

“**Second Out Obligations**” means the “Obligations” as defined in the Second Out Facility.

“**Second Out Secured Parties**” means the “Secured Parties” as defined in the Second Out Facility.

“**Secured Agreement**” means any Secured Cash Management Agreement or Secured Hedge Agreement.

“**Secured Cash Management Agreement**” means (i) any Cash Management Agreement that is entered into by and between the Borrower and any Cash Management Bank to the extent designated as such by the Borrower and such Cash Management Bank in writing to the Administrative Agent from time to time in accordance with Section 12.16 and (ii) each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Cash Management Agreement”

“**Secured Hedge Agreement**” means any Swap Contract permitted under Article 7 that is entered into by and between the Borrower and any Hedge Bank to the extent designated as such by the Borrower and such Hedge Bank in writing to the Administrative Agent from time

to time in accordance with Section 12.16 and (ii) each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Hedge Agreement”.

“**Secured Parties**” means, collectively, the Revolving Secured Parties and the Term Secured Parties and any other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.08.

“**Secured Revolving Obligations**” means, collectively with respect to each Loan Party, all Revolving Credit Facility Obligations and all Related Obligations.

“**Secured Term Obligations**” means, collectively with respect to each Loan Party, all Term Facility Obligations.

“**Securities Account**” has the meaning specified in the UCC.

“**Security Agreement**” means that certain Debtor-in-Possession Pledge and Security and Intercreditor Agreement dated as of the date hereof, by and among the Administrative Agent and each of the Grantors party thereto, substantially in the form of Exhibit H, as amended, restated, supplemented or otherwise modified from time to time.

“**Separation Agreement**” means the Separation Agreement, Plan of Reorganization and Distribution, dated as of October 22, 2007, between Peabody and the Borrower.

“**Similar Business**” means coal production, coal mining, coal gasification, coal liquifaction, other BTU conversions, coal brokering, coal transportation, mine development, coal supply contract restructurings, ash disposal, environmental remediation, Reclamation, coal and coal bed methane exploration, production, marketing, transportation and distribution and other related businesses, and activities of the Borrower and its Subsidiaries as of the date hereof and any business or activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

“**Single Class Default**” means an Event of Default resulting from a failure to perform the covenants set forth in Section 6.02(1), as to which the applicable Class of Lenders is the Revolving Lenders.

“**SMCRA**” means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201 et seq., as amended.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “**Subsidiary**” or to “**Subsidiaries**” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” has the meaning specified in the introductory paragraph hereto.

“**Subsidiary Guarantor Obligations**” mean, with respect to any Subsidiary Guarantor, the collective reference to (i) the Obligations and (ii) all obligations and liabilities of such Subsidiary Guarantor which may arise under or in connection with this Agreement or any other Loan Document to which such Subsidiary Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent and counsel to the Lenders that are required to be paid by such Subsidiary Guarantor pursuant to the terms of this Agreement or any other Loan Document).

“**Supermajority Revolving Lenders**” means, as of any date of determination, Lenders holding more than 75% of the sum of the Total Revolving Credit Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and the aggregate unused Revolving Commitments; *provided* that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority Revolving Lenders.

“**Superpriority Claim**” means a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

“**Swap Contract**” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any valid netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market

or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Syndication Agent” means Barclays Bank PLC, as syndication agent under the Loan Documents.

“Tangible Assets” means at any date, with respect to any Person, (a) the sum of all amounts that would, in accordance with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of such Person at such date *minus* (b) the sum of all amounts that would, in accordance with GAAP, be set forth opposite the captions “goodwill” or other intangible categories (or any like caption) on a consolidated balance sheet of such Person on such date.

“Tax Separation Agreement” means that Tax Separation Agreement, dated as of October 22, 2007, between Peabody and the Borrower.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01(b).

“Term Commitment” means, as to each Term Lender, the obligation to make Term Loans to the Borrower pursuant to Section 2.01(b) in the amount set forth under the caption “Term Commitment” opposite such Lender’s name on Schedule 2.01(b), or, as the case may be, opposite such caption in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. As of the Closing Date, the aggregate amount of the Term Commitments is \$375,000,000.

“Term Commitment Fee” has the meaning specified in Section 2.10(b).

“Term Facility” has the meaning specified in the introductory statement.

“Term ~~Facility~~ Collateral” has the meaning specified in the Security Agreement.

“Term Cash Collateral Account” means the account established by, and under the sole dominion and control of, the Administrative Agent maintained with the Administrative Agent and designated as the “Patriot Term Cash Collateral Account”.

“Term Facility Obligations” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Term Loan or Term Commitment, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“**Term Lender**” means, at any time, a Lender with an outstanding Term Loan or a Term Commitment at such time.

“**Term Loan**” has the meaning specified in Section 2.01(b).

“**Term Secured Parties**” means, collectively, the Administrative Agent (to the extent of any Term Facility Obligations owing to the Administrative Agent), the Term Lenders, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.08.

“**Termination Date**” means the earliest of (i) the Maturity Date, (ii) the date of termination of the Commitments pursuant to Section 2.06, (iii) the date of termination of the Commitment of each Lender and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 9.02, (iv) the Prepayment Date, (v) the Consummation Date and (vi) the date of dismissal of the Cases by the Bankruptcy Court.

“**Threshold Amount**” means \$10,000,000.

“**Total L/C Obligations**” means the aggregate Outstanding Amount of all L/C Obligations.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Term Loans, Revolving Credit Loans and L/C Obligations.

“**Total Revolving Credit Outstandings**” means the aggregate Outstanding Amount of all Revolving Credit Loans and L/C Obligations.

“**Total L/C Obligations**” means the aggregate Outstanding Amount of all L/C Obligations.

“**Transaction**” means, collectively, the entering into by the Loan Parties of the Loan Documents to which they are a party and the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“**Type**” means, with respect to any Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York; *provided*, that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s accrued benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s

assets, determined in accordance with the actuarial assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in Section 2.04(d)(i).

“**Unrestricted Cash**” means cash or Cash Equivalents of the Borrower or any of its Subsidiaries that would not appear as “restricted” on a consolidated balance sheet of the Borrower and its Subsidiaries.

“**U.S. Loan Party**” means any Loan Party that is organized under the laws of one of the states of the United States of America and that is not a CFC.

Section 1.02. *Other Interpretive Provisions.* With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “**include,**” “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation.**” The word “**will**” shall be construed to have the same meaning and effect as the word “**shall.**” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “**herein,**” “**hereof**” and “**hereunder,**” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “**asset**” and “**property**” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “**from**” means “**from and including;**” the words “**to**” and “**until**” each mean “**to but excluding;**” and the word “**through**” means “**to and including.**”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. *Accounting Terms.* (a) *Generally.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, *except* as otherwise specifically prescribed herein.

(b) *Changes in GAAP.* If at any time any Accounting Change or any other change as permitted by Section 7.15 would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such Accounting Change as if such Accounting Change has not been made; *provided*, that until so amended, all financial covenants, standards, and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred.

Section 1.04. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.05. *Letter of Credit Amounts.* Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.06. *Reserves.* When any Reserve is to be established or a change in any amount, percentage, reserve, eligibility criteria or other item in the definitions of the terms “Borrowing Base” and “Eligible Receivables” is to be determined in each case in the Administrative Agent’s “reasonable discretion”, such Reserve shall be implemented or such change shall become effective on the Business Day immediately following delivery of a written notice thereof to the Borrower, or immediately, without prior written notice, if such change is a result of a mathematical calculation and during the continuance of a Default.

ARTICLE 2

THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01. *The Loans.* (a) *Revolving Credit Loans.* Subject to the terms and conditions set forth herein and in the Orders, each Revolving Lender severally agrees to make loans (each such loan, a “**Revolving Credit Loan**”) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate principal amount not to

exceed at any time outstanding the amount of such Lender's Revolving Credit Commitment; *provided, however*, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Maximum Revolving Credit and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Revolving Credit Commitment. Within the limits of each Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof and in the Orders, the Borrower may borrow under this Section 2.01(a), prepay under Section 2.06, and reborrow under this Section 2.01(a). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein. In no event shall the Total Revolving Credit Outstandings *plus* the Term Loans exceed the amount authorized by the Bankruptcy Court in the Orders.

(b) *Term Loans.* Subject to the terms and conditions set forth herein and in the Orders, each Term Lender severally agrees to make loans (each such loan, a "**Term Loan**") to the Borrower from time to time, on any Business Day on or after the Closing Date and prior to the date that is two Business Days following the Final Order Entry Date in two draws, in an aggregate principal amount not to exceed the amount of such Lender's Term Commitment. For the avoidance of doubt, any unused Term Commitments shall terminate on the earlier of (i) the second Term Borrowing hereunder and (ii) the date that is two Business Days following the Final Order Entry Date (or if earlier, the Termination Date). The Term Borrowing shall be in an aggregate amount of \$100,000,000 or an integral multiple of \$50,000,000 in excess thereof and shall consist of Term Loans of the same Type made on the same day by the Term Lenders ratably according to their respective Term Commitments; *provided*, that (x) the First Term Borrowing shall be in the amount authorized by the Bankruptcy Court in the Interim Order but in no event more than \$250,000,000 and (y) the second Term Borrowing shall be in an amount equal to the difference between (i) the lesser of (A) the full amount authorized by the Bankruptcy Court in the Final Order and (B) the aggregate amount of Term Commitments and (ii) the amount of the first Term Borrowing. Term Loans prepaid or repaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

Section 2.02. *Borrowings, Conversions and Continuations of Loans.* (a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans; ~~*provided, however, that if the Borrower wishes to request Eurocurrency Rate Loans having an Interest Period other than one, two, three, or six months, the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them.*~~ Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate

Loans, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Notice or Notice of Conversion or Continuation, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Except as provided in Sections 2.04(d), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Revolving Credit Borrowing, a Term Borrowing, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, (iv) the Type of Loans to be borrowed and (v) the duration of the Interest Period with respect thereto, if applicable. Each Notice of Continuation or Conversion (whether telephonic or written) shall specify (i) whether the Borrower is requesting a conversion of Revolving Credit Loans from one Type to the other, a conversion of Term Loans from one Type to the other, a continuation of Revolving Credit Loans that are Eurocurrency Rate Loans, or a continuation of Term Loans that are Eurocurrency Rate Loans, and (ii) specifying (A) the amount and Type of Loan being converted or continued, (B) in the case of a conversion to or a continuation of Eurocurrency Rate Loans, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion. If the Borrower fails to specify a Type of Loan in a Borrowing Notice or if the Borrower fails to give a timely Notice of Conversion or Continuation with respect to Eurocurrency Rate Loans, then the applicable Revolving Credit Loans or Term Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Borrowing Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Borrowing Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under the applicable Loan, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each such Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of any Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however*, that if, on the date a Borrowing Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Advances outstanding,

then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any Unreimbursed Amounts in respect thereof, and second, shall be made available to the Borrower as provided above.

(c) Unless the Lenders are compensated for any losses under Section 3.05, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans if the Required Lenders or the Administrative Agent so notify the Borrower.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's "prime rate" used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than (x) five (5) Interest Periods in effect under the Revolving Credit Facility and (y) five (5) Interest Periods in effect under the Term Facility.

Section 2.03. *L/C Cash Collateral Account.*

(a) *Deposits in L/C Cash Collateral Account.* On any date on which the Administrative Agent receives any payment from the Borrower to increase the L/C Cash Collateral Deposit Amount, the Administrative Agent shall deposit in the L/C Cash Collateral Account the amount of such payment;

(b) *Withdrawals from and Closing of L/C Cash Collateral Account.* Amounts on deposit in the L/C Cash Collateral Account shall be withdrawn and distributed as follows:

(i) on any date on which any L/C Issuer is to be reimbursed by the Borrower for any payment made by such L/C Issuer with respect to a Letter of Credit, the Administrative Agent shall, unless the Borrower shall have so reimbursed such L/C Issuer in cash in accordance with Section 2.04(d), withdraw from the L/C Cash Collateral Account an amount equal to the amount of such payment, and make such amount available to such L/C Issuer;

(ii) upon receipt of the Borrower's written withdrawal request not later than 1:00 p.m. on the requested withdrawal date (which shall be a Business Day), the Administrative Agent shall withdraw from the L/C Cash Collateral Account the amount requested by the Borrower and make such funds available to the Borrower; *provided* that after giving effect to the withdrawal of such amount, the Total Revolving Credit Outstandings shall not exceed the Maximum Revolving Credit; and

(iii) upon the Termination Date and the expiration or cancellation of all outstanding Letters of Credit (or cash collateralization thereof pursuant to arrangements reasonably satisfactory to the Administrative Agent), the Administrative Agent (x) shall withdraw from the L/C Cash Collateral Account the aggregate amount then on deposit therein and apply such funds in accordance with Section 9.03; and (y) shall close the L/C Cash Collateral Account.

(c) *Investment of L/C Cash Collateral Deposit Amount.* The Administrative Agent shall, on behalf of the Borrower, invest the L/C Cash Collateral Deposit Amount in Cash Equivalents or such other investments as the Administrative Agent and the Borrower shall agree to from time to time. The return earned on the L/C Cash Collateral Deposit Amount will be deposited by the Administrative Agent in the L/C Cash Collateral Account. No Lender shall have any obligation under or in respect of the provisions of this Section 2.03(c).

Section 2.04. *Letters of Credit.* (a) *The Letter of Credit Commitment.* Subject to the terms and conditions set forth herein and in the Orders, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.04, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Revolving Letters of Credit for the account of the Borrower or any other Loan Party, and to amend or extend Revolving Letters of Credit previously issued by it, in accordance with Section 2.04(c), and (2) to honor drawings under the Revolving Letters of Credit; and (3) the Revolving Lenders severally agree to participate in Revolving Letters of Credit issued for the account of the Borrower or any other Loan Party and any drawings thereunder; *provided*, that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the L/C Obligations outstanding with respect to such Issuer shall not exceed such L/C Issuer's L/C Sublimit, (x) the aggregate amount of L/C Obligations shall not exceed the L/C Sublimit of all L/C Issuers taken as a whole, (y) the Total Revolving Credit Outstandings shall not exceed the Maximum Revolving Credit, and (z) the Outstanding Amount of the Revolving Credit Loans of any Revolving Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Revolving Credit Commitment. Each request by the Borrower or any other Loan Party for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that (i) the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence and (ii) such Letter of Credit will not extend, renew or replace any Pre-Petition Letter of Credit. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Revolving Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Revolving Letters of Credit to replace Revolving Letters of Credit that have expired or that have been drawn upon and reimbursed.

(b) (i) No L/C Issuer shall issue any Letter of Credit if:

(A) subject to Section 2.04(c)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the applicable L/C Issuer in its sole

discretion and, in the case of a Letter of Credit, the Required Revolving Lenders, have approved such expiry date;

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the applicable L/C Issuer in its sole discretion and all the Revolving Lenders, have approved such expiry date; or

(C) such Letter of Credit would extend, renew or replace any Pre-Petition Letter of Credit.

(ii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing such Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than \$250,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars;

(E) subject to Section 2.04(c)(iv), such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(F) a default of any Revolving Lender's obligations to fund under Section 2.04(d) exists or any Revolving Lender is at such time a Defaulting Lender hereunder, unless the applicable L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender.

(iii) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would not have any obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(iv) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 10 with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “**Administrative Agent**” as used in Article 10 included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

(v) No L/C Issuer shall be required to issue documentary or “trade” Letters of Credit (as opposed to “standby” Letters of Credit).

(c) *Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.* (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by such L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least four Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the applicable L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the applicable L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit

Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Unless such L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article 4 shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the applicable L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage *times* the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, an L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); *provided*, that any such Auto-Extension Letter of Credit must permit the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “**Non-Extension Notice Date**”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Appropriate Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that the applicable L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.01(a)), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(iv) If the Borrower so requests in any applicable Letter of Credit Application, an L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “**Auto-Reinstatement Letter of Credit**”). Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Appropriate Lenders shall be

deemed to have authorized (but may not require) the applicable L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the applicable L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “**Non-Reinstatement Deadline**”), the applicable L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the applicable L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(d) *Drawings and Reimbursements; Funding of Participations.* (i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. The Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing on the date on which the Borrower receives notice of any payment by such L/C Issuer under a Letter of Credit, *provided* that the Borrower receives notice by 1:00 p.m., New York City time on such date, or on the next Business Day if notice is not received by such time (each such date, an “**Honor Date**”). If the Borrower fails to so reimburse such L/C Issuer by the time set forth in the preceding sentence, the applicable L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”). The Administrative Agent shall, in the case of a payment under a Letter of Credit, promptly notify each Revolving Lender thereof and of the amount of such Revolving Lender’s Applicable Percentage thereof. Any notice given by such L/C Issuer or the Administrative Agent pursuant to this Section 2.04(d)(i) may be given by telephone 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.

(ii) Each Revolving Lender shall upon any notice pursuant to Section 2.04(d)(i) make funds available to the Administrative Agent for the account of the applicable L/C Issuer at the Administrative Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.04(d)(iii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer.

(iii) With respect to any Unreimbursed Amount for a payment under a Letter of Credit that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at (A) the rate applicable to Revolving Credit Loans that are Base Rate Loans from the Honor Date to the date reimbursement is required pursuant to Section 2.04(d) (i) and (B) thereafter, the Default Rate. Each Revolving Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.04(d)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.04.

(iv) Until each Revolving Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.04(d) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Revolving Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Revolving Letters of Credit, as contemplated by this Section 2.04(d), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(d) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Borrowing Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(d) by the time specified in Section 2.04(d)(ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A

certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.04(d)(vi) shall be conclusive absent manifest error.

(vii) Unless the Borrower shall have notified the Administrative Agent and the applicable L/C Issuer of its intent to reimburse any drawing on a Letter of Credit in cash on or before the Honor Date (and shall have actually made such reimbursement in cash to the L/C Issuer on such date), the Borrower's obligation to reimburse the L/C Issuer with respect to such drawing shall be satisfied by funds withdrawn by the Administrative Agent from the L/C Cash Collateral Account and transferred to the L/C Issuer in accordance with Section 2.03(b)(i) (and the Borrower hereby irrevocably authorizes and instructs the Administrative Agent to make such withdrawals and transfers).

(e) *Repayment of Participations.* (i) At any time after an L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.04(d), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable L/C Issuer pursuant to Section 2.04(d) is required to be returned under any of the circumstances described in Section 12.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Revolving Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(f) *Obligations Absolute.* The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each Unreimbursed Amount shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary

or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable L/C Issuer or any Lender, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit, except to the extent caused by the applicable L/C Issuer's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit, so long as the L/C Issuer shall have determined in the absence of gross negligence or willful misconduct, in good faith and in accordance with the standard of care specified in the Uniform Commercial Code of the State of New York, that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment appear on their face to be in conformity with such Letter of Credit;

(v) any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(vi) any other action taken or omitted to be taken by the applicable L/C Issuer under or in connection with any Letter of Credit or the related drafts or documents, whether or not similar to any of the foregoing, that might, but for this Section 2.04(g), constitute a legal or equitable discharge of the Borrower's obligations hereunder.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(g) *Role of L/C Issuer.* Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related

Parties nor any correspondent, participant or assignee of the L/C Issuers shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders, the Required Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Notwithstanding anything to the contrary herein the Borrower may have a claim against the applicable L/C Issuer, and the applicable L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the applicable L/C Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final, non-appealable judgment. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the applicable L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a 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.

(h) *Cash Collateral.* (i) Upon the request of the Administrative Agent, (A) if, as of the Letter of Credit Expiration Date or the Termination Date, any L/C Obligation for any reason remains outstanding or (B) if an Event of Default has occurred and is continuing, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of such L/C Obligation.

(ii) Sections 2.04 and 9.02(a)(iii) set forth certain additional requirements to deliver cash collateral hereunder. "**Cash Collateralize**" means to pledge to the Administrative Agent and deposit in a Control Account, for the benefit of the applicable L/C Issuer and the Revolving Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount of at least 103% of the L/C Obligations pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the applicable L/C Issuer (which documents are hereby consented to by the Revolving Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuers and the Revolving Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in the Cash Collateral Account. If at any time the Administrative Agent determines that any funds held in the Cash Collateral Account are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited in the Cash Collateral Account, an amount equal to the excess of (x) such aggregate Outstanding

Amount over (y) the total amount of funds, if any, then held in the Cash Collateral Account that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit in the Cash Collateral Account, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer for the amount of such drawing.

(i) *Applicability of ISP.* Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(j) *Letter of Credit Fees.* The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage a Letter of Credit fee (the “**Letter of Credit Fee**”) for each Letter of Credit equal to the Applicable Rate for Revolving Credit Loans that are Eurocurrency Rate Loans *times* the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. Letter of Credit Fees for Revolving Letters of Credit shall be (i) computed on a monthly basis in arrears and (ii) due and payable on the first Business Day after the end of each calendar month commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(k) *Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.* The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate of 0.25% per annum on the face amount drawn under each Letter of Credit, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each calendar month in respect of the most recently-ended monthly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(l) *Conflict with Issuer Documents.* In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(m) *Letters of Credit Issued for Subsidiaries.* Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable L/C

Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.05. *[Reserved]*.

Section 2.06. *Prepayments.* (a) *Optional.* The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided*, that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class(es) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Any prepayment of a Term Loan may not be reborrowed.

(b) *Mandatory.* (i) *[Reserved]*.

(ii) If the Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition permitted by Section 7.05(a), (b), (c) or (k)) (A) which results in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all other such Dispositions since the Closing Date, exceed \$5,000,000, the Borrower shall prepay an aggregate principal amount of Loans equal to 50% of such excess Net Cash Proceeds or (B) which results in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all other such Dispositions since the Closing Date, exceed \$100,000,000, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such excess Net Cash Proceeds immediately upon receipt thereof by such Person (such prepayments to be applied as set forth in clauses (v) and (vi) below), without, with respect to Revolving Credit Loans, a corresponding permanent reduction in Revolving Credit Commitments.

(iii) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Subsidiaries, and not otherwise included in clause (i) of this Section 2.06(b), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom

immediately upon receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clauses (v) and (vi) below), without, in respect of the Revolving Credit Loans, a corresponding permanent reduction in Revolving Credit Commitments; *provided, however*, that at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of receipt of such cash proceeds), and so long as no Default shall have occurred and be continuing, the Borrower or such Subsidiary may apply within 90 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received or reinvest in other operating assets; and *provided, further, however*, that any cash proceeds not so applied shall be applied to the prepayment of the Loans as set forth in this Section 2.06(b)(iii) at the end of such 90 day period.

(iv) If, at any time, the Total Revolving Credit Outstandings at such time exceed the Maximum Revolving Credit, then, within one Business, the Borrower shall prepay Revolving Credit Loans and/or the Borrower shall Cash Collateralize the L/C Obligations (including by depositing funds in the L/C Cash Collateral Account pursuant to Section 2.03(a)) in an aggregate amount sufficient to reduce the amount of Total Revolving Credit Outstandings as of such date of payment to an amount less than or equal to the Maximum Revolving Credit; *provided, however*, that, subject to the provisions of Section 2.04(h)(ii), the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.06(b)(iv) unless after the prepayment in full of the Revolving Credit Loans the Total Revolving Credit Outstandings exceed the Maximum Revolving Credit above at such time.

(v) Prepayments of the Facilities made pursuant to this Section 2.06(b) in respect of Net Cash Proceeds of Term ~~Facility~~ Collateral *first*, shall be applied ratably to the outstanding Term Loans, *second*, shall be applied to the Second Out Obligations ~~pursuant to the extent permitted under Section 10.09(b)~~ 10.10 of the Security Agreement, *third*, shall be applied to the L/C Borrowings, *fourth*, shall be applied ratably to the outstanding Revolving Credit Loans, ~~and~~ *fifth*, shall be used to Cash Collateralize the remaining L/C Obligations ~~; provided, that if such prepayment results from a Disposition of all or substantially all of the assets of the Loan Parties taken as a whole then such prepayments shall be applied pursuant to Section 10.09(a)(ii) of the Security Agreement.~~ and, sixth, shall be applied to any remaining Second Out Obligations.

(vi) Prepayments of the Facilities made pursuant to this Section 2.06(b) in respect of Net Cash Proceeds of Revolving ~~Credit Facility~~ Collateral *first*, shall be applied to the L/C Borrowings, *second*, shall be applied ratably to the outstanding Revolving Credit Loans, *third*, shall be used to Cash Collateralize the remaining L/C Obligations, *fourth* shall be applied ratably to the outstanding Term Loans and *fifth*, shall be applied to the Second Out Obligations ~~pursuant to Section 10.09(c) of the Security Agreement.~~

(vii) In the case of prepayments of the Facilities required pursuant to clause (i), (ii) or (iii) of this Section 2.06(b), the amount remaining, if any, after the

prepayment in full of all L/C Borrowings, Revolving Credit Loans, Term Loans and Second Out Obligations outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held in the Cash Collateral Account shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the L/C Issuer or the Revolving Lenders, as applicable.

Section 2.07. *Termination or Reduction of Commitments.* (a) The Borrower may, upon notice to the Administrative Agent, terminate, or from time to time permanently reduce, the Revolving Credit Commitments; *provided*, that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof and (iii) the Borrower shall not terminate or reduce the aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Maximum Revolving Credit. The Administrative Agent will promptly notify the Appropriate Lenders of any such notice of termination or reduction of the aggregate Revolving Credit Commitments. Any reduction of the aggregate Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Revolving Lender according to its Applicable Percentage. All Commitments shall terminate on July 13, 2012 if the Closing Date has not occurred by such date.

(b) *[Reserved]*.

(c) *Payment of Fees.* All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

Section 2.08. *Repayment of Loans.*

(a) *Revolving Credit Loans.* The Borrower shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(b) *[Reserved]*.

(c) *Term Loans.* The Borrower shall repay the Term Lenders on the Termination Date the aggregate principal amount of all Term Loans outstanding on such date.

Section 2.09. *Interest.* (a) Subject to the provisions of Section 2.09(b),

(i) Each Revolving Credit Loan that is (A) a Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period *plus* the Applicable Rate and (B) a Base Rate Loan shall bear interest on the outstanding

principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate;

(ii) *[Reserved]*.

(iii) Each Term Loan that is (A) a Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period *plus* the Applicable Rate and (B) a Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate *plus* the Applicable Rate.

(b) (i) If any amount of principal or interest of any Loan (or any other Obligation) is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein.

Section 2.10. *Fees.* In addition to certain fees described in Sections 2.04(j) and (k):

(a) *Revolving Credit Commitment Fee.* The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage, a commitment fee (the “**Revolving Credit Commitment Fee**”) equal to the Applicable Rate *times* the actual daily amount by which the aggregate Revolving Credit Commitments of all Revolving Lenders exceed the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations. The Revolving Credit Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable monthly in arrears on the last Business Day of each month, commencing with the first such date to occur after the Closing Date, and on the Termination Date.

(b) *Term Commitment Fee.* The Borrower shall pay to the Administrative Agent for the account of each Term Lender in accordance with its Applicable Percentage, a commitment fee (the “**Term Commitment Fee**”) equal to the Applicable Rate *times* the actual daily amount by which the aggregate Term Commitments of all Term Lenders exceed the Outstanding Amount of Term Loans. The commitment fee shall accrue at all times from and including the Closing Date to but not including the earlier of (i) the Termination Date and (ii)

the date of termination of the Term Commitments pursuant to Section 2.01(b), including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable monthly in arrears and on the second and final Term Borrowing, the date that is two Business Days following the Final Order Entry Date, and on the Termination Date.

(c) *Extension Fee.* If the Borrower elects, subject to the occurrence of the Extension Date, to extend the Maturity Date of the Facilities, the Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an extension fee (the “**Extension Fee**”) equal to 0.50% of the aggregate Revolving Credit Commitments and Term Loans of all Lenders outstanding on the Extension Date.

(d) *Upfront Fee.* The Borrower shall pay to the Administrative Agent, for the account of each Lender, fees in the amounts and at the times specified in the Fee Letter.

(e) *Other Fees.* The Borrower shall pay to each Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(f) *Defaulting Lender Fees.* Notwithstanding anything herein to the contrary, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to clauses (a), (b) and (c) above (without prejudice to the rights of the Non-Defaulting Lenders in respect of such fees); *provided*, that (i) to the extent that a Ratable Portion of the L/C Obligations of such Defaulting Lender is reallocated to the Non-Defaulting Lenders pursuant to Section 2.15(a), such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, *pro rata* in accordance with their respective Revolving Credit Commitments, and (ii) to the extent that all or any portion of such L/C Obligations cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the applicable L/C Issuer.

Section 2.11. *Computation of Interest and Fees.* (a) All computations of interest for Base Rate Loans (other than Loans bearing interest at the Base Rate based on clause (c) of the definition thereof) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided*, that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) *[Reserved]*.

Section 2.12. *Evidence of Debt.* (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained

by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.12(a), each Revolving Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Revolving Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

Section 2.13. *Payments Generally; Administrative Agent's Clawback.* (a) *General.* All payments to be made by the Borrower or the other Loan Parties shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower or the other Loan Parties hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its ratable share of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) *Funding by Lenders; Presumption by Administrative Agent.* Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the

applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) *Payments by Borrower; Presumptions by Administrative Agent.*

Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Appropriate Lenders or the applicable L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to such Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) *Failure to Satisfy Conditions Precedent.* If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) *Obligations of Lenders Several.* The obligations of (i) the Revolving Lenders hereunder to make Revolving Credit Loans and to fund participations in Letters of Credit, (ii) the Term Lenders hereunder to make Term Loans, and (iii) all Lenders hereunder to make payments pursuant to Section 12.04(c) are several and not joint. The failure of (x) any Revolving Lender to make any Revolving Credit Loan or to fund any such participation, (y) any Term Lender to make any Term Loan, or (z) any Lender to make payment under

Section 12.04(c) on any date required hereunder shall not relieve any other Appropriate Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Appropriate Lender to do so.

(e) *Funding Source.* Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.14. *Sharing of Payments by Lenders.* If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Appropriate Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Appropriate Lenders hereunder and under the other Loan Documents at such time obtained by all Appropriate Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Appropriate Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Appropriate Lenders hereunder and under the other Loan Documents at such time obtained by all of the Appropriate Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and/or, if applicable, subparticipations in L/C Obligations of the other Appropriate Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Appropriate Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Appropriate Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided*, that:

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

(iii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Loans, subparticipations in L/C Obligations, or Term Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply), or (C) any payments pursuant to the Fee Letters.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.15. *Defaulting Lender.*

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders; and

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 9 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any L/C Issuer hereunder; *third*, to Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.04(h); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.04(h); *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuers as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were

issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Facility without giving effect to clause (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.14(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *[Reserved]*.

(iv) *Reallocation of Participations to Reduce Fronting Exposure.* All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation..

(v) *Cash Collateral.* If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.14(a)(ii).

(b) *Defaulting Lender Cure.* If the Borrower, the Administrative Agent and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable Facility (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further,*

that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) *New Letters of Credit.* So long as any Lender is a Defaulting Lender, no L/C Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.16. *Priority and Liens.* (a) The Borrower hereby covenants and agrees that upon the entry of an Interim Order (and when applicable, the Final Order):

(i) the Obligations pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim in the Cases subject only to the Carve-Out;

(ii) subject to the terms of the Orders and the Security Agreement, the Revolving Credit Obligations, pursuant to Section 364 of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable perfected (A) first priority Lien on all of the Revolving ~~Credit Facility~~ Collateral of each Loan Party and (B) first priority Lien (on a *pari passu* basis with the Liens described in clause (iii) below and with the Liens securing the Second Out Obligations) on all of the Term ~~Facility~~ Collateral of each Loan Party subject, in each case, to the Carve-Out; *provided* that amounts in the Cash Collateral Account shall not be subject to the Carve-Out;

(iii) subject to the terms of the Orders and the Security Agreement, the Term Facility Obligations pursuant to Section 364 of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable perfected (A) first priority Lien (on a *pari passu* basis with the Liens described in clause (ii) above and with the Liens securing the Second Out Obligations) on all of the Term ~~Facility~~ Collateral of each Loan Party and (B) junior Lien (on a *pari passu* basis with the Liens securing the Second Out Obligations), subject only to the Lien described in clause (ii) above, on all of the Revolving ~~Credit Facility~~ Collateral of each Loan Party subject, in each case, to the Carve-Out;

(b) *[Reserved]*.

(c) The relative priorities of the Liens described in this Section 2.16 with respect to the Revolving ~~Credit Facility~~ Collateral of the Debtors and the Term ~~Facility~~ Collateral of the Debtors shall be as set forth in the Interim Order (and, when entered, the Final Order) and Section 10 of the Security Agreement. All of the Liens described in this Section 2.16 shall be effective and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order.

(d) Notwithstanding anything to the contrary herein, not more than 65% of the voting equity interests of any CFC shall be pledged in favor of any Lender or the Administrative Agent.

Section 2.17. *No Discharge; Survival of Claims.* The Borrower agrees that to the extent that its obligations under the Loan Documents have not been satisfied in full in cash, (i) its obligations under the Loan Documents shall not be discharged by the entry of an order confirming a Reorganization Plan (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders and the Liens granted to the Administrative Agent and the Lenders pursuant to the Orders shall not be affected in any manner by the entry of an order confirming a Reorganization Plan.

ARTICLE 3

TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. *Taxes.* (a) *Payments Free of Taxes.* Any and all payments by or on behalf of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided*, that if the Borrower or other Person making payments on behalf of the Borrower shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions including deductions applicable to additional sums payable under this Section 3.01(a) (after payment of all Indemnified Taxes and Other Taxes) the Administrative Agent, any Lender or any L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or other Person shall make such deductions and (iii) the Borrower or other Person shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) *Payment of Other Taxes by the Borrower.* Without limiting the provisions of Section 3.01(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) *Indemnification by the Borrower.* The Borrower shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within 30 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or such L/C Issuer or any of their respective Affiliates, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an L/C Issuer, shall be conclusive absent manifest error.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the

Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) *Status of Lenders.* Each Lender that is a “U.S. Person” as defined in section 7701(a)(30) of the Code that has not otherwise established to the reasonable satisfaction of the Borrower and Administrative Agent (or, in the case of a Participant purchasing its participation from a Foreign Lender, to the Lender from which the related participation shall have been purchased) that it is an exempt recipient (as defined in section 6049(b)(4) of the Code and the regulations thereunder) shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable law or upon the reasonable request of the Borrower or Administrative Agent), two duly completed and executed copies of Internal Revenue Service Form W-9.

Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable or any subsequent version thereof or successor thereto:

(i) duly completed and executed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed and executed copies of Internal Revenue Service Form W-8ECI relating to all payments to be received by such Foreign Lender hereunder or under any other Loan Document,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

In the event that, pursuant to Section 12.06(d), a Participant is claiming the benefits of this Section 3.01, such Participant shall provide the forms required above to the Lender from which the related participation was purchased, and if such Lender is a Foreign Lender, such

Lender shall, promptly upon receipt thereof (but in no event later than the next scheduled payment under this Agreement) forward such documentation to the Borrower and the Administrative Agent, together with such additional forms as are required by law.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender's status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to the Administrative Agent or the Borrower, as the Administrative Agent or the Borrower shall reasonably request, on or prior to the Effective Date, and in a timely fashion thereafter (including upon the expiration or obsolescence of any such forms or documents and promptly after the occurrence of any event requiring a change from the most recent forms previously delivered), such other documents and forms as would reduce or avoid any Indemnified Taxes in respect of all payments to be made to such Lender outside of the U.S. pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in such other jurisdiction; *provided*, that in such Lender's reasonable judgment such documentation or forms would not materially prejudice such Lender. Each Lender shall promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction. Notwithstanding any other provision of this Section 3.01(e), a Lender shall not be required to deliver any form, document or other information pursuant to this Section 3.01(e) that such Lender is not legally able to deliver.

If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) *Treatment of Certain Refunds.* If the Administrative Agent, any Lender or any L/C Issuer receives a refund with respect to Indemnified Taxes or Other Taxes paid by the Borrower, which in the sole discretion and good faith judgment of the Administrative Agent, any Lender or any L/C Issuer is allocable to such payment, it shall promptly pay such refund (but only to the extent of the Indemnified Taxes or Other Taxes paid by the Borrower giving rise to such refund) to the Borrower, net of all out-of-pocket expenses of the Administrative Agent, such Lender or such L/C Issuer incurred in obtaining such refund (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent, such Lender or such L/C Issuer in good faith and in its sole discretion, and as will leave the Administrative Agent, such Lender or such L/C Issuer in no worse position than it would be in if no such Indemnified Taxes or Other Taxes had been imposed and without interest (other than any interest paid by the relevant Governmental Authority with

respect to such refund); *provided, however*, that the Borrower agrees to promptly return such amount (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority), net of any reasonable incremental additional costs, to the applicable Administrative Agent, the Lender or the L/C Issuer, as the case may be, if it receives notice from the applicable Administrative Agent, Lender or L/C Issuer that such Administrative Agent, Lender or L/C Issuer is required to repay such refund. This subsection shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02. *Illegality.* If any Lender determines that as a result of any Change in Law it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all such Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03. *Inability to Determine Rates.* If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan, or (b) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Section 3.04. *Increased Costs; Reserves on Eurocurrency Rate Loans.* (a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate contemplated by Section 3.04(e)) or any L/C Issuer; or

(ii) impose on any Lender or L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; *provided*, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, in its reasonable discretion, in any legal, economic or regulatory manner) to designate a different Eurocurrency Rate lending office if the making of such designation would allow the Lender or its Eurocurrency Rate lending office to continue to perform its obligation to make Eurocurrency Rate Loans or to continue to fund or maintain Eurocurrency Rate Loans and avoid the need for, or reduce the amount of, such increased cost.

(b) *Capital Requirements.* If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital requirements has the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this

Section, describing the basis therefore and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided, that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 90-days prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Additional Reserve Requirements.* The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least 10 Business Days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender describing the basis therefor and showing the calculation thereof in reasonable detail. If a Lender fails to give notice 10 Business Days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable within 30 days from receipt of such notice.

Section 3.05. *Compensation for Losses.* Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any conversion, payment or prepayment of any Eurocurrency Rate Loan, and any conversion of a Base Rate Loan to a Eurocurrency Rate Loan, on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, or continue any Eurocurrency Rate Loan, or to convert a Base Rate Loan to a Eurocurrency Rate Loan, on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 12.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained, but excluding any loss of anticipated profits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

Section 3.06. *Mitigation Obligations; Replacement of Lenders.* (a) *Designation of a Different Lending Office.* If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the Administrative Agent or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) *Replacement of Lenders.* If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender gives a notice pursuant to Section 3.02 or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 12.13.

Section 3.07. *Survival.* All of the Borrower's obligations under this Article 3 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE 4
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Conditions of Initial Credit Extension.* The effectiveness of this Agreement and the obligation of each L/C Issuer and Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a duly authorized officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement executed by each Lender and each Loan Party;

(ii) Notes executed by the Borrower in favor of each Lender requesting a Note or Notes;

(iii) the Security Agreement executed by each Loan Party,

(iv) proper financing statements (except for any as-extracted collateral filing or UCC fixture filing) in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary in order to perfect the Liens and security interests created or purported to be created under the Interim Order and the Security Agreement, covering the Collateral described therein;

(v) the Perfection Certificate, executed by each Loan Party;

(vi) such certificates of resolutions or other action, incumbency certificates and/or other certificates of duly authorized officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each officer of a Loan Party executing the Loan Documents to which such Loan Party is a party;

(vii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(viii) the executed opinion of Davis Polk & Wardwell LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent, as to

such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(ix) the executed opinion of Joseph W. Bean, Esq., special Missouri counsel and in-house counsel to the Loan Parties, addressed to the Administrative Agent, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(x) a certificate of a duly authorized officer of each Loan Party (A) either (1) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (2) stating that no such consents, licenses or approvals are so required; and (B) stating that all consents, licenses and approvals required in connection with the consummation of such Loan Party of the Transaction has been received;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that, except as disclosed in writing by the Borrower to the Administrative Agent and the Lenders or in filings made with the SEC and press releases, in each case prior to the Closing Date, since December 31, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect; and

(xii) such other assurances, certificates and documents as the Administrative Agent reasonably may require.

(b) Any fees required to be paid on or before the Closing Date to the Administrative Agent, any Arranger or the Lenders (i) pursuant to the Fee Letters or (ii) otherwise for which invoices have been received at least one Business Day prior to the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least one Business Day prior to the Closing Date, *plus* such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing and customary post-closing proceedings included in such invoices (*provided*, that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(d) The Administrative Agent shall have received copies of all Real Property Leases of the Loan Parties.

(e) The Administrative Agent shall have received (i) the Audited Financial Statements for the fiscal year ended December 31, 2011 and (ii) interim unaudited quarterly

consolidated financial statements of the Borrower for each completed fiscal quarter ending not less than 45 days prior to the Closing Date.

(f) The Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act, to the extent requested at least 5 Business Days prior to the Closing Date.

(g) Concurrently with the initial extension of credit hereunder, the obligations of the Borrower and the other Loan Parties (other than contingent indemnification obligations) under the Existing Securitization Facility shall have been paid in full (or, in the case of obligations in respect of outstanding letters of credit, cash collateralized or otherwise provided for in a manner satisfactory to the applicable issuing bank), and the Administrative Agent shall have received customary payoff letters.

(h) The Administrative Agent shall be satisfied, in its sole discretion, with the cash management arrangements of the Loan Parties (or with the cash management arrangements required to be put in place by the Loan Parties pursuant to Section 6.22), it being understood and agreed that cash management arrangements consistent with Section 6.22 are satisfactory to the Administrative Agent.

(i) The Petition Date shall have occurred on or prior to July 11, 2012.

(j) The First Day Orders sought by the Borrower and entered on the Closing Date (including a cash management order) shall be satisfactory to the Administrative Agent and the Arrangers.

(k) The Interim Order Entry Date shall have occurred prior to the Closing Date and not later than 5 Business Days following the Petition Date, and the Interim Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to each Arranger and shall not be subject to a stay.

(l) All of the Liens described in Section 2.16 shall have been created and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order. The Interim Order shall have been effective to create the relative priorities of the Liens described in Section 2.16 with respect to the Collateral. The automatic stay under the Bankruptcy Code shall have been automatically vacated, subject to the terms of the Interim Order, to permit enforcement of the Secured Parties’ rights and remedies under this Agreement and the other Loan Documents.

(m) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(n) The Operating Forecast and the initial 13-Week Projection (each in form and substance satisfactory to the Administrative Agent) shall have been received by the Administrative Agent prior to the date hereof

(o) The Administrative Agent shall have received an executed Borrowing Base Certificate satisfactory to the Administrative Agent.

(p) The Administrative Agent shall be satisfied in its sole discretion that there shall not occur as a result of, and after giving effect to, the initial extension of credit under the Facilities, a default (or any event which with the giving of notice or lapse of time or both would be a default) under any of the Borrower's or its Subsidiaries' debt instruments and other material agreements which would permit the counterparty thereto to exercise remedies thereunder on a post-petition basis.

(q) There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases) that could reasonably be expected to have a Material Adverse Effect.

(r) The "Required Lenders" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement shall have executed and delivered to the Administrative Agent (as defined in the Existing Credit Agreement) written commitment advices, subject to satisfactory documentation, to enter into the Second Out Facility in accordance with a Summary of DIP Terms provided therewith and (ii) the Interim Order shall provide that the Second Out Facility shall be in full force and effect upon entry of the Interim Order and approval by the Required Lenders (as defined in the Existing Credit Agreement).

Section 4.02. *Conditions to All Credit Extensions.* The obligation of each Appropriate Lender to honor any Request for Credit Extension (other than a Borrowing Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of each Loan Party contained in this Agreement and each other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, each applicable L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Closing Date shall have occurred.

(e) The Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Administrative Agent, *provided*, that at the time of the making of any Loan or the issuance of any Letter of Credit the aggregate amount of either of which, when added to the Total Outstandings, would exceed the amount under the applicable Facility authorized by the Interim Order (collectively, the “**Additional Credit**”), the Administrative Agent and each of the Lenders shall have received a final copy of an order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications are satisfactory in form and substance to the Administrative Agent and the Arrangers) and authorizing such Additional Credit (the “**Final Order**”), and at the time of the extension of any Additional Credit the Final Order shall be in full force and effect, and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Administrative Agent.

(f) The making of such Loan (or the issuance of such Letter of Credit) shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

(g) In the case of any Revolving Credit Borrowing or L/C Credit Extension with respect to a Letter of Credit, (i) a Borrowing Base Certificate shall have been delivered in accordance with Section 6.02(l) and (ii) no Borrowing Base Deficiency will exist after giving effect to such Credit Extension.

(h) In the case of any Term Borrowing after the Closing Date, the Bankruptcy Court shall have entered the Final Order and the Final Order shall (i) be in full force and effect (ii) not have been vacated or reversed (iii) not have been modified or amended other than as acceptable to the Administrative Agent and the Arrangers and (iv) not be subject to a stay.

Each Request for Credit Extension (other than a Borrowing Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), (b) and (f) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

The Borrower and, to the extent that the following representations and warranties relate to the Loan Parties, each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

Section 5.01. *Existence, Qualification and Power.* (a) Each Loan Party is duly organized or formed and validly existing and (i) in good standing under the Laws of the jurisdiction of its incorporation or organization, except, with respect to this clause (ii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry of the Orders and subject to the terms thereof, each Loan Party has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents and Related Documents to which it is a party and consummate the Transaction, and (iii) is duly qualified and is licensed and, as applicable, in good standing, under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (iii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. *Authorization; No Contravention.* Subject to the entry of the Orders and subject to the terms thereof, the execution, delivery and performance by each Loan Party of each Loan Document, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation (except in respect of the Existing Senior Notes) to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents.* (a) Subject to the entry of the Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority and (b) no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with any other Person, in each case, is necessary or required in connection with (i) the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents or (iii) the perfection of the Liens created under the Collateral Documents (including the first priority nature thereof to the extent provided for in the Orders) except for (x) those approvals, consents, exemptions, authorizations or other actions which have already been obtained, taken, given or made and are in full force and

effect, and (z) those landlord consents required with respect to Real Property Leases that constitute Collateral.

Section 5.04. *Binding Effect.* Subject to the entry of the Orders, this Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Orders, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.

Section 5.05. *Financial Statements; No Material Adverse Effect.* (a) The Audited Financial Statements of the Borrower and its Subsidiaries (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, of the Borrower and its Subsidiaries as of the date thereof, direct or contingent, including material liabilities for Taxes, material commitments and material Indebtedness.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries dated March 31, 2012, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since December 31, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, except as previously disclosed in writing to the Administrative Agent and the Lenders or in filings made with the SEC and press releases, in each case prior to Closing Date.

(d) The consolidated pro forma balance sheet of the Borrower and its Subsidiaries as at May 31, 2012, and the related consolidated *pro forma* statements of income and cash flows of the Borrower and its Subsidiaries for the month then ended and the portion of the fiscal quarter then ended, certified by the chief financial officer or treasurer of the Borrower, copies of which have been furnished to the Administrative Agent, fairly present in all material respects the consolidated pro forma financial condition of the Borrower and its Subsidiaries as at such date and the consolidated pro forma results of operations of the

Borrower and its Subsidiaries for the period ended on such date, in each case giving effect to the Transaction and the Cases, all in accordance with GAAP.

(e) The consolidated forecasted balance sheet and statements of income and cash flows of the Borrower and its Subsidiaries delivered pursuant to Section 4.01 or ~~Section 6.02(d)~~ Section 6.02(k) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable in light of the conditions existing at the time of delivery of such forecasts.

Section 5.06. *Litigation.* There are no unstayed actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues (a) that purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transaction, or (b), other than the Cases and except as specifically disclosed in public filings prior to the date hereof or on Schedule 5.06, as to which there is a reasonable possibility of an adverse determination and that could reasonably be expected to result in liability of the Loan Parties greater than the Threshold Amount.

Section 5.07. *No Default.* Neither the Borrower nor any Subsidiary is in default under or with respect to any Contractual Obligation (a) with respect to any Material Leased Real Property (except for non-material non-payment defaults ~~or~~ and defaults which do not or, with the giving of any notice, the passage of time, or both, would not give rise a right of termination by the lessor) or (b) that would permit the exercise remedies thereunder on a post-petition basis. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

Section 5.08. *Ownership of Property; Liens; Investments.* (a) The Borrower and each of its Subsidiaries has (i) subject to the Liens listed on Schedule 7.01, good and marketable Mining Title to the Material Owned Real Property and the Material Leased Real Property for the ordinary conduct of the business and operations of the Loan Parties as presently conducted on the date hereof and (ii) good record title to, or valid leasehold, easement or other real property interests in all other Real Property necessary for the ordinary conduct of the business and operations of the Loan Parties as presently conducted, subject to such defects in title as could not reasonably be expected to materially interfere with the ordinary conduct of the business and operations of any Loan Party.

(b) Subject to the exceptions listed thereon, Schedule 7.01 sets forth a complete and accurate list as of the Closing Date of all Liens (other than any Liens permitted under Sections 7.01(e) or (l)) on the property or assets of the Borrower and each of its Subsidiaries, showing as of the date hereof the lienholder thereof.

(c) Schedule 5.08(c) sets forth a complete and accurate list as of the Closing Date of the locations of all mines owned or leased by the Borrower or any of its Subsidiaries.

(d) The Borrower and each of its Subsidiaries has good record title to, or valid leasehold, easement or other property interests in all personal property necessary for the ordinary conduct of the business and operations of the Loan Parties as presently conducted.

(e) Schedule 7.03 sets forth a complete and accurate list as of the Closing Date of all Investments held by the Borrower and any of its Subsidiaries on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

(f) To the knowledge of the Loan Parties on the Closing Date, all Material Owned Real Property and the Material Leased Real Property that is being mined or operated as of the Closing Date is in a physical condition that would permit mining or operations as presently conducted.

Section 5.09. *Environmental Compliance.* Except as disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedule 5.09, or as otherwise could not reasonably be expected to have a Material Adverse Effect:

(a) The Properties do not contain, and have not previously contained, any Hazardous Materials in amounts or concentrations which (i) constitute or constituted a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(b) None of the Borrower nor any of its Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by the Borrower or any of its Subsidiaries (the "**Business**"), or any prior business for which the Borrower has retained liability under any Environmental Law.

(c) Hazardous Materials have not been transported or disposed of from the Properties in violation of, or in a manner or to a location which could reasonably be expected to give rise to liability under, any applicable Environmental Law, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law.

(d) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened under any Environmental Law to which the Borrower or any of its Subsidiaries is or, to the knowledge of the Borrower, will be named as a party or with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other similar administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.

(e) There has been no release or threat of release of Hazardous Materials at or from the Properties, or arising from or related to the operations of the Borrower or any of its Subsidiaries in connection with the Properties or otherwise in connection with the

Business, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability under any applicable Environmental Laws.

(f) The Properties and all operations at the Properties are in compliance in all material respects with all applicable Environmental Laws.

(g) The Borrower and each of its Subsidiaries (i) hold all Environmental Permits (each of which is in full force and effect and is not subject to appeal, except in such instances where the requirement to hold an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted) required for any of their current operations or for the current ownership, operation or use of the Properties, including all Environmental Permits required for the coal mining-related operations of the Borrower or any of its Subsidiaries or, to the extent currently required, any pending construction or expansion related thereto; (ii) are, or have been, in compliance with all Environmental Permits, except in such instances where the requirement of an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted; and (iii) have used commercially reasonable efforts to cause all contractors, lessees and other Persons occupying, operating or using the mines on the Properties to comply with all Environmental Laws and obtain all Environmental Permits required for the operation of the mines.

(h) To the knowledge of the Borrower, none of the Properties have any associated direct or indirect acid mine drainage which (i) constitutes or constituted a violation of, or (ii) could reasonably be expected to give rise to liability under, any applicable Environmental Law.

Section 5.10. *Mining.* The Borrower and each of its Subsidiaries has, in the amounts and forms required pursuant to Environmental Law, obtained all performance bonds and surety bonds, or otherwise provided any financial assurance required under Environmental Law for Reclamation or otherwise in the ordinary conduct of the business and operations of the Loan Parties (collectively, “**Mining Financial Assurances**”), except for such Mining Financial Assurances that do not exceed \$25,000,000 in the aggregate.

Section 5.11. *Insurance.* The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

Section 5.12. *Taxes.* The Borrower and its Subsidiaries have filed all Federal, state and other tax returns and reports required to be filed, and have paid all material Federal, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable (other than those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP); no ~~material~~-tax Lien has been filed [\(other than Liens for \(i\) pre-petition Taxes that were not yet due on the Petition](#)

Date or which are being contested in good faith and by appropriate proceedings and (ii) post-petition Taxes not to exceed the Threshold Amount not yet due or which are being contested in good faith and by appropriate proceedings) and, to the knowledge of the Borrower, no material claim is being asserted or audit being conducted, with respect to any material Tax, fee or other charge of the Borrower or any of its Subsidiaries. There is no proposed tax assessment against the Borrower or any Subsidiary that would, reasonably be likely to result in liability of the Loan Parties greater than the Threshold Amount. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement, other than the Tax Separation Agreement.

Section 5.13. *ERISA Compliance.* (a) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws (except that with respect to any Multiemployer Plan which is a Plan, such representation is deemed made only to the knowledge of the Borrower) and (ii) with respect to each Plan, no failure to satisfy the minimum funding standards of Sections 412 or 430 of the Code has occurred, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no nonexempt “prohibited transaction” (as defined in Section 406 of ERISA) or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur (except as may occur as a result of relief granted pursuant to section 1113 of the Bankruptcy Code), any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

Section 5.14. *Subsidiaries; Equity Interests; Loan Parties.* As of the Closing Date, the Borrower has no Subsidiaries other than those specifically disclosed in Schedule 5.14, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by each Person in the percentages specified on Schedule 5.14 free and clear of all Liens except those created under the Collateral Documents and the Orders or permitted by this Agreement and the other Loan Documents. Schedule 5.14 indicates which subsidiaries are Loan Parties as of the Closing Date showing (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its

U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation.

Section 5.15. *Margin Regulations; Investment Company Act.* (a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Federal Reserve Board), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 7.01, Section 7.04 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 9.01(e) will be margin stock.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is required to register as an “investment company” under the Investment Company Act of 1940.

Section 5.16. *Disclosure.* No report, financial statement, certificate or other information furnished (in writing) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, taken as a whole with any other information furnished or publicly available, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the date when made or delivered; *provided*, that with respect to any forecast, projection or other statement regarding future performance, future financial results or other future developments, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower’s control, and that no assurance can be given that the future developments addressed in such information can be realized).

Section 5.17. *Compliance With Laws.* The Borrower and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws (including any zoning, building, ordinance, code or approval or any building or mining permits) and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted, or (b) the failure to comply therewith has been disclosed in the Borrower’s most recent annual, quarterly or other report filed with the SEC.

Section 5.18. *Intellectual Property; Licenses, Etc.* The Borrower and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their

respective businesses, except where the failure to own or possess the right to use such IP Rights could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the use of such IP Rights by the Borrower or any Subsidiary does not infringe upon any rights held by any other Person, except for any infringement that could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.18, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.19. *[Reserved]*.

Section 5.20. *Casualty, Etc.* Neither the businesses nor the properties of the Borrower or any of its Subsidiaries have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.21. *Labor Matters.* Except as specifically disclosed on Schedule 5.21, there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date.

Section 5.22. *Collateral Documents.* Subject to the entry of the Orders, the provisions of the Collateral Documents when executed and delivered (and at all times thereafter) are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien on all right, title and interest of the Collateral owned by the Loan Parties and described therein.

Section 5.23. *Use of Proceeds.* The Borrower will use the proceeds of the Loans solely as provided for in Section 6.11.

Section 5.24. *Coal Act; Black Lung Act.*

(a) The Borrower, each of its Subsidiaries and its “related persons” (as defined in the Coal Act) are in compliance in all material respects with the Coal Act and any regulations promulgated thereunder except which compliance is being contested in good faith by appropriate proceedings diligently conducted or excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court, and none of the Borrower, its Subsidiaries or its “related persons” (as defined in the Coal Act) has any liability under the Coal Act, except as disclosed in the Borrower’s financial statements or which could not reasonably be expected to have a Material Adverse Effect, or with respect to premiums or other material payments required thereunder which have been paid when due, or which liability is being contested in good faith by appropriate proceedings diligently conducted or the current payment of which is excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court.

(b) The Borrower and each of its Subsidiaries are in compliance in all material respects with the Black Lung Act except which compliance is being contested in good faith by appropriate proceedings diligently conducted or excused by the Bankruptcy Code

by virtue of commencement of the Cases or by the Bankruptcy Court, and neither the Borrower nor any of its Subsidiaries has either incurred any Black Lung Liability or assumed any other Black Lung Liability, except as disclosed in the Borrower's financial statements or which could not reasonably be expected to have a Material Adverse Effect, or with respect to premiums, contributions or other material payments required thereunder which have been paid when due or which Black Lung Liability is being contested in good faith by appropriate proceedings diligently conducted or the current payment of which is excused by the Bankruptcy Code by virtue of commencement of the Cases or by the Bankruptcy Court.

Section 5.25. *Activities and Liabilities of EACC Camps, Inc.* EACC Camps, Inc., a West Virginia corporation, owns no material assets, material Indebtedness or other material liabilities, direct or contingent, including material liabilities for Taxes and material commitments, and conducts no material business or operations.

Section 5.26. *Anti-Terrorism Laws.* (a) None of the Loan Parties or, to the knowledge of any of the Loans Parties, any of their Affiliates, is in violation of any applicable laws relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) No Loan Party or, to the knowledge of any of the Loan Parties, any of their Affiliates is any of the following:

- (i) a Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a Person or entity owned or controlled by, or acting for or on behalf of, any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a Person or entity with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or
- (v) a Person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

(c) No Loan Party or to the knowledge of any Loan Party, any of its Affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in Section 5.26(b)(ii) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) knowingly engages in or conspires to knowingly engage in any transaction that evades or avoids, or has the purpose of

evading or avoiding, or attempts to violate, any of the prohibitions set forth in any applicable Anti-Terrorism Law.

ARTICLE 6
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and expenses related thereto not then payable or in existence as of the later of the Termination Date or the Letter of Credit Expiration Date), or any Letter of Credit shall remain outstanding, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01 and 6.02 (a) – (g)) cause each Subsidiary to:

Section 6.01. *Financial Statements.* Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2011), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended June 30, 2012), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event within 15 Business Days after the end of each fiscal month of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal month and for the portion of the Borrower's fiscal year then ended, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, changes in

shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Section 6.01(a) or (b) above at the times specified therein.

Section 6.02. *Certificates; Other Information.* Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants reporting on such financial statements and stating that in performing their audit nothing came to their attention that caused them to believe the Borrower failed to comply with the financial covenants set forth in Section 7.11, except as specified in such certificate;

(b) concurrently with the delivery of the financial statements referred to in Section 6.01(c) (commencing with the delivery of the financial statements for the fiscal month ended June 30, 2012), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, which shall include detailed computations of the financial covenant set forth in Sections 7.11, 7.12 and 7.13.;

(c) promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of the Borrower or any of its Subsidiaries, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) unless otherwise required to be delivered to the Lenders hereunder, promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) as soon as available, but in any event prior to the date audited financial statements are required to be delivered, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and

containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify;

(g) promptly, and in any event within five Business Days after receipt thereof by the Borrower or any Subsidiary, copies of each material notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of the Borrower or any Subsidiary;

(h) unless otherwise required to be delivered to the Lenders hereunder, not later than ten days after receipt thereof by the Borrower or any Subsidiary, copies of all notices of default, non-compliance or any other material matters (excluding those delivered pursuant to the relevant agreement in the ordinary course of business), material requests and other material documents (including amendments, waivers and other modifications) so received under or pursuant to any Related Document and, from time to time upon request by the Administrative Agent, such other information and reports regarding the Related Documents as the Administrative Agent may reasonably request;

(i) as soon as available, but in any event within the time period in which the Borrower must deliver its annual audited financials under Section 6.01(a), a report supplementing Schedules 5.08(a), 5.08(b) and 5.08(c) and identifying all Material Owned Real Property and Material Leased Real Property ~~Leases~~ acquired or disposed of by any Loan Party during such fiscal year;

(j) promptly, such additional information regarding the business, financial, legal or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(k) weekly, on or before the third Business Day following the end of every calendar week (for purposes of this section, each calendar week being deemed to end on Friday), commencing with the calendar week ending July 13, 2012, a 13-Week Projection;

(l) a Borrowing Base Certificate substantially in the form of Exhibit G₃ as of the date required to be delivered or so requested, in each case with supporting documentation, (i)(A) semi-monthly (as of the 15th day and as of the last day of each month (or, if either such day is not a Business Day, as of the Business Day immediately preceding such 15th or last day, as applicable)), on or before the third Business Day following each 15th day and each last day of each month or (B) weekly at any time that Excess Availability is less than \$37,500,000 (as of the last Business Day of each week) on or before the third Business Day of each week, in each case, commencing July 13, 2012, which Borrowing Base Certificate shall reflect the Collateral contained in the Borrowing Base updated as of such 15th or last day of each month, as applicable; (ii) in addition to the bi-weekly Borrowing Base Certificates required pursuant to clause (i), upon the occurrence and continuance of an Event of Default, on or before the third Business Day following the end of each calendar week, which weekly Borrowing Base Certificate shall reflect the Collateral included in the Borrowing Base updated

as of the immediately preceding Monday; (iii) upon the consummation of any Disposition pursuant to 7.05(g); and (iv) if requested by the Administrative Agent at any other time when the Administrative Agent reasonably believes that the then existing Borrowing Base Certificate is materially inaccurate, as soon as reasonably available after such request; in each case with supporting documentation as the Administrative Agent or the Revolving Lenders may reasonably request;

(m) The Borrower shall deliver or cause to be delivered to the Administrative Agent and, if requested, the Lenders, the following:

(i) upon request by the Administrative Agent, and in no event less frequently than 5th Business Day after the end of each month, (i) a monthly trial balance showing Accounts outstanding aged from statement date as follows: 1 to 30 days, 31 to 60 days, 61 to 90 days and 91 days or more, accompanied by a comparison to the prior month's trial balance and such supporting detail and documentation as shall be reasonably requested by the Administrative Agent and (ii) a summary of Inventory by location and type accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent;

(ii) on the date any Borrowing Base Certificate is delivered pursuant to Section 6.02(l), a report with respect to the Borrower, including all additions and reductions (cash and non-cash) with respect to intercompany Indebtedness of the Loan Parties, accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent;

(iii) at the time of delivery of each of the financial statements pursuant to Sections 6.01(a) and (b);

(A) a reconciliation of the Accounts trial balance and quarter-end Inventory reports of the ~~Borrowers~~Borrower to the general ledger of such Loan Party, in each case, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent; and

(B) a list of any application for the registration of any patent, trademark or copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency which any Loan Party has filed in the prior fiscal quarter;

(iv) upon request by the Administrative Agent and, in no event less frequently than 45 days after the end of the second and fourth fiscal quarters of each year, a list of Account Debtors with respect to Eligible Accounts, with addresses and contact information;

(v) such other reports, statements and reconciliations with respect to the Borrowing Base or Collateral of any or all Loan Parties as the Administrative Agent shall from time to time reasonably request;

(n) promptly (and in any event within three Business Days) after any Loan Party has knowledge that Accounts of the Loan Parties in an aggregate face amount of \$15,000,000 or more cease to be Eligible Receivables, notice of such occurrence; and

(o) all pleadings, motions and other documents directly related to the Facilities (including, without limitation, any requests for relief under sections 363 or 365 or to approve any compromise and settlement of claims), any Reorganization Plan or any disclosure statement related thereto, or any request for relief under section 1113 or 1114 of the Bankruptcy Code by the earlier of (i) two Business Days prior to being filed (and if impracticable, then promptly after being filed) on behalf of any of the Debtors with the Bankruptcy Court or (ii) at the same time as such documents are provided by any of the Debtors to any statutory committee appointed in the Cases or the United States Trustee for the Southern District of New York, it being agreed that the Borrower shall be deemed in compliance with this covenant if it uses good faith efforts to comply.

Documents required to be delivered pursuant to Section 6.01(a), (b) or (c) or Section 6.02(a) or (b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 12.02; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) on which such documents are filed for public availability of the SEC's Electronic Data Gathering and Retrieval system; *provided*, that the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of the documents required to be delivered pursuant to Section 6.01(a), (b) or (c) or Section 6.02(a) or (b). The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 6.03. *Notices.* Notify the Administrative Agent:

- (a) promptly, of the occurrence of any Default or Event of Default;
- (b) promptly, of any event which could reasonably be expected to have a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event that, individually, or in the aggregate, would be reasonably likely to have a Material Adverse Effect, as soon as possible and in any event within 30 days after the Borrower knows or has obtained notice thereof;
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(e) promptly after receipt of notice or knowledge of any Loan Party thereof, of any unstayed action, suit, proceeding or claim alleging any Environmental Liability against or by such Loan Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect;

(f) promptly after receipt of notice or knowledge of the Borrower thereof, of any accidents, explosions, implosions, collapses or flooding at or otherwise related to the Properties that result in (i) any fatality or (ii) the trapping of any Person in any mine for more than twenty-four hours;

(g) promptly after receipt of notice or knowledge of the Borrower thereof, of the issuance of any closure order pursuant to any Environmental Law or pursuant to any Environmental Permit that could reasonably be expected to directly or indirectly result in the closure or cessation of operation of any mine for a period of more than 5 consecutive days; and

(h) promptly after receipt of notice or knowledge of any Loan Party of any default by such Loan Party of any of its Subsidiaries under any Contractual Obligation with respect to Material Leased Real Property (except for non-material non-payment defaults and defaults which do not or, with the giving of any notice, the passage of time, or both, would not give rise a right of termination by the lessor).

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04. *Payment of Post-Petition Obligations.* In accordance with the Bankruptcy Code and subject to any required approval by the Bankruptcy Court, pay and discharge as the same shall become due and payable (a) all post-petition Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, except where failure to do so could not reasonably be expected to result in a Material Adverse Effect or (b) all lawful claims which, if unpaid, would by law become a Lien upon any material portion of the Collateral, unless, in each of clause (a) or (b) above, such liabilities, assessments, governmental charges, levies or claims are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary.

Section 6.05. *Preservation of Existence, Etc.* With respect to the Borrower and each of its Subsidiaries, (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary for the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

Section 6.06. *Maintenance of Properties.* With respect to the Borrower and each of its Subsidiaries, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition (ordinary wear and tear and damage by fire or other casualty or taking by condemnation excepted); except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. The Loan Parties shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all applicable law.

Section 6.07. *Maintenance of Insurance.* Maintain with financially sound and reputable insurance companies which may be Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or Similar Business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried by companies engaged in Similar Businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates. Without limiting the generality of the foregoing, the Borrower and its Subsidiaries will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, (b) liability insurance, (c) business interruption insurance, and (d) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as would be carried or maintained under similar circumstances by Persons of established reputation engaged in Similar Businesses. Each such policy of insurance shall (i) name the Administrative Agent, on behalf of Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Administrative Agent, on behalf of the Secured Parties, as the loss payee thereunder and provide for at least thirty days' prior written notice to the Administrative Agent of any modification or cancellation of such policy.

Section 6.08. *Compliance with Laws.* Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted; (b) the failure to comply therewith, in addition to the risk thereof, is disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedules 5.09, or (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

Section 6.09. *Books and Records.* (a) Maintain proper books of record and account, in which in all material respects full, true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower

or such Subsidiary, as the case may be; and (c) each Loan Party shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions.

Section 6.10. *Inspection Rights; Field Exams.* (a) Permit representatives and independent contractors of the Administrative Agent and each Lender to, at the Borrower's expense, visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (except to the extent (i) any such access is restricted by a Requirement of Law or (ii) any such agreements, contracts or the like are subject to a written confidentiality agreement with a non-Affiliate that prohibits the Borrower or any of its Subsidiaries from granting such access to the Administrative Agent or the Lenders; *provided*, that with respect to such confidentiality restrictions affecting the Borrower or any of its Subsidiaries, a Responsible Officer is made available to such Lender to discuss such confidential information to the extent permitted), and to discuss the business, finances and accounts with its officers and independent public accountants at such reasonable times during normal business hours and as often as may be reasonably desired, *provided*, that the Administrative Agent or such Lender shall give Borrower reasonable advance notice prior to any contact with such accountants and give the Borrower the opportunity to participate in such discussions.

(b) At any reasonable time and from time to time during regular business hours, upon reasonable notice, permit representatives and independent contractors of the Administrative Agent or any of the Revolving Lenders to visit the properties of the Loan Parties and their Subsidiaries to, at the Borrower's expense, conduct field examinations, evaluations, appraisals, environmental assessments and ongoing maintenance and monitoring in connection with the Borrower's computation of the Borrowing Base and the assets included in the Borrowing Base and such other assets and properties of the Loan Parties or their Subsidiaries as the Administrative Agent may reasonably require, and to monitor the Collateral and all related systems; *provided* that such field exams and appraisals may be conducted at the Borrower's expense not more than twice per twelve-month period or, at any time that Excess Availability is less than \$37,500,000, once per quarter. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default such field examinations and appraisals may be conducted at the Borrower's expense as many times as the Administrative Agent shall consider reasonably necessary.

(c) At any reasonable time and from time to time during regular business hours, upon reasonable notice, permit representatives and independent contractors of the Administrative Agent or any of the Arrangers to visit the Real Property of the Borrower and its Subsidiaries to conduct evaluations, appraisals, surveys and environmental assessments in connection with monitoring the Term ~~Facility~~ Collateral and, after the occurrence and during the continuance of an Event of Default, in order to market any Real Property (including any Leased Real Property) for sale.

Section 6.11. *Use of Proceeds.* Use the proceeds of the Credit Extensions to refinance the Existing Swingline Obligations and all obligations outstanding under the Existing Securitization Facility and for working capital, capital expenditures and other general corporate purposes.

Section 6.12. *Covenant to Guarantee Obligations and Give Security.* (a) Upon the formation or acquisition of any new direct or indirect Guarantor Subsidiary by any Loan Party, then the Borrower shall, at the Borrower's expense:

(i) within 10 days (or such longer period as the Administrative Agent may agree) after such formation or acquisition, cause such Guarantor Subsidiary, to duly execute and deliver to the Administrative Agent a supplement to this Agreement and to the Security Agreement, in each case in form and substance reasonably satisfactory to the Administrative Agent, whereby such Guarantor Subsidiary shall (A) become a party to this Agreement and the Security Agreement upon execution and delivery by such Guarantor Subsidiary of an Assumption Agreement in the form of Exhibit K hereto, and any supplements to the Security Agreement or Intellectual Property Security Agreements or other security and pledge agreements, in all such cases, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all Pledged Equity Interests and Pledged Debt in and of such Guarantor Subsidiary, and other instruments representing the Pledged Equity Interests in certificated form accompanied by undated stock powers executed in blank or the Pledged Debt indorsed in blank to the extent required by the Security Agreement), in all such cases to the same extent that such documents and instruments would have been required to have been delivered by Persons that were Guarantor Subsidiaries on the Closing Date, securing payment of all the Obligations of such Guarantor Subsidiary under the Loan Documents (B) guarantee the other Loan Parties' obligations and become a Subsidiary Guarantor for all purposes under the Loan Documents and (C) grant a security interest in substantially all of its assets to secure such obligations; and

(ii) within 10 days (or such longer period as the Administrative Agent may agree) after such formation or acquisition, furnish to the Administrative Agent a description any Material Owned Real Property and Material Leased Real Property of such Guarantor Subsidiary, in detail reasonably satisfactory to the Administrative Agent.

(b) At the reasonable request of the Administrative Agent, each Loan Party shall, at the Borrower's expense:

(i) (A) with respect to Material Owned Real Property, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent within 45 days (or such longer period as the Administrative Agent may agree) after such request, deeds of trust, trust deeds, deeds to secure debt and/or mortgages, (B) with respect to Material Leased Real Property where the terms of the lease of such Material Leased Real Property (or applicable state law, if such lease is silent on the issue) do not prohibit a mortgage thereof, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent within 30 days (or such longer period as the Administrative Agent may agree) after such request, leasehold mortgages or leasehold deeds of trust, and (C) with respect to Material Leased Real Property where the terms of the lease of such Material Leased Real Property (or applicable state law, if such lease is silent on the issue) prohibit a mortgage thereof, (1) cause the applicable Loan

Party to use commercially reasonable efforts to promptly obtain estoppel and consent agreements executed by the lessors of such Material Leased Real Property and duly execute and deliver to the Administrative Agent, leasehold mortgages or leasehold deeds of trust or (2) cause the applicable Loan Party to file the Interim Order with the government authority responsible for recording mortgages in the jurisdiction in which such Material Leased Real Property is located, in the case of clauses (A), (B) and (C), in form and substance satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents;

(ii) within 45 days (or such longer period as the Administrative Agent may agree) after such request take whatever additional action (including the recording of mortgages and the filing of Uniform Commercial Code financing statements) may be necessary in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on any Material Owned Real Property or Material Leased Real Property, enforceable against all third parties;

(iii) within 45 days (or such longer period as the Administrative Agent may agree) after such request, cause the applicable Loan Party to provide the Administrative Agent with a legal description of any Material Owned Real Property or any Material Leased Real Property, as applicable, from which any As-Extracted Collateral will be severed or to which As-Extracted Collateral otherwise relates, together with the name of the record owner of such Material Owned Real Property or Material Leased Real Property, as applicable, the county in which such Material Owned Real Property or Material Leased Real Property, as applicable, is located, accurate real estate descriptions sufficient to locate such real property on the ground and such other information as may be necessary or desirable to file real property related financing statements, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and/or leasehold deeds of trust under Section 9-502(b) or 9-502(c) of the UCC or any similar legal requirements; and

(iv) within 45 days (or such longer period as the Administrative Agent may agree) after such request, cause the applicable Loan Party to provide the Administrative Agent with all geological data, reserve data, material existing mine maps, surveys, title insurance policies, title insurance, abstracts and other evidence of title, core hole logs and associated data, Coal measurements, Coal samples, lithologic data, Coal reserve calculations or reports, washability analyses or reports, quality analyses, mine plans, mining permit applications and supporting data, engineering studies and all other information, maps, reports and data in the possession of such Loan Party and relating to or affecting the Real Property, including the Coal reserves, Coal ownership, Real Property Leases, mining conditions, mines, and mining plans of such Loan Party as prepared and utilized by such Loan Party in its ordinary course of business.

Section 6.13. *Compliance With Environmental Laws.* Except as otherwise excused by the Bankruptcy Court, (a) comply, and use commercially reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply, in all material

respects, with all applicable Environmental Laws and Environmental Permits and obtain, to the extent necessary based on its current operations, and renew all Environmental Permits for its operations and properties, except in such instances in which (i) the requirement of an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted, or (ii) the failure to so comply, obtain or renew, in addition to the risk thereof, has been disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedule 5.09; and (b) undertake and perform any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws, except in such instances in which (i) the requirement to undertake or perform is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted, or (ii) the failure to so undertake or perform has been, in addition to the risk thereof, disclosed in the Borrower's most recent annual, quarterly or other reports filed with the SEC or on Schedule 5.09.

Section 6.14. *Preparation of Environmental Reports.* Not more often than once per Property during the term of this Agreement (or more frequently during the continuance of an Event of Default), at the reasonable request of the Administrative Agent, the Borrower shall provide to the Lenders within 60 days after such request, at the expense of the Borrower, an environmental or mining site assessment or audit report for any of its Properties described in such request, prepared by an environmental or mining consulting firm reasonably acceptable to the Administrative Agent describing the presence or absence of Hazardous Materials and information otherwise reasonably requested by the Lenders.

Section 6.15. *Further Assurances.* Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments (including Mortgages) as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject the Borrower's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents or the Orders, and (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and by the Orders.

Section 6.16. *Compliance with Terms of Leaseholds and Related Documents.* (a) Except as otherwise excused by the Bankruptcy Court, make all payments and otherwise perform all obligations in respect of all Real Property Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Real Property Leases in full force and effect and not allow such Real Property Leases to lapse or be terminated or any rights to renew such Real Property Leases to be forfeited or cancelled, except in connection with the rejection of any unexpired lease pursuant to Section 8.01.

(b) Except as otherwise excused by the Bankruptcy Court, make all payments and otherwise perform all obligations in respect of all Related Documents, keep such Related Documents in full force and effect and not allow such Related Documents to lapse or be terminated or any rights to renew such Related Documents to be forfeited or cancelled, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

Section 6.17. *Ratings.* The Borrower shall use commercially reasonable efforts to obtain within 30 days after the Closing Date a public credit rating from each of Moody's and S&P with respect to the Term Loans.

Section 6.18. *First Day Orders.* Cause all proposed "first day" orders submitted to the Bankruptcy Court to be in accordance with and permitted by the terms of this Agreement in all respects, it being understood and agreed that the forms of orders approved by the Arrangers prior to the Petition Date are in accordance with and permitted by the terms of this Agreement in all respects.

Section 6.19. *Mining Financial Assurances.* Maintain all material Mining Financial Assurances to the extent required pursuant to any Environmental Law.

Section 6.20. *Post-Closing Obligations.* Perform the obligations set forth on Schedule 6.21, as and when set forth therein.

Section 6.21. *Administration of Accounts and Inventory.* (a) If an Account of any Loan Party includes a charge for any taxes, the Administrative Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Loan Party if such Loan Party does not do so and to charge the ~~Borrowers~~Borrower therefor; *provided, however,* that neither the Administrative Agent nor the Lenders shall be liable for any taxes that may be due from the Loan Parties or with respect to any Collateral.

(b) Whether or not a Default exists, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or any Loan Party, to verify the validity, amount or any other matter relating to any Accounts of the Loan Party by mail, telephone or otherwise. The Loan Parties shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

Section 6.22. *Cash Management System.*

(a) Within 30 days after the Closing Date (or such later date as the Administrative Agent may specify in its sole discretion), and at all times thereafter, the applicable Loan Parties shall enter into and maintain a Blocked ~~Control~~Account Agreement, satisfactory in form and substance to the Administrative Agent and the Arrangers in their reasonable discretion, with respect to each Deposit Account into which payments in respect of the Accounts of the Loan Parties are remitted (each such Deposit Account, a "**Collection Account**"), which Blocked Account Agreements shall require the ACH or wire transfer by the end of each Business Day of all ledger or available, as applicable, cash receipts held in such Collection Accounts to the Revolving ~~Credit Facility~~ Collateral Account. No Loan Party shall

direct any Account Debtor, or any customer, to make payments on Accounts to any Deposit Account other than the Collection Accounts which, 30 days after the Closing Date (or such later date as the Administrative Agent may specify in its sole discretion), are subject to Blocked Account Agreements, and the Revolving ~~Credit Facility~~ Collateral Account.

(b) Each Loan Party shall (i) deposit in the Term Cash Collateral Account (A) all Term ~~Facility~~ Collateral (other than the L/C Cash Collateral Account) constituting cash and Cash Equivalents and (B) all cash Proceeds they receive from any disposition of Term ~~Facility~~ Collateral, (ii) except as provided in clause (a) above, deposit in the Revolving ~~Credit Facility~~ Collateral Account all other cash they receive and (iii) not establish or maintain any Securities Account, Commodities Account or Deposit Account that is not a Control Account, other than Excluded Accounts. Each Loan Party shall instruct each Person obligated to make a payment to any of them to make payment, or to continue to make payment, to the appropriate Control Account as required by this Section 6.22.

(c) Each Loan Party hereby acknowledges and agrees that (i) it has no right of withdrawal from the Control Accounts, (ii) the funds on deposit in the Control Accounts shall at all times continue to be collateral security for all of the Obligations, and (iii) the funds on deposit in any Control Account shall be applied as provided in Section 9.03 of this Agreement, subject to Article 11 the Security Agreement. In the event that, notwithstanding the provisions of this Section 6.22, a Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall promptly be deposited into the appropriate Control Account or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(d) Without limiting the foregoing, funds on deposit in any Deposit Account or Securities Account under the sole dominion and control of the Administrative Agent may be invested (but the Administrative Agent shall be under no obligation to make any such investment) in Cash Equivalents at the direction of the Administrative Agent and, except during the continuance of an Event of Default, the Administrative Agent agrees with the Borrower to issue Entitlement Orders for such investments in Cash Equivalents as requested by the Borrower; *provided, however*, that the Administrative Agent shall not have any responsibility for, or bear any risk of loss of, any such investment or income thereon.

(e) Any amounts received (i) in the Term Cash Collateral Account shall be applied to payment of the Term Loans pursuant to Sections 2.06(b) or 2.08(c) as and when due and (ii) in the Revolving Facility Collateral Account and each other Control Account (other than the L/C Cash Collateral Account, the Term Cash Collateral Account and any Cash Collateral Account) shall be applied, *first* to payment of all Revolving Credit Loans then due, *second* to the extent otherwise required by the Agreement, to Cash Collateralize all outstanding Revolving Letters of Credit, and *then* as directed by the Borrower; *provided that*, if an Event of Default has occurred and is continuing, all amounts in Control Accounts shall be applied pursuant to Section 9.03 and Article 10 of the Security Agreement.

Section 6.23. *Financial Restructuring Officer and Advisor.* The Borrower shall retain a restructuring advisor reasonably acceptable to the Arrangers to provide restructuring advice and assistance during the pendency of the Cases (it being understood and agreed that AlixPartners LLP is acceptable to the Arrangers). The Borrower shall appoint a Chief Restructuring Officer satisfactory to the Arrangers (it being understood and agreed that Ted Stenger is acceptable to the Arrangers) and file a motion for such appointment as soon as is practicable after the Petition Date but in any event on or before the Final Order Entry Date. The Chief Restructuring Officer shall report to the Chairman of the board of directors of the Borrower.

ARTICLE 7
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and costs and expenses related thereto not then payable or in existence as of the later of the Termination Date or the Letter of Credit Expiration Date), or any Letter of Credit shall remain outstanding, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

Section 7.01. *Liens.* Create, incur, assume or suffer to exist any Lien upon, or exception to title to, any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

- (a) Liens pursuant to any Loan Document or an Order;
- (b) Liens on the property of the Borrower or any of its Subsidiaries existing on the date hereof and listed on Schedule 7.01;
- (c) Liens for (i) pre-petition Taxes that were not yet due on the Petition Date or which are being contested in good faith and by appropriate proceedings and (ii) post-petition Taxes not to exceed the Threshold Amount not yet due or which are being contested in good faith and by appropriate proceedings, *provided* that, adequate reserves with respect to both pre-petition and post-petition taxes are maintained on the books of the applicable Person in accordance with GAAP;
- (d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person.
- (e) easements, covenants, conditions, rights-of-way, zoning restrictions, other restrictions and other similar encumbrances which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property

subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(f) Liens securing attachments or judgments for the payment of money not constituting an Event of Default under Section 9.01(h) or securing appeal or surety bonds related to such attachments or judgments;

(g) Liens securing Indebtedness of the Borrower and its Subsidiaries permitted by Section 7.02(e) incurred to finance the acquisition of fixed or capital assets; *provided*, that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (other than after-acquired title in or on such property and proceeds of the existing collateral in accordance with the instrument creating such Lien), (iii) the principal amount of Indebtedness secured by any such Lien shall at no time exceed 100% of the original purchase price of such property at the time it was acquired, and (iv) if the terms of such Indebtedness require any Lien hereunder to be subordinated to such Liens, then the Lien hereunder shall be subordinated on terms reasonably acceptable to the Administrative Agent;

(h) *[Reserved]*;

(i) Liens on the property of the Borrower or any of its Subsidiaries, as a tenant under a lease or sublease entered into in the ordinary course of business by such Person, in favor of the landlord under such lease or sublease, securing the tenant's performance under such lease or sublease, as such Liens are provided to the landlord under applicable law and not waived by the landlord;

(j) Liens arising from precautionary Uniform Commercial Code financing statement filings with respect to operating leases or consignment arrangements entered into by the Borrower or any of its Subsidiaries in the ordinary course of business;

(k) *[Reserved]*;

(l) Production Payments, royalties, dedication of reserves under supply agreements or similar rights or interests granted, taken subject to, or otherwise imposed on properties consistent with normal practices in the mining industry;

(m) leases, subleases, licenses, sublicenses and rights-of-use granted to others incurred in the ordinary course of business and that do not materially and adversely affect the use of the property encumbered thereby for its intended purpose;

(n) Liens in favor of a banking institution arising by operation of law or any contract encumbering deposits (including the right of set-off) held by such banking institutions incurred in the ordinary course of business and which are within the general parameters customary in the banking industry securing obligations not exceeding \$1,000,000;

(o) *[Reserved]*;

(p) *[Reserved]*;

(q) *[Reserved]*;

(r) rights of owners of interests in overlying, underlying or intervening strata and/or mineral interests not owned by Borrower or one of its Subsidiaries, with respect to tracts of real property where the Borrower or applicable Subsidiary's ownership is only surface or severed mineral or is otherwise subject to mineral severances in favor of one or more third parties; and

(s) other defects and exceptions to title of real property where such defects or exceptions are not material to the value of such real property.

Section 7.02. *Indebtedness.* Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02;

(c) Indebtedness under the Second Out Facility in a principal amount not to exceed \$302,000,000;

(d) Guarantees of the Borrower or any of its Subsidiaries in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Loan Party;

(e) Indebtedness in respect of Capital Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(g); *provided, however*, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$15,000,000;

(f) Indebtedness in respect of Swap Contracts approved by the Bankruptcy Court incurred in the ordinary course of business for non-speculative purposes and consistent with past business practice; *provided, however* that the notional amount of (i) such Swap Contracts shall not to exceed \$10,000,000 individually and \$25,000,000 in the aggregate;

(g) Indebtedness of the Borrower or any other Loan Party to any other Loan Party and of any non-Loan Party Subsidiary to any Loan Party or any other non-Loan Party Subsidiary; *provided*, that such Indebtedness must be subordinated to the Obligations on customary terms;

(h) Intercompany current liabilities between Loan Parties incurred in the ordinary course of business of such Loan Parties;

(i) *[Reserved]*;

(j) Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements in each case in connection with deposit accounts and in the ordinary course of business;

(k) Indebtedness representing deferred or equity compensation to employees of the Borrower or any of its Subsidiaries incurred in the ordinary course of business;

(l) *[Reserved]*; and

(m) Indebtedness in the form of bank guaranties, bid, performance and reclamation bonds, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, in an aggregate amount not to exceed (i) the amount of such Indebtedness outstanding on the date hereof and listed on Schedule 7.02 plus (ii) twenty-five percent (25%) of such amount; *provided* that such Indebtedness described in this clause (m) is not secured by any Lien.

Section 7.03. *Investments.* Make or hold any Investments, except:

(a) Investments held by the Borrower or any of its Subsidiaries in the form of Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$500,000 at any time outstanding subject to Bankruptcy Court approval, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Investments (including debt obligations and Equity Interests) received in satisfaction of judgments or in connection with the bankruptcy or reorganization of suppliers and customers of the Borrower and its Subsidiaries and in settlement of delinquent obligations of, and other disputes with, such customers and suppliers arising in the ordinary course of business;

(e) Investments in the nature of Production Payments, royalties, dedication of reserves under supply agreements or similar rights or interests granted, taken subject to, or otherwise imposed on properties with normal practices in the mining industry;

(f) Investments existing on the date hereof and set forth on Schedule 7.03;

(g) promissory notes and other similar non-cash consideration received by the Borrower and its Subsidiaries in connection with Dispositions not otherwise prohibited under this Agreement;

(h) Permitted Land Swaps, to the extent constituting Investments;

(i) Swap Contracts permitted under Section 7.02(f);

(j) Investments by the Borrower or its Subsidiaries in any Loan Party and Investments by any non-Loan Party in any other non-Loan Party; *provided*, that if the Investment is in the form of Indebtedness, such Indebtedness must be permitted pursuant to Section 7.02(g); and

(k) Investments by the Borrower or any of its Subsidiaries not otherwise permitted under this Section 7.03 in an aggregate amount not in excess of \$20,000,000.

Section 7.04. *Fundamental Changes.* Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower, provided, that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided, that when any Subsidiary that is a Loan Party is merging with another Subsidiary, the Loan Party shall be the continuing or surviving Person and the security interests granted by such Loan Party pursuant to the Orders and the Collateral Documents shall remain in full force and effect;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided, that if the transferor in such a transaction is a Loan Party, then the transferee must either be the Borrower or another Loan Party and the security interests granted by such Loan Party pursuant to the Orders and the Collateral Documents shall remain in full force and effect;

(c) the Borrower and any Subsidiary may merge or consolidate with any other Person in a transaction in which the Borrower is the surviving or continuing Person; and

(d) the Borrower and its Subsidiaries may consummate any transaction that would be permitted as an Investment under Section 7.03.

Section 7.05. *Dispositions.* Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of used, worn out, obsolete or surplus property by the Borrower or any of its Subsidiaries in the ordinary course of business or the abandonment or allowance to lapse or expire or other Disposition of Intellectual Property in the ordinary course of business that is, in the reasonable judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the Borrower and its Subsidiaries taken as a whole;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Permitted Land Swaps;

(e) *[Reserved]*;

(f) *[Reserved]*;

(g) Dispositions of assets by the Borrower and its Subsidiaries not otherwise permitted under this Section 7.05; *provided*, that (i) 100% of the consideration received in respect of any such Disposition shall be cash or Cash Equivalents, (ii) at the time of any such Disposition, no Default shall exist or would result from such Disposition, (iii) the consideration for such Disposition, when taken in the aggregate with the consideration for all such other Dispositions since the Closing Date, does not exceed \$100,000,000 and (iv) with respect to any such Disposition for consideration with a Fair Market Value greater than \$5,000,000, the Borrower shall first provide 30 days' prior written notice to the Administrative Agent (unless such notice provision is waived by the Administrative Agent) during which time the Administrative Agent, on behalf of the Secured Parties, shall be permitted to (x) credit bid forgiveness of a portion of the Indebtedness, in an amount up to half of the total consideration offered by the Administrative Agent, which total consideration shall be at least equal to the consideration offered by any other party in respect of such Disposition, outstanding under the Term Loans with respect to a Disposition of Term ~~Facility~~ Collateral, or outstanding under the Revolving Loans, with respect to a Disposition of Revolving ~~Credit Facility~~ Collateral or (y) except with respect to Dispositions of Real Property Leases (which are governed by Section 8.01(a)), find an acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement purchaser offering an amount in excess of the consideration offered by any other party in respect of such Disposition;

(h) so long as no Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of this Section 7.05;

(i) assignments, licenses, sublicenses of Intellectual Property in the ordinary course of business and in accordance with the applicable Collateral Documents; *provided*, *however*, that any license or sublicense of intellectual property shall be on a non-exclusive basis;

(j) sales or discounts (without recourse) of accounts receivable arising in the ordinary course of business in connection with the compromise of collection thereof;

(k) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangement between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(l) transfers of property subject to casualty or condemnation events upon receipt of the Net Cash Proceeds constituting an Extraordinary Receipt.

provided, however, that any Disposition pursuant to Section 7.05(a), (b), (c), (g) and (l) and shall be for Fair Market Value.

Section 7.06. *Restricted Payments.* Declare or make, directly or indirectly, any Restricted Payment; except that each Subsidiary may make Restricted Payments to the Borrower and the Subsidiary Guarantors, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made; *provided* that no Default shall have occurred and be continuing at the time of such Restricted Payment or would result therefrom.

Section 7.07. *Change in Nature of Business.* Engage in any material line of business other than a Similar Business.

Section 7.08. *Transactions With Affiliates.* Enter into any transaction of any kind with any Affiliate, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, unless such transaction is (a) not prohibited by this Agreement and (b) upon fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate. The foregoing restrictions shall not apply to the following:

(c) transactions between or among the Borrower and any other Loan Parties or between and among any Loan Parties;

(d) the payment of reasonable and customary fees and reimbursement of expenses payable to directors of the Borrower or any Subsidiary or to any Plan, Plan administrator or Plan trustee;

(e) loans and advances to directors, officers and employees to the extent permitted by Section 7.03;

(f) arrangements with respect to the procurement of services of directors, officers, independent contractors, consultants or employees in the ordinary course of business and the payment of customary compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable reimbursement arrangements in connection therewith;

(g) payments to directors and officers of the Borrower and its Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the Organization Documents or other corporate action of the Borrower or its Subsidiaries, respectively, or pursuant to applicable law; and

(h) Permitted Land Swaps between or among Loan Parties.

Section 7.09. *Burdensome Agreements.* Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Subsidiary Guarantor or to otherwise transfer property to or invest in the Borrower or any Subsidiary Guarantor, unless such Contractual Obligations could not reasonably be expected to materially hinder the Borrower's ability to meet its obligations under this Agreement.

Section 7.10. *Use of Proceeds.* Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

Section 7.11. *Minimum Consolidated EBITDA.* Permit Consolidated EBITDA of the Borrower and its Subsidiaries on a cumulative basis for each period beginning on June 1, 2012 and ending on each date set forth in the table below to be less than the amount set forth opposite such period:

Period Ending	Minimum Consolidated EBITDA (in millions)
October 31, 2012	\$48.0
November 30, 2012	\$49.0
December 31, 2012	\$53.0
January 31, 2013	\$61.0
February 28, 2013	\$60.0
March 31, 2013	\$67.0
April 30, 2013	\$81.0
May 31, 2013	\$94.0
June 30, 2013	\$98.0
July 31, 2013	\$110.0
August 31, 2013	\$134.0
September 30, 2013	\$148.0
October 31, 2013	\$176.0
November 30, 2013	\$190.0
December 31, 2013	\$205.0

Section 7.12. *Capital Expenditures.* Make or become legally obligated to make any Capital Expenditure, except for Capital Expenditures in the ordinary course of business not exceeding, in the aggregate for the Borrower and its Subsidiaries on a cumulative basis for each period beginning on June 1, 2012 and ending on each date set forth below, the amount set forth opposite such period:

Month	Amount (in millions)
July 31, 2012	\$66.0
August 31, 2012	\$73.0

Month	Amount (in millions)
September 30, 2012	\$77.0
October 31, 2012	\$91.0
November 30, 2012	\$96.0
December 31, 2012	\$106.0
January 31, 2013	\$118.0
February 28, 2013	\$121.0
March 31, 2013	\$135.0
April 30, 2013	\$145.0
May 31, 2013	\$164.0
June 30, 2013	\$188.0
July 31, 2013	\$192.0
August 31, 2013	\$196.0
September 30, 2013	\$215.0
October 31, 2013	\$229.0
November 30, 2013	\$236.0
December 31, 2013	\$245.0

Section 7.13. *Minimum Liquidity.* Permit Liquidity, as of the close of business on any day, to be less than the amount set forth opposite the period in which such day falls:

Period	Amount (in millions)
From July 1, 2012 until September 30, 2012	\$150.0
From October 1, 2012 until December 31, 2012	\$130.0
After January 1, 2013	\$100.0

; *provided, however*, that until the Final Order Entry Date, the Borrower shall not permit Liquidity, as of the close of business on any day, to be less than \$125,000,000.

Section 7.14. *Amendments of Organization Documents.* Amend any of its Organization Documents in any respect materially adverse to the Lenders.

Section 7.15. *Accounting Changes.* Make any change in (a) its accounting policies or reporting practices, except as required or permitted by GAAP, or (b) its fiscal year.

Section 7.16. *Prepayments, Etc. of Indebtedness.* Voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any (i) Indebtedness of any Loan Party incurred prior to the Petition Date except as contemplated by the Order, (ii) any Indebtedness under the Second Out Facility, except as contemplated by the Security Agreement and the Orders, (iii) any other Indebtedness that is subordinated to the Obligations or (iv) any other Indebtedness, except in the case of clause (iv) only, (x) the prepayment of the Credit Extensions in accordance with the terms of this Agreement or (b) as expressly provided

for in the orders of the Bankruptcy Court entered upon pleadings in the form and substance acceptable to the Administrative Agent.

Section 7.17. *Amendment, Etc. of Orders, Related Documents and Indebtedness.* (a) Amend, modify or change in any manner any First Day Order without the prior consent of the Arrangers or (b) (i) cancel or terminate any Related Document or consent to or accept any cancellation or termination thereof, other than in accordance with its terms, (ii) amend, modify or change in any manner any term or condition of any Related Document or give any consent, waiver or approval thereunder, (iii) waive any default under or any breach of any term or condition of any Related Document or (iv) take any other action in connection with any Related Document, in the case of each of clauses (i) through (iv), that would materially impair the value of the interest or rights of any Loan Party thereunder or that would materially impair the ability of the Lenders to be repaid hereunder.

Section 7.18. *Limitation on Negative Pledge Clauses.* Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) after the Petition Date that limits the ability of the Borrower or any Subsidiary Guarantor to create, incur, assume or suffer to exist any Lien upon any of its property to secure the Obligations hereunder; *provided, however,* that the foregoing clause shall not apply to Contractual Obligations which:

- (a) *[Reserved]*;
- (b) *[Reserved]*;
- (c) *[Reserved]*;
- (d) *[Reserved]*;
- (e) *[Reserved]*;
- (f) arise in connection with any Permitted Land Swap or other Disposition permitted by Section 7.05, with respect to the assets so Disposed;
- (g) *[Reserved]*;
- (h) Are customary restrictions on leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby, other than with respect to any Material Leased Real Property, so long as such restrictions relate to the assets subject thereto;
- (i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary, other than with respect to any Material Leased Real Property;
- (j) are customary limitations (including financial maintenance covenants) existing under or by reason of leases entered into in the ordinary course, other than with respect to any Material Leased Real Property;

(k) are restrictions on cash or other deposits imposed under contracts entered into in the ordinary course of business, other than with respect to any Material Leased Real Property; or

(l) are customary provisions restricting assignment of any, other than agreements with respect to any Material Leased Real Property.

ARTICLE 8
REAL PROPERTY LEASES

Section 8.01. *Special Rights with respect to Real Property Leases.* (a) No Loan Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, (x) reject a Real Property Lease or otherwise terminate a Real Property Lease (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code) or (y) sell or assign (I) any Material Lease, (II) any Real Property Lease for consideration that, when taken in the aggregate with the consideration for all such other sales or assignments since the Closing Date, exceeds \$20,000,000 or (III) any Real Property Lease during the continuance of an Event of Default, in each case, without first providing 30 days' prior written notice (or, if applicable, notice that such Loan Party will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code) to the Administrative Agent (unless such notice provision is waived by the Administrative Agent in its sole discretion) during which time the Administrative Agent shall be permitted to find an acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement lessee (which may include the Administrative Agent or its Affiliates) to whom such Real Property Lease may be assigned. If such a prospective assignee is timely found, the Loan Parties shall (i) not seek to reject such Real Property Lease, (ii) promptly withdraw any previously filed rejection motion, (iii) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Real Property Lease and assigning it to such prospective assignee and (iv) cure any defaults that have occurred and are continuing under such Real Property Lease; *provided* that this Section 8.01(a) shall not apply to Real Property Leases that are rejected, sold or assigned (A) pursuant to a filing which is acceptable to the Administrative Agent on the Petition Date or (B) on the effective date of an Acceptable Reorganization Plan. For the avoidance of doubt, it is understood and agreed that on or prior to the 30th day prior to the Automatic Rejection Date, the ~~Borrowers~~Loan Parties shall have delivered (and hereby agree to deliver) written notice to the Administrative Agent of each outstanding Real Property Lease that they intend to reject (including, without limitation, through automatic rejection on the Automatic Rejection Date) from and after the date of such notice (or, if applicable, notice that the ~~Borrower~~Loan Parties will seek to extend the Automatic Rejection Date as provided in Section 365(d)(4) of the Bankruptcy Code); *provided* that if the ~~Borrowers~~Loan Parties fail to deliver any such notice to the Administrative Agent prior to such date with respect to any such Real Property Lease (or a notice indicating that no such Real Property Leases shall be rejected), the ~~Borrowers~~Loan Parties shall be deemed, for all purposes hereunder, to have delivered notice to the Administrative Agent as of such date that it intends to reject all outstanding Real Property Leases.

(b) If an Event of Default shall have occurred and be continuing, the Administrative Agent may exercise any Debtor's rights pursuant to section 365(f) of the Bankruptcy Code with respect to any Real Property Lease or group of Real Property Leases and, subject to the Bankruptcy Court's approval after notice and hearing, assign any such Real Property Lease in accordance with section 365 of the Bankruptcy Code notwithstanding any language to the contrary in any of the applicable lease documents or executory contracts. In connection with the exercise of such rights, the Administrative Agent may (x) find an acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement lessee (which may include the Administrative Agent or its Affiliates) to whom a Real Property Lease may be assigned, (y) hold, and manage all aspects of, an auction or other bidding process to find such reasonably acceptable replacement lessee, and (z) in connection with any such auction, agree, on behalf of the Loan Parties, to a break-up fee or to reimburse fees and expenses of any stalking horse bidder up to an amount not to exceed 3.00% of the purchase price of such Real Property Lease and may make any such payments on behalf of such Loan Party and any amount used by the Administrative Agent to make such payments shall, at the election of the Administrative Agent in its sole discretion and subject to satisfaction of the conditions in Section 4.02, be deemed a Revolving Credit Borrowing hereunder. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 8.01(b), the Loan Parties shall promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of assuming such Real Property Lease and assigning it to such assignee and (iv) cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 8.01(b) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Reorganization Plan.

(c) If an Event of Default shall have occurred and be continuing, the Administrative Agent shall have the right to direct any Debtor that is a lessee under a Real Property Lease to assign such Real Property Lease to the Administrative Agent, on behalf of the Secured Parties, as collateral for the Obligations and to direct such Debtor lessee to assume such Real Property Lease to the extent assumption is required under the Bankruptcy Code as a prerequisite to such assignment. Upon receipt of notice that the Administrative Agent elects to exercise its rights under this Section 8.01(c), the Loan Parties shall (i) promptly file a motion seeking expedited relief and a hearing on the earliest court date available for purposes of, if necessary, assuming such Real Property Lease and assigning it to the Administrative Agent and (ii) cure any defaults that have occurred and are continuing under such Real Property Lease. Notwithstanding the foregoing, this Section 8.01(c) shall not apply to Real Property Leases that are rejected on the effective date of an Acceptable Reorganization Plan.

(d) Any order or the Bankruptcy Court approving the assumption of any Real Property Lease shall (i) specifically provide that the applicable Debtor shall be authorized to assign such Real Property Lease pursuant to section 365(f) of the Bankruptcy Code subsequent to the date of such assumption or (ii) provide for the assignment of such Real Property Lease, on the date of such order, to a reasonably acceptable (in the Administrative Agent's good faith and reasonable discretion) replacement lessee (which may include the Administrative Agent or its Affiliates) designated by the Administrative Agent.

(e) No Loan Party shall, nor shall it permit any of its Subsidiaries to, pursuant to Section 365 of the Bankruptcy Code, sell or assign a Real Property Lease without first providing 5 Business Days' prior written notice (the "**Initial Notice Period**") to the Administrative Agent (unless such notice provision is waived by the Administrative Agent in its sole discretion), which Initial Notice Period may be extended up to a further 25 days by the Administrative Agent in its sole discretion by delivering written notice of such extension to such Loan Party prior to expiration of the Initial Notice Period, and by any further period as is mutually agreeable between the Administrative Agent and such Loan Party (such notice period being the "**Aggregate Notice Period**"). During such Aggregate Notice Period, the Administrative Agent, on behalf of the Secured Parties, shall be permitted to credit bid forgiveness of some or all of the outstanding Term Facility Obligations (in an amount equal to at least the consideration offered by any other party in respect of such assignment) as consideration in exchange for any such Real Property Lease. In connection with the exercise of any of the Administrative Agent's rights under Sections 9.01 and 9.02(e) to direct or compel a sale or assignment of any Real Property Lease, the Administrative Agent, on behalf of the Secured Parties, shall be permitted to credit bid forgiveness of a portion of the Indebtedness (in an amount equal to at least the consideration offered by any other party in respect of such sale or assignment) outstanding under the Term Loans in exchange for such Real Property Lease. For the avoidance of doubt, the rights of the Administrative Agent under this Section 8.01(e) are in addition to any rights it may have under Section 7.05(g).

(f) If any Loan Party is required to cure any monetary default under any Real Property Lease under this Section 8.01, or otherwise in connection with any assumption of such Real Property Lease pursuant to section 365 of the Bankruptcy Code, and such monetary default is not cured within five Business Days of the receipt by such Loan Party of notice from the Administrative Agent under Section 8.01(a), (b) or (c) or any other notice from the Administrative Agent requesting the cure of such monetary default, then the Administrative Agent may cure any such monetary default on behalf of such Loan Party and any such payments shall, at the election of the Administrative Agent in its sole discretion and subject to satisfaction of the conditions in Section 4.02, be deemed a Revolving Credit Borrowing hereunder.

ARTICLE 9

EVENTS OF DEFAULT AND REMEDIES

Section 9.01. *Events of Default.* Any of the following shall constitute an Event of Default:

(a) *Non-Payment.* The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) *Specific Covenants.* (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03, 6.05, 6.07, 6.08, 6.10, 6.11,

6.12, 6.15, 6.16, 6.18, 6.20, 6.222 or 6.23 or Articles 7 or 8, (ii) any of the Subsidiary Guarantors fails to perform or observe any term, covenant or agreement contained in Article 11 of this Agreement (but only to the extent it relates to a default under one of the covenants listed in clause (i) above), (iii) any representation, warranty, certification or statement of fact made or deemed made under Section 2.04(a) by or on behalf of the Borrower shall be incorrect or misleading in any material respect when made or deemed made or (iv) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in Section 10 of the Security Agreement; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 9.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) *Representations and Warranties.* Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default.* (i) The Borrower or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder, Indebtedness under Swap Contracts or Guarantees of the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date), in each case having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit agreement) of more than the Threshold Amount, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee was created or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; (ii) there occurs under any Swap Contract (excluding any Swap Contract that was entered into prior to the Petition Date) an Early Termination Date (as defined under such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or (iii) there occurs under any Liability Assumption Agreement an early termination of such agreement for any reason which could reasonably be expected to have an adverse effect on any Loan Party or that would impair the ability of the Lenders to be repaid in full hereunder; or

(f) *Second Out Facility.* The intercreditor and priority of payment provisions set forth in the Security Agreement and the Orders shall for any reason be revoked, invalidated, or otherwise cease to be in full force and effect, or the Second Out Agent or lenders constituting more than 50% in aggregate principal amount of the Second Out Obligations shall contest in any manner (including by filing any application or motion with the Bankruptcy Court) the validity or enforceability thereof, or any such application or motion commenced by any Second Out Secured Party shall be successful, or the Obligations shall otherwise cease to have the priority contemplated by the Security Agreement and the Orders; or

(g) *Challenges.* Any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent, any L/C Issuer, any Arranger or any Lender with respect to the Obligations; or

(h) *Judgments.* There is entered against the Borrower or any of its Subsidiaries one or more final judgments or orders with respect to any post-petition liability for the payment of money that arose post-petition in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance), and, such judgments or orders shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) *ERISA.* (i) The occurrence of any of the following events that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in an actual obligation to pay money of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(j) *Invalidity of Loan Documents.* Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) *Change of Control.* There occurs any Change of Control; or

(l) *Collateral Documents.* Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms hereof or thereof, including as a result of a transaction permitted by Section 7.04 or 7.05) cease to create a valid and perfected Lien, with the priority required hereby or thereby (subject to Liens permitted by Section 7.01), on the Collateral purported to be covered thereby, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as

to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied or failed to acknowledge coverage; or

(m) *[Reserved]*.

(n) *Dismissal or Conversion of Cases.* (i) Any of the Cases of the Debtors shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal of any Case of any Debtor under Section 1112 of the Bankruptcy Code or otherwise, (ii) a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Debtors and the order appointing such trustee or examiner shall not be reversed or vacated within 30 days after the entry thereof;

(o) *Superpriority Claims.* An order of the Bankruptcy Court shall be entered granting any Superpriority Claim or other claim or administrative expense (other than the Carve-Out) in any of the Cases of the Debtors that is *pari passu* with or senior to the claims of the Administrative Agent and the Lenders against any Borrower or any other Loan Party hereunder or under any of the other Loan Documents, or any Debtor takes any action seeking or supporting the grant of any such claim, except as expressly permitted hereunder; or

(p) *Relief from Automatic Stay.* The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$5,000,000 in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole); or

(q) *Certain Orders.* (i) The Final Order Entry Date shall not have occurred by the date that is 30 days (or 45 days, if entry of the Final Order is delayed by any requirements as a result of an evidentiary hearing or similar hearing or process associated with objections being made to entry of the Interim Order or the Final Order) following the Interim Order Entry Date; or

(ii) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying for a period of five days or more, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, or the ~~Borrowers~~Borrower or any Subsidiary of the Borrower shall apply for authority to do so, without the prior written consent of the Administrative Agent, the Arrangers or the Required Lenders, and such order is not reversed or vacated within 5 days after the entry thereof; or

(iii) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Loan Parties; or

(iv) the Interim Order or Final Order shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect; or

(v) any of the Loan Parties shall fail to comply with the Orders; or

(vi) a final non-appealable order in the Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the commencement of other actions that is materially adverse to the Administrative Agent, the Lenders or their respective rights and remedies under the Facilities in any of the Cases or inconsistent with any of the Loan Documents; or

(r) *Pre-Petition Payments.* Except as permitted by the Orders, any Debtor shall make any Pre-Petition Payment other than Pre-Petition Payments authorized by the Bankruptcy Court in accordance with “first day” orders of the Bankruptcy Court satisfactory to the Administrative Agent and the Arrangers or by other orders entered by the Bankruptcy Court with the consent of (or non-objection by) the Arrangers; *provided, however*, that in no event shall the Debtors make any Pre-Petition Payment in respect of: (i) critical vendors in an aggregate amount in excess of \$25,000,000, (ii) foreign vendors in an aggregate amount in excess of \$750,000 and (iii) the claims of common carriers and warehousemen in an aggregate amount in excess of \$18,000,000, without the prior written consent of the Administrative Agent and the Arrangers; or

(s) *Invalid Plan.* A Reorganization Plan that is not an Acceptable Reorganization Plan shall be confirmed in any of the Cases of the Debtors, or any order shall be entered which dismisses any of the Cases of the Debtors and which order does not provide for termination of the Commitments and payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable), or any of the Debtors shall seek, support or fail to contest in good faith confirmation of any such plan or entry of any such order; or

(t) *Supportive Actions.* Any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in paragraphs (n) through (s), above or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal; or

(u) Any Material Lease is terminated by the lessor of such Material Leased Real Property and such termination is not (a) being contested in good faith by appropriate proceedings diligently conducted or (b) stayed in its effectiveness by the Bankruptcy Code by virtue of the commencement of the Cases or by the Bankruptcy Court.

Section 9.02. *Remedies Upon Event of Default.* (a) If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Class Required Lenders of any Class, take any or all of the following actions:

(i) declare the commitment of each Lender of the applicable Class to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans of the applicable Class, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(iii) in the case of the Required Revolving Lenders, require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof);

(iv) subject to the provisions of Section 10 of the Security Agreement, exercise on behalf of itself, the Class of Lenders and the applicable L/C Issuer all rights and remedies available to it, such Lenders and such L/C Issuer under the Loan Documents or applicable law (including in respect of the Collateral);

(v) require any Loan Party to promptly complete, pursuant to Section 363 and 365 of the Bankruptcy Code, subject to the rights of the Secured Parties to credit bid, a Disposition of its Real Property Leases or any portion thereof in one or more parcels at public or private sales, at any of the Administrative Agent's offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable;

(vi) exercise any of its rights with respect to Real Property Leases under Section 8.01;

provided, however, that (y) with respect to a Single Class Default, only Lenders of the applicable Class shall be entitled to request that the Administrative Agent exercise remedies pursuant to this Section 9.02 (or to consent thereto) and (z) with respect to the enforcement of Liens or other remedies with respect to the Collateral of the Loan Parties under the preceding clause (iv), the Administrative Agent shall provide the Borrower (with a copy to counsel for the Creditors' Committee in the Cases and to the United States Trustee for the Southern District of New York) with seven (7) days' prior written notice prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing.

(b) Upon the occurrence of the Termination Date, (i) the Commitments of each Lender to make Loans and the Commitments of each Lender and Issuer to issue or participate in Letters of Credit shall each automatically be terminated, (ii) the Loans, all interest thereon and all other amounts and Obligations shall automatically become due and payable in cash, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower and the other Loan Parties.

Section 9.03. *Application of Funds.* Subject to the Security Agreement, on the Termination Date and after the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have

automatically been required to be Cash Collateralized), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article 3) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Revolving Lenders, the Term Lenders, and the L/C Issuer with respect to Letters of Credit (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) and amounts payable under Article 3, ratably among them in proportion to the respective amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Revolving Lenders, the Term Lenders and the L/C Issuer in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and amounts owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Revolving Lenders, Term Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law;

provided, that the application to the Obligations pursuant to this Section 9.03 of amounts received in respect of Collateral that is Revolving ~~Credit Facility~~ Collateral and in respect of Collateral that is Term ~~Facility~~ Collateral is expressly subject to the priorities set forth in Section Article 10 of the Security Agreement and in the Interim Order (and, when entered, the Final Order), and all such amounts shall first be allocated in accordance with such priorities before being applied to the Obligations pursuant to this Section 9.03.

Subject to Section 2.04(d), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause *Fifth* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash

collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE 10
ADMINISTRATIVE AGENT

Section 10.01. *Authorization and Action.* (a) (i) Each Term Lender Lender and L/C Issuer hereby appoints Citibank, N.A. as the Term Administrative Agent hereunder and (ii) each Revolving Lender and L/C Issuer hereby appoints Citibank, N.A. as the Revolving Administrative Agent hereunder and, in each case, each such Lender and L/C Issuer authorizes such Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to such Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and L/C Issuer hereby authorizes the applicable Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents and, in the case of the Collateral Documents, to act as agent for the applicable Lenders, L/C Issuers and other Secured Parties under such Collateral Documents. The provisions of this Article 10 are solely for the benefits of the Administrative Agent, the Lenders and the L/C Issuers, and no Loan Party shall have rights as a third party beneficiary of any such provision

(b) As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, (or such other number or percentage of the Lenders as shall be necessary, or that the Administrative Agent shall believe in good faith to be necessary), and such instructions shall be binding upon all Revolving Lenders or Term Lenders, as applicable and the applicable L/C Issuers; *provided*, that the Administrative Agent shall be required to take any action that in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to the Loan Documents or applicable Requirements of Law, including, without limitation, any action that may be in violation of the automatic stay under any Requirement of Law relating to bankruptcy, insolvency or reorganization or relief of debtors. The Administrative Agent shall be deemed not to have knowledge of any Default or the event or events that give rise to any Default unless and until the Borrower, any Lender or any L/C Issuer shall have given written notice to the Administrative Agent describing such Default and such event or events. The Revolving Administrative Agent agrees to give to each Revolving Lender and applicable L/C Issuer, and the Term Administrative Agent agrees to give each Term Lender and applicable L/C Issuer, in each case, prompt notice of each notice given to it by any Loan Party pursuant to the terms of this Agreement or the other Loan Documents.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and L/C Issuers (except to the limited extent provided in Section 12.06(c)), and its duties are entirely

ministerial and administrative in nature. The Administrative Agent does not assume and shall not be deemed to have assumed any duties or obligations other than as expressly set forth herein and in the other Loan Documents or any other relationship as the agent, fiduciary or trustee of or for any Lender, L/C Issuer or holder of any other Obligation. The Administrative Agent may perform any of its duties under any Loan Document by or through its agents or employees. It is understood and agreed that the use of the term “administrative agent” herein or in any other Loan Document (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(d) Neither the Administrative Agent may perform any and all of its functions and duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its functions and duties and exercise its rights and powers by or through their respective Affiliates. Each such sub-agent and the Affiliates of the Administrative Agent and each such sub-agent shall be entitled to the benefits of all provisions of this Article 10 and Section 12.04 (as though such sub-agents were the “Administrative Agent” under the Loan Documents) as if set forth in full herein with respect thereto. Each such sub-agent shall be required to comply with the provisions of Article 3 to the same extent as if it were the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any of its sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction in a final, non-appealable judgment, in the selection of such sub-agent.

(e) The Administrative Agent nor any member of the Agent’s Group shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other information made or supplied in or in connection with this Agreement, any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Orders or the Collateral Documents or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Administrative Agent. Neither the Administrative Agent nor any member of the Agent’s Group shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for a failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by a Person serving as an agent or any of its Affiliates in any capacity.

(f) Nothing in this Agreement or any other Loan Document shall require the Administrative Agent or any of its Related Parties to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender or L/C Issuer and each Lender and L/C Issuer confirms to the Administrative Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Administrative Agent or any of its Related Parties.

(g) The Arrangers and the Syndication Agent shall have not have any obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity.

Section 10.02. *Administrative Agent’s Reliance, Etc.* Neither the Administrative Agent nor any of its Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Loan Documents, except for its, his, her or their gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment. Without limiting the foregoing, the Administrative Agent (a) may treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 12.06(b) may rely on the Register to the extent set forth in Section 12.06(c), may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon, (d) may consult with legal counsel (including counsel to the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (e) makes no warranty or representation to any Lender or L/C Issuer and shall not be responsible to any Lender or L/C Issuer for any statements, warranties or representations made by or on behalf of any Loan Party in or in connection with this Agreement or any other Loan Document, (f) shall not have any duty to ascertain or to inquire either as to the performance or observance of any term, covenant or condition of this Agreement or any other Loan Document, as to the financial condition of any Loan Party or as to the existence or possible existence of any Default or Event of Default, (g) shall not be responsible to any Lender or L/C Issuer for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto or thereto and (h) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by relying on or acting upon any notice, request, statement, document, consent, certificate or other instrument or writing (including any electronic message, internet or intranet website posting or other distribution) or any telephone message believed by it to be genuine and signed, sent or otherwise authenticated by the proper party or parties. In determining compliance with any condition hereunder to the making of a Loan or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender unless an officer of the Administrative Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit, and in the case of a Borrowing, such Lender shall not have made available to

the Administrative Agent, such Lender or such L/C Issuer's Ratable Portion of such Borrowing

Section 10.03. *Posting of Approved Electronic Communications.* (a) Each of the Lenders and L/C Issuers and each Loan Party agree that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders and the L/C Issuers by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “**Approved Electronic Platform**”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Closing Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the L/C Issuer and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lenders, the L/C Issuer and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) The Approved Electronic Platform and the Approved Electronic Communications are provided “as is” and “as available”. Neither the Administrative Agent nor any of its Affiliates or any of their respective officers, directors, employees, agents, advisors or representatives (each, an “**Agent Affiliate**”) warrant the accuracy, adequacy or completeness of the Approved Electronic Communications or the Approved Electronic Platform and each expressly disclaims liability for errors or omissions in the Approved Electronic Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Agent Affiliates in connection with the Approved Electronic Platform or the Approved Electronic Communications.

(d) Each of the Lenders, the L/C Issuers and each Loan Party agree that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally-applicable document retention procedures and policies.

(e) The Borrower hereby acknowledges that certain of the Lenders may be “public-side” Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “**Public Lender**”). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or

equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, any Arranger, the L/C Issuers and the Lenders to treat the Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent the Borrower Materials constitute Information, they shall be treated as set forth in Section 12.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and any Arranger shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, the Borrower shall not be under any obligation to mark the Borrower Materials "PUBLIC." In connection with the foregoing, each party hereto acknowledges and agrees that the foregoing provisions are not in derogation of their confidentiality obligations under Section 12.07.

Section 10.04. *The Administrative Agent Individually.* With respect to its Ratable Portion, Citibank shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The terms "*Lenders*", "*Required Lenders*" and any similar terms shall, unless the context clearly otherwise indicates, include, without limitation, Citibank in its individual capacity as a Lender or as one of the Required Lenders. Citibank and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with, any Loan Party as if Citibank were not acting as the Administrative Agent.

Section 10.05. *Activities of Agent's Group.* (a) Each Lender and L/C Issuer understands that Citibank, acting in its individual capacity, and its Affiliates (collectively, the "**Agent's Group**") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 10.05(a) as "*Activities*") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, other Loan Parties or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender and the L/C Issuer understands and agrees that in engaging in the Activities, the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders or the L/C Issuers that are not members of the Agent's Group. Neither the Administrative Agent nor any member of the Agent's Group shall have any duty to disclose to

any Lender or L/C Issuer or use on behalf of the Lenders or the L/C Issuers and shall not be liable for the failure to so disclose or use any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Parties or any Affiliate of any Loan Parties) or to account for any revenue or profits obtained in connection with the Activities, except that the Administrative Agent shall deliver or otherwise make available to each Lender and L/C Issuer such documents as are expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders or the L/C Issuers.

(b) ~~(a)~~ Each Lender and L/C Issuer further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders or the L/C Issuers (including the interests of the Lenders or the L/C Issuers hereunder and under the other Loan Documents). Each Lender and L/C Issuer agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as the Administrative Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender or L/C Issuer. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent's Group of information (including Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) owing by the Administrative Agent or any member of the Agent's Group to any Lender or L/C Issuer including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

Section 10.06. *Lender Credit Decision.* (a) Each Lender and L/C Issuer confirms to the Administrative Agent, each other Lender and L/C Issuer and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Administrative Agent, any other Lender or L/C Issuer or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Loans and other extensions of credit hereunder and under the other Loan Documents and (z) taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender and L/C Issuer acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, (ii) that it has, independently and without reliance upon the Administrative Agent, any other Lender or L/C Issuer or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based

on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Administrative Agent, any other Lender or L/C Issuer or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Loan Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(i) the financial condition, status and capitalization of the Borrower and each other Loan Party;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(iii) determining compliance or non-compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition;

(iv) the adequacy, accuracy and/or completeness of the other information delivered by the Administrative Agent, any other Lender or L/C Issuer or by any of their respective Related Parties under or in connection with this Agreement or any other Loan Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

Section 10.07. *Indemnification.* Each Lender agrees to indemnify the Administrative Agent, the Arrangers and each of their respective Affiliates, and each of their respective directors, officers, employees, members, partners, agents, trustees, representatives, attorneys, consultants and advisors (to the extent not reimbursed by the Borrower and without affecting the Borrower's indemnification obligations hereunder), from and against such Lender's aggregate Ratable Portion of any Indemnified Matters; *provided, however,* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or such Affiliate's, director's, officer's, employee's, member's, partner's, agent's, trustee's, representative's, attorney's, consultant's and advisor's gross negligence or willful misconduct or as a result of material breach by such Indemnitee, in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment. Without limiting the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its Ratable Portion of any out-of-pocket expenses (including fees, expenses and disbursements of financial and legal advisors) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement or the other Loan Documents, to the extent that the Administrative Agent is not reimbursed for such expenses

by the Borrower or another Loan Party; *provided*, that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; *provided, further*, that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof.

Section 10.08. *Successor Administrative Agent.* (a) The Revolving Administrative Agent or the Term Administrative Agent may at any time give notice of its resignation to the applicable Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the applicable Lenders, appoint a successor Administrative Agent; *provided, that* if the Administrative Agent notifies the Borrower, the applicable Lenders and the L/C Issuers that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the applicable Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed), and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each applicable Lender or L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 10.08). The fees payable by the Borrower to any successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article 10 and Section 12.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while such retiring Administrative Agent was Administrative Agent under this Agreement and the other Loan Documents.

(b) Any resignation pursuant to this ~~REF_Ref328583668~~ ~~w-h~~ ~~08d0e9ea79f9baee118e8200aa004ba90b020000008000000e0000005f005200650066003300320038003500380033003600360038000000~~ Section 10.08 by a Person acting as Administrative Agent shall, unless such Person shall notify the Borrower and the applicable Lenders and the L/C Issuers otherwise, also act to relieve such Person and its Affiliates of any obligation to advance or issue new, or extend existing, or Letters of Credit where such advance, issuance or extension is to occur on or after the effective date of such resignation. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the

retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

(c) In addition to the foregoing, if a Revolving Lender becomes, and during the period it remains, a Defaulting Lender, any L/C Issuer may, upon prior written notice to the Borrower and the Revolving Administrative Agent, resign as L/C Issuer effective at the close of business New York time on a date specified in such notice (which date may not be less than 30 days after the date of such notice); provided that such resignation by such L/C Issuer will have no effect on the validity or enforceability of any Letter of Credit then outstanding or on the obligations of the Borrower or any Lender under this Agreement with respect to any such outstanding Letter of Credit or otherwise to such L/C Issuer.

Section 10.09. *Concerning the Collateral and the Collateral Documents.* (a) Each Lender and L/C Issuer agrees that any action taken by the Administrative Agent or the Required Lenders (or, where required by the express terms of this Agreement, a greater proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders, the L/C Issuers and other Secured Parties. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive right and authority to (i) act as the disbursing and collecting agent for the Lenders and the L/C Issuers with respect to all payments and collections arising in connection herewith and with the Collateral Documents, (ii) execute and deliver each Collateral Document and accept delivery of each such agreement delivered by any Loan Party, (iii) act as Administrative Agent for the Lenders, the L/C Issuers and the other Secured Parties for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein, *provided, however,* that the Administrative Agent hereby appoints, authorizes and directs the Administrative Agent, each Lender and L/C Issuer to act as collateral sub-agent for the Administrative Agent, the Lenders and the L/C Issuers for purposes of the perfection of all security interests and Liens with respect to the Collateral, including any deposit or securities accounts maintained by a Loan Party with, and cash and Cash Equivalents held by, such Lender or such L/C Issuer, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Collateral Documents and (vi) except as may be otherwise specifically restricted by the terms hereof or of any other Loan Document, exercise all remedies given to the Administrative Agent, the Lenders, the L/C Issuer and the other Secured Parties with respect to the Collateral under the Loan Documents relating thereto, applicable law or otherwise.

(b) Each of the Lenders and L/C Issuers hereby consents to the release and hereby directs, in accordance with the terms hereof, the Administrative Agent to release (or, in

the case of clause (ii) below, release or subordinate) any Lien held by the Administrative Agent for the benefit of the Lenders and the L/C Issuers against any of the following:

(i) all of the Collateral and all Loan Parties, upon termination of the Commitments and payment and satisfaction in full in cash of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (and, in respect of contingent L/C Obligations, with respect to which cash collateral has been deposited or a back-up letter of credit has been issued, in either case in the appropriate currency and on terms satisfactory to the Administrative Agent and the applicable L/C Issuer)

(ii) any assets that are subject to a Lien permitted by Section 7.01(g);
and

(iii) any part of the Collateral sold or disposed of by a Loan Party if such sale or disposition is permitted by this Agreement (or permitted pursuant to a waiver of or consent to a transaction otherwise prohibited by this Agreement), subject to approval by the Bankruptcy Court.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the L/C Issuer and each other Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Administrative Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Administrative Agent may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of Secured Parties shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

(d) Each of the Lenders and L/C Issuers hereby directs the Administrative Agent to execute and deliver or file such termination and partial release statements and do such other things as are necessary to release Liens to be released pursuant to this Section 10.09 promptly upon the effectiveness of any such release.

(e) Each of the Lenders and L/C Issuers hereby consents to the release of any Subsidiary Guarantor from its obligations under Article 11 if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(f) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under Article 11 pursuant to this Section 10.09.

(g) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 10.10. *Collateral Matters Relating to Related Obligations.* The benefit of the Loan Documents and of the provisions of this Agreement relating to the Collateral shall extend to and be available in respect of any Obligation arising under any Secured Hedge Agreement or Cash Management Agreement or that is otherwise owed to Persons other than the Administrative Agent, the Lenders and the L/C Issuers (collectively, "**Related Obligations**") solely on the condition and understanding, as among the Administrative Agent and all Secured Parties, that (a) the Related Obligations shall be entitled to the benefit of the Loan Documents and the Collateral to the extent expressly set forth in this Agreement and the other Loan Documents and to such extent the Administrative Agent shall hold, and have the right and power to act with respect to, the guaranty in Article 11 and the Collateral on behalf of and as agent for the holders of the Related Obligations, but the Administrative Agent is otherwise acting solely as agent for the Lenders and the L/C Issuers and shall have no fiduciary duty, duty of loyalty, duty of care, duty of disclosure or other obligation whatsoever to any holder of Related Obligations, (b) all matters, acts and omissions relating in any manner to the guaranty in Article 11, the Collateral, or the omission, creation, perfection, priority, abandonment or release of any Lien, shall be governed solely by the provisions of this Agreement and the other Loan Documents and no separate Lien, right, power or remedy shall arise or exist in favor of any Secured Party under any separate instrument or agreement or in respect of any Related Obligation, (c) each Secured Party shall be bound by all actions taken or omitted, in accordance with the provisions of this Agreement and the other Loan Documents, by the Administrative Agent and the Required Lenders, each of whom shall be entitled to act at its sole discretion and exclusively in its own interest given its own Commitments and its own interest in the Loans, L/C Obligations and other Obligations to it arising under this Agreement or the other Loan Documents, without any duty or liability to any other Secured Party or as to any Related Obligation and without regard to whether any Related Obligation remains outstanding or is deprived of the benefit of the Collateral or becomes unsecured or is otherwise affected or put in jeopardy thereby, (d) no holder of Related Obligations and no other Secured Party (except the Administrative Agent, the Lenders and the L/C Issuers, to the extent set forth in this Agreement) shall have any right to be notified of, or to direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under this Agreement or the Loan Documents and (e) no holder of any Related Obligation shall exercise any right of setoff, banker's lien or similar right except to the extent provided in Section 12.08 and then only to the extent such right is exercised in compliance with Section 2.14.

Section 10.11. *Delivery of Certain Financial Information.* The Borrower agrees and shall cause each other Loan Party to agree, that the Administrative Agent may make available to the Lenders and the L/C Issuers all Approved Electronic Communications provided to the Administrative Agent pursuant to Section 6.01. The Borrower further agrees, and shall cause each other Loan Party to further agree, that the Administrative Agent may make available to the Lenders such other Approved Electronic Communications provided to the Administrative Agent, upon such Lenders' request.

Section 10.12. *L/C Issuers.* Each L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Article 10 with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and L/C Documents pertaining to such Letters of Credit fully as if the term "Administrative Agent" as used in this Article and the definition of "Agent Affiliate" included such L/C Issuer with respect to such acts or omissions, and (b) as additionally provided herein with respect to each L/C Issuer.

ARTICLE 11 GUARANTEE

Section 11.01. *Guarantee.* (a) Subject to the provisions of Section 11.01(b), each of the Subsidiary Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and each other Loan Party when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Subsidiary Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Subsidiary Guarantor under the Bankruptcy Code, or any other applicable federal and state laws relating to fraudulent conveyances, fraudulent transfers, or the insolvency of debtors (after giving effect to the right of contribution established in Section 11.02).

(c) Each Subsidiary Guarantor agrees that the Obligations may at any time and from time to time exceed the maximum amount of the liability of such Subsidiary Guarantor under Section 11.01(b) without impairing the guarantee contained in this Article 11 or affecting the rights and remedies of the Secured Parties hereunder.

(d) The guarantee contained in this Article 11 shall remain in full force and effect until all the Obligations (other than any contingent indemnification obligations not then due) shall have been satisfied by payment in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with "back to back" letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments shall be terminated,

notwithstanding that from time to time during the term of the Credit Agreement the Borrower may be free from any Borrower Obligations.

(e) No payment made by the Borrower, any of the Subsidiary Guarantors, any other Subsidiary Guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Subsidiary Guarantors, any other Subsidiary Guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to reduce, release, modify or otherwise affect the liability of any Subsidiary Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Subsidiary Guarantor in respect of the Obligations or any payment received or collected from such Subsidiary Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Subsidiary Guarantor hereunder until the Obligations (other than any contingent indemnification obligations not then due) are paid in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments are terminated.

Section 11.02. *Right of Contribution.* Each Subsidiary Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder (including by way of set-off rights being exercised against it), such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other Subsidiary Guarantor hereunder which has not paid its proportionate share of such payment. Each Subsidiary Guarantor’s right of contribution shall be subject to the terms and conditions of Section 11.03. The provisions of this Section 11.02 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Secured Parties, and each Subsidiary Guarantor shall remain jointly and severally liable to the Secured Parties for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 11.03. *No Subrogation.* Notwithstanding any payment made by any Subsidiary Guarantor hereunder or any set-off or application of funds of any Subsidiary Guarantor by any Secured Party, no Subsidiary Guarantor shall be entitled to be subrogated to any of the rights of any Secured Party against the Borrower or any Subsidiary Guarantor or any collateral security or guarantee or right of offset held by any Secured Party for the payment of the Obligations, nor shall any Subsidiary Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Subsidiary Guarantor in respect of payments made by such Subsidiary Guarantor hereunder, until all amounts owing to the Secured Parties by the Borrower on account of the Obligations (other than any contingent indemnification obligations not then due) are paid in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments are terminated. If any amount shall be paid to any Subsidiary Guarantor on account of such subrogation rights at any time when all of the Obligations (other than any contingent indemnification obligations not then due) shall not have been paid in full, such amount shall be held by such Subsidiary Guarantor in trust for the Secured Parties, segregated from other funds of such Subsidiary

Guarantor, and shall, forthwith upon receipt by such Subsidiary Guarantor, be turned over to the Administrative Agent in the exact form received by such Subsidiary Guarantor (duly indorsed by such Subsidiary Guarantor to the Administrative Agent, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

Section 11.04. *Amendments, etc. with Respect to the Borrower Obligations.* Each Subsidiary Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Subsidiary Guarantor and without notice to or further assent by any Subsidiary Guarantor, any demand for payment of any of the Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, increased, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and this Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Obligations or for the guarantee contained herein or any property subject thereto.

Section 11.05. *Guarantee Absolute and Unconditional.* Each Subsidiary Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or a surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Subsidiary Guarantor agrees as follows:

(a) The guarantee under this Article 11 is a guaranty of payment when due and not of collectability, and is a primary obligation of each Subsidiary Guarantor and not merely a contract of surety.

(b) The Administrative Agent may enforce the guarantee under this Article 11 upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default.

(c) Each Subsidiary Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Article 11 or acceptance of the guarantee contained in this Article 11.

(d) The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance

upon the guarantee contained in this Article 11 and all dealings between the Borrower and any of the Subsidiary Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Article 11.

(e) To the fullest extent permitted by applicable law, each Subsidiary Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Subsidiary Guarantors with respect to the Obligations.

(f) Each Subsidiary Guarantor understands and agrees that the guarantee contained in this Article 11 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to

(i) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party,

(ii) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party,

(iii) any acts of any legislative body or governmental authority affecting the Borrower, including but not limited to, any restrictions on the conversion of currency or repatriation or control of funds or any total or partial expropriation of the Borrower's property, or by economic, political, regulatory or other events in the countries where the Borrower is located, or

(iv) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Subsidiary Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Obligations, or of such Subsidiary Guarantor under the guarantee contained in this, in bankruptcy or in any other instance.

(g) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Subsidiary Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Subsidiary Guarantor or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Subsidiary Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Subsidiary Guarantor or any other Person or any such collateral security or guarantee or right of offset, shall not relieve any Subsidiary Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies,

whether express, implied or available as a matter of law, of the Secured Parties against any Subsidiary Guarantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

Section 11.06. *Waiver by Subsidiary Guarantors.* Each Subsidiary Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Subsidiary Guarantor, to (i) proceed against Borrower, any other Subsidiary Guarantor of the Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other Subsidiary Guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Subsidiary Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Subsidiary Guarantor from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party’s errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Subsidiary Guarantor’s obligations hereunder, (ii) the benefit of any statute or limitations affecting such Subsidiary Guarantor’s liability hereunder or the enforcement hereof, (iii) any rights of set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including the acceptance hereof, notices of default hereunder, the Secured Hedge Agreements or any agreement or instrument related thereto, the Secured Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of extension of credit to Borrower; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate Subsidiary Guarantors or sureties, or which may conflict with the terms hereof.

Section 11.07. *[Reserved.]*

Section 11.08. *Releases.* (a) At such time as the Obligations shall have been paid in full (other than any contingent indemnification obligations not then due), the Commitments have been terminated and no Letters of Credit shall be outstanding (except to the extent that the Letters of Credit that have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Subsidiary Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of any Subsidiary Guarantor following any such termination, the

Administrative Agent shall execute and deliver to such Subsidiary Guarantor such documents as such Subsidiary Guarantor shall reasonably request to evidence such termination.

(b) A Subsidiary Guarantor shall automatically be released from its obligations hereunder and the Guarantee of such Subsidiary Guarantor shall automatically be released under the circumstances described in Section 10.10(b).

Section 11.09. *Subordination of Other Obligations.* Any Indebtedness of the Borrower or any Subsidiary Guarantor held as of the Closing Date or thereafter by any Subsidiary Guarantor (the “**Obligee Guarantor**”) is hereby subordinated in right of payment to the Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be credited and applied against the Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

Section 11.10. *Authority of Subsidiary Guarantors or Borrower.* It shall not be necessary for any Beneficiary to inquire into the capacity or powers of any Subsidiary Guarantor or Borrower or the officers, directors or agents acting or purporting to act on behalf of any of them.

Section 11.11. *Financial Condition of Borrower.* Any Credit Extension may be made to the Borrower or continued from time to time, without notice to or authorization from any Subsidiary Guarantor regardless of the financial or other condition of Borrower at the time of such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Subsidiary Guarantor its assessment, or any Subsidiary Guarantor’s assessment, of the financial condition of the Borrower. Each Subsidiary Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Loan Documents, and each Subsidiary Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and all circumstances bearing upon the risk of nonpayment of the Obligations. Each Subsidiary Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower known as of the Closing Date or thereafter known by any Beneficiary.

Section 11.12. *Taxes and Payments.* The provisions of Section 3.01(a)-(d) shall apply *mutatis mutandis* to the Subsidiary Guarantors and payments thereby.

Section 11.13. *Assignments.* Each Subsidiary Guarantor acknowledges that the Administrative Agent or any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, the Loans owing to it and any Note or Notes held by it) and such assignee, transferee or participant shall thereupon become vested with all the benefits in respect thereof granted to such party herein or otherwise, in each case as and to the extent

provided in Section 12.06. No Subsidiary Guarantor shall have the right to assign its rights hereunder or any interest herein except in accordance with Section 12.06.

Section 11.14. Reinstatement. Each Subsidiary Guarantor agrees that if (a) any payment made by the Borrower or any other Person and applied to the Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or (b) the proceeds of Collateral are required to be returned by any Beneficiary to the Borrower or its estate, trustee, receiver or any other Party including any Subsidiary Guarantor or its estate, trustee, or receiver under any Requirement of Law, then, to the extent of such payment or repayment, any such Subsidiary Guarantors liability hereunder shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, the guarantee under this Article 11 shall have been cancelled or surrendered (and, if any Lien or other Collateral securing such Subsidiary Guarantor's liability hereunder shall have been released or terminated by virtue of such cancellation or surrender), the guarantee under this Article 11 (and such Lien or other Collateral) shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Subsidiary Guarantor in respect of the amount of such payment (or any lien or other Collateral securing such obligation).

ARTICLE 12 MISCELLANEOUS

Section 12.01. *Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender;
- (b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments hereunder without the written consent of each Lender directly adversely affected thereby;
- (c) reduce the principal of, or the stated rate of interest specified herein on, any Loan or Unreimbursed Amount, or (subject to clause (iv) of the second proviso to this Section 12.01) any fees or other amounts payable hereunder without the written consent of each Lender entitled to such amount; *provided, however*, that only the consent of the Class Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the

effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(d) change Sections 2.07, 2.17 or 9.03 in a manner that would alter the pro rata sharing of payments or payment priorities required thereby without the written consent of each Lender adversely affected thereby;

(e) change any provision of this Section 12.01 or the definition of "Required Lenders"; "Class Required Lenders", "Required Revolving Lenders", "Required Term Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender adversely affected thereby;

(f) other than as permitted by Section 11.08, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(g) release all or substantially all of the Subsidiary Guarantors, without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 11.08 (in which case such release may be made by the Administrative Agent acting alone);

(h) amend or modify the Superpriority Claim status of the Lenders under the Orders or under any other Loan Document without the written consent of each Lender affected thereby;

(i) grant any Lien on the Collateral which is senior to the Liens created by the Loan Documents or *pari passu* with such Liens without the written consent of each Lender;

(j) affect the relative priority of Liens created under the Loan Documents, without the written consent of each Lender;

(k) directly or indirectly, whether by amendment, waiver or otherwise, increase the advance rates set forth in the definition of the term Borrowing Base, add new asset categories to the Borrowing Base or otherwise cause the Borrowing Base or availability under the Revolving Credit Facility provided for herein to be increased (other than changes in Reserves implemented by the Administrative Agent in its reasonable discretion) without the written consent of the Supermajority Revolving Lenders, *provided* that any such amendment, waiver or consent described in this clause (k) shall be effective without the consent of any Lenders other than the Supermajority Revolving Credit Lenders;

and *provided, further*, that any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of one Class of Lenders (but not of any other Class of Lenders), including (i) any waiver of conditions set forth in Section 4.02 with respect to a Borrowing of Loans or an issuance of a Letter of Credit of such Class and (ii) any amendment, waiver or modification relating to a Single Class Default applicable to

such Class, in each case, shall be effective with the consent of the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; and (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace each non-consenting Lender in accordance with Section 12.13; *provided*, that such amendment, waiver, consent or release can be effected as a result of all such assignments.

Any such waiver and any such amendment or modification pursuant to this Section 12.01 shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the L/C Issuers, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Borrower, the Lenders, the L/C Issuers and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 12.01 shall be deemed to be cured and not continuing during the period of such waiver.

Section 12.02. *Notices; Effectiveness; Electronic Communications.* (a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 12.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or on Schedule 1 to the Lender Addendum to which such Lender is a party.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided*, that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article 2 if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided*, that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to the Lenders and the L/C Issuers to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided*, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Each Lender agrees that notice to it specifying that any Borrower Materials or other notices or communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; *provided* that if requested by any Lender, the Administrative Agent shall deliver a copy of the Borrower Materials, notices or other communications to such Lender by email or fax.

(c) *The Platform.* THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the

Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower, any Lender, L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party as determined by a court of competent jurisdiction in a final, non-appealable judgment; *provided, however*, that in no event shall the Agent Party have any liability to the Borrower, any Lender, L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address, Etc.* Each of the Borrower, the Administrative Agent and each L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) *Reliance by Administrative Agent, L/C Issuers and Lenders.* The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 12.03. *No Waiver; Cumulative Remedies.* None of the Secured Parties shall by any act (except by a written instrument pursuant to Section 12.01), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure by any Lender, L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 12.04. *Expenses; Indemnity; Damage Waiver.* (a) *Costs and Expenses.* The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the

Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of counsel and industry advisors for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery, administration and enforcement of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such all reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Each Subsidiary Guarantor agrees to pay or reimburse each Secured Party for all its reasonable and documented out-of-pocket expenses incurred in collecting against such Subsidiary Guarantor under the guarantee contained in Article 10 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Subsidiary Guarantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Administrative Agent.

(b) *Indemnification by the Loan Parties.* The Borrower and each Subsidiary Guarantor shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable out-of-pocket costs and expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided*, that such indemnity shall

not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) have resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction in a final, non-appealable judgment or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction.

(c) *Reimbursement by Lenders.* To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's pro rata share (based on the Loans and unused Commitments held by such Lender relative to the total Loans and unused Commitments then outstanding) of such unpaid amount, *provided*, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or such L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.13(d).

(d) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages result from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction.

(e) *Payments.* All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival.* The agreements in this Section shall survive the resignation of the Administrative Agent or any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 12.05. *Payments Set Aside.* To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such

payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, any L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 12.06. *Successors and Assigns.* (a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 12.06(b), (ii) by way of participation in accordance with the provisions of Section 12.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.06(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders.* Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Commitments of a Class, Loans or Loans of a Class (including for purposes of this Section 12.06(b), participations in L/C Obligations) at the time owing to it); *provided*, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents

(each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) *[Reserved]*.

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee in the amount of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 12.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.06(d).

(c) *Register*. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and the L/C Issuer, at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations.* Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); *provided*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided*, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), (b), (c) and (f) of the first proviso to Section 12.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment; *provided, further*, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold

to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) *Certain Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Electronic Execution of Assignments.* The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

(h) *Resignation as L/C Issuer.* Notwithstanding anything to the contrary contained herein, Citibank, Barclays, Bank of America or any L/C Issuer may, (i) upon 30 days’ notice to the Borrower, the Lenders and other L/C Issuers, resign as L/C Issuer or (ii) upon 10 days’ notice to Borrower, the Lenders and other L/C Issuers, appoint an Affiliate of such L/C Issuer as a successor L/C Issuer hereunder. In the event of any such resignation as L/C Issuer pursuant to clause (i) of the preceding sentence, the Borrower shall be entitled to appoint from among the Lenders and their Affiliates a successor L/C Issuer hereunder; *provided, however*, that no failure by the Borrower to appoint any such successor shall affect the resignation of such L/C Issuer. If Citibank, Barclays and Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.04(d)). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to such L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

Section 12.07. *Treatment of Certain Information; Confidentiality.* Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such

as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section.

For purposes of this Section, “**Information**” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, *provided*, that in the case of information received from the Borrower or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care to protect such Information, and in no event less than the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities laws.

Section 12.08. *Right of Setoff.* Subject to the Orders, upon any amount becoming due and payable hereunder (whether at stated maturity, by acceleration or otherwise), each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, such L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer agrees to notify the Borrower and

the Administrative Agent promptly after any such setoff and application, *provided*, that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09. *Interest Rate Limitation.* Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 12.10. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or of a Lender Addendum by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 12.11. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Section 12.12. *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or

unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 12.13. *Replacement of Lenders.* If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a Nonconsenting Lender (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided*, that:

(e) the Administrative Agent shall have received the assignment fee specified in Section 12.06(b);

(f) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(g) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(h) such assignment does not conflict with applicable Laws; and

(i) neither the Administrative Agent nor any Lender shall be obligated to be or to find the assignee.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. In the event that (x) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto and (y) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Nonconsenting Lender.**” Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

Section 12.14. *Governing Law; Jurisdiction; Etc.* (a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(b) *SUBMISSION TO JURISDICTION.* THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *WAIVER OF VENUE.* THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *SERVICE OF PROCESS.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 12.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 12.15. *Waiver of Jury Trial.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO

REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 12.16. *Designation of Secured Agreements.* (a) The Borrower and any Cash Management Bank or Hedge Bank may from time to time designate a Cash Management Agreement or Swap Contract permitted hereunder as a Secured Agreement upon written notice (a “**Designation Notice**”) to the Administrative Agent from the Borrower and such Cash Management Bank or Hedge Bank, in form reasonably acceptable to the Administrative Agent, which Designation Notice shall include a description of such Secured Agreement and the maximum amount of obligations thereunder which are to constitute Obligations (each, a “**Designated Amount**”); *provided* that (x) no such Designated Amount with respect to any Secured Agreement shall constitute Obligations to the extent that, at the time of delivery of the applicable Designation Notice and after giving effect to such Designated Amount (including to the reserve for Secured Agreements to be established by the Administrative Agent in connection therewith), the Excess Availability would be less than zero and (y) any such Designated Amount shall constitute Obligations only to the extent that such Designated Amount, together with all other Designated Amounts under Secured Agreements theretofore designated hereunder and constituting Obligations, does not exceed, \$10,000,000.

(b) The Borrower and any counterparty to a Secured Agreement may increase, decrease or terminate any Designated Amount in respect of such Secured Agreement upon written notice to the Administrative Agent; *provided* that any increase in a Designated Amount shall be deemed to be a new designation of a Designated Amount pursuant to a new Designation Notice and shall be subject to the limitations set forth in Section 12.16(a). No obligations under any Secured Agreement in excess of the applicable Designated Amount shall constitute Obligations hereunder or the other Loan Documents.

(c) No counterparty to a Secured Agreement that obtains the benefits of Section 9.03, Article 11, or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable counterparty to a Secured Agreement.

Section 12.17. *No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and the

other Loan Parties acknowledge and agree that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Arranger are arm's-length commercial transactions between the Borrower, the other Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent and any Arranger, on the other hand, (B) the Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent deemed appropriate by such Loan Parties, and (C) the Borrower and the other Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and any Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, the other Loan Parties, their respective Affiliates or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower, the other Loan Parties or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and any Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent and any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 12.18. *USA Patriot Act Notice.* Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

Section 12.19. *Time of the Essence.* Time is of the essence of the Loan Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

PATRIOT COAL CORPORATION

By: _____
Name:
Title:

Subsidiary Guarantors:

AFFINITY MINING COMPANY
APOGEE COAL COMPANY, LLC
APPALACHIA MINE SERVICES, LLC
BEAVER DAM COAL COMPANY, LLC
BIG EAGLE, LLC
BIG EAGLE RAIL, LLC
BLACK STALLION COAL COMPANY, LLC
BLACK WALNUT COAL COMPANY
BLUEGRASS MINE SERVICES, LLC
BROOK TROUT COAL, LLC
CATENARY COAL COMPANY, LLC
CENTRAL STATES COAL RESERVES OF
KENTUCKY, LLC
CHARLES COAL COMPANY, LLC
CLEATON COAL COMPANY
COAL CLEAN LLC
COAL PROPERTIES, LLC
COAL RESERVE HOLDING LIMITED
LIABILITY COMPANY NO. 2
COLONY BAY COAL COMPANY
COOK MOUNTAIN COAL COMPANY, LLC
CORYDON RESOURCES LLC
COVENTRY MINING SERVICES, LLC
COYOTE COAL COMPANY LLC
CUB BRANCH COAL COMPANY LLC
DAKOTA LLC
DAY LLC
DIXON MINING COMPANY, LLC
DODGE HILL HOLDING JV, LLC
DODGE HILL MINING COMPANY, LLC
DODGE HILL OF KENTUCKY, LLC
EASTERN ASSOCIATED COAL, LLC
EASTERN COAL COMPANY, LLC
EASTERN ROYALTY, LLC
EMERALD PROCESSING, L.L.C.
GATEWAY EAGLE COAL COMPANY, LLC
GRAND EAGLE MINING, LLC
HERITAGE COAL COMPANY LLC
HIGHLAND MINING COMPANY, LLC
HILLSIDE MINING COMPANY
HOBET MINING, LLC
INDIAN HILL COMPANY LLC
INFINITY COAL SALES, LLC
INTERIOR HOLDINGS, LLC
IO COAL LLC

[SIGNATURE PAGE TO CREDIT AGREEMENT]

JARRELL'S BRANCH COAL COMPANY
JUPITER HOLDINGS LLC
KANAWHA EAGLE COAL, LLC
KANAWHA RIVER VENTURES I, LLC
KANAWHA RIVER VENTURES II, LLC
KANAWHA RIVER VENTURES III, LLC
KE VENTURES, LLC
LITTLE CREEK LLC
LOGAN FORK COAL COMPANY
MAGNUM COAL COMPANY LLC
MAGNUM COAL SALES LLC
MARTINKA COAL COMPANY, LLC
MIDLAND TRAIL ENERGY LLC
MIDWEST COAL RESOURCES II, LLC
MOUNTAIN VIEW COAL COMPANY, LLC
NEW TROUT COAL HOLDINGS II, LLC
NEWTOWN ENERGY, INC.
NORTH PAGE COAL CORP.
OHIO COUNTY COAL COMPANY, LLC
PANTHER LLC
PATRIOT BEAVER DAM HOLDINGS, LLC
PATRIOT COAL COMPANY, L.P.
PATRIOT COAL SALES LLC
PATRIOT COAL SERVICES LLC
PATRIOT LEASING COMPANY LLC
PATRIOT MIDWEST HOLDINGS, LLC
PATRIOT RESERVE HOLDINGS, LLC
PATRIOT TRADING LLC
PATRIOT VENTURES LLC
PCX ENTERPRISES, INC.
PINE RIDGE COAL COMPANY, LLC
POND CREEK LAND RESOURCES, LLC
POND FORK PROCESSING LLC
REMINGTON HOLDINGS LLC
REMINGTON II LLC
REMINGTON LLC
RIVERS EDGE MINING, INC.
ROBIN LAND COMPANY, LLC
SENTRY MINING, LLC
SNOWBERRY LAND COMPANY
SPEED MINING LLC
STERLING SMOKELESS COAL COMPANY,
LLC
TC SALES COMPANY, LLC
THE PRESIDENTS ENERGY COMPANY LLC
THUNDERHILL COAL LLC

[SIGNATURE PAGE TO CREDIT AGREEMENT]

TROUT COAL HOLDINGS, LLC
UNION COUNTY COAL CO., LLC
VIPER LLC
WEATHERBY PROCESSING LLC
WILDCAT ENERGY LLC
WILDCAT, LLC
WILL SCARLET PROPERTIES LLC
WINCHESTER LLC
WINIFRED DOCK LIMITED LIABILITY
COMPANY
YANKEETOWN DOCK, LLC

as Subsidiary Guarantors

Executing this Agreement as an authorized officer of
each of the 98 foregoing entities on behalf of and so as
to bind the entities named above under the caption
“Subsidiary Guarantors”

By: _____

Name:

Title:

[SIGNATURE PAGE TO CREDIT AGREEMENT]

CITIBANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

CITICORP NORTH AMERICA, INC.
as Lender

By: _____
Name:
Title:

CITICORP NORTH AMERICA, INC.
as L/C Issuer

By: _____
Name:
Title:

BARCLAYS BANK PLC
as Lender

By: _____
Name:
Title:

BARCLAYS BANK PLC, NEW
YORK BRANCH
as L/C Issuer

By: _____
Name:
Title:

BANK OF AMERICA, N.A.,
as Lender

By: _____
Name:

[SIGNATURE PAGE TO CREDIT AGREEMENT]

Title:

BANK OF AMERICA, N.A.
as L/C Issuer

By:

Name:

Title:

[SIGNATURE PAGE TO CREDIT AGREEMENT]

Summary Report:	
Litéra® Change-Pro TDC 7.0.0.320 Document Comparison done on 7/15/2012 3:48:15 PM	
Style Name: Default Style	
Original DMS: iw://USDMS/US_ACTIVE/44034880/21	
Modified DMS: iw://USDMS/US_ACTIVE/44034880/22	
Changes:	
Add	38
Delete	58
Move From	0
Move To	0
Table Insert	9
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	105

AMENDED AND RESTATED

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of July 11, 2012

among

PATRIOT COAL CORPORATION,
a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as the Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent and an L/C Issuer

and

The Other Lenders Party Hereto

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Sole Lead Arranger and Sole Lead Book Manager

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	
1.01	Defined Terms 2
1.02	Other Interpretive Provisions 25
1.03	Accounting Terms 25
1.04	Times of Day 25
1.05	Letter of Credit Amounts 26
ARTICLE II THE LETTERS OF CREDIT	
2.01	Letters of Credit 26
2.02	Conversions and Continuations of L/C Borrowings 33
2.03	Prepayments 34
2.04	Repayment of L/C Borrowings 35
2.05	Interest 35
2.06	Fees 36
2.07	Computation of Interest and Fees 36
2.08	Evidence of Debt 36
2.09	Payments Generally; Administrative Agent’s Clawback 37
2.10	Sharing of Payments by Lenders 38
2.11	Defaulting Lender. 39
2.12	No Discharge; Survival of Claims 40
2.13	Priority and Liens 40
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY	
3.01	Taxes 41
3.02	Illegality 44
3.03	Inability to Determine Rates 44
3.04	Increased Costs; Reserves on Eurocurrency Rate L/C Borrowings 45
3.05	Compensation for Losses 47
3.06	Mitigation Obligations; Replacement of Lenders 47
3.07	Survival 48
ARTICLE IV CONDITIONS PRECEDENT TO EFFECTIVENESS	
4.01	Conditions of Effectiveness 48
4.02	Conditions to Letter of Credit Renewal 51

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01	Existence, Qualification and Power	52
5.02	Authorization; No Contravention	52
5.03	Governmental Authorization; Other Consents.....	53
5.04	Binding Effect.....	53
5.05	Litigation.....	53
5.06	No Default.....	53
5.07	Incorporation by Reference of First Out Facility Provisions.....	53

ARTICLE VI
AFFIRMATIVE AND NEGATIVE COVENANTS

ARTICLE VII
REAL PROPERTY LEASES

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01	Events of Default	54
8.02	Remedies Upon Event of Default	56
8.03	Application of Funds.....	57

ARTICLE IX
ADMINISTRATIVE AGENT

9.01	Appointment and Authority	58
9.02	Rights as a Lender.....	59
9.03	Exculpatory Provisions	59
9.04	Reliance by Administrative Agent.....	60
9.05	Delegation of Duties	60
9.06	Resignation of Administrative Agent	61
9.07	Non-Reliance on Administrative Agent and Other Lenders.....	62
9.08	No Other Duties, Etc.....	62
9.09	Collateral and Guaranty Matters.....	62
9.10	Indemnification.....	63

ARTICLE X
MISCELLANENOUS

10.01	Amendments, Etc.....	63
10.02	Notices; Effectiveness; Electronic Communications.....	65
10.03	No Waiver; Cumulative Remedies	67
10.04	Expenses; Indemnity; Damage Waiver.....	67
10.05	Payments Set Aside.....	69
10.06	Successors and Assigns.....	69
10.07	Treatment of Certain Information; Confidentiality.....	72

10.08	Right of Setoff.....	73
10.09	Interest Rate Limitation	74
10.10	Counterparts; Integration; Effectiveness.....	74
10.11	Survival of Representations and Warranties.....	74
10.12	Severability	75
10.13	Replacement of Lenders	75
10.14	Governing Law; Jurisdiction; Etc.	76
10.15	Waiver of Jury Trial.....	77
10.16	Delivery of Lender Addenda	77
10.17	[Reserved].....	77
10.18	No Advisory or Fiduciary Responsibility	77
10.19	USA PATRIOT Act Notice.	77
10.20	Time of the Essence.	78
10.21	Amendment and Restatement.	78
10.22	Security Agreement Governs.....	78

SCHEDULES

- 1.01(a) Subsidiary Guarantors
- 1.01(b) Existing Secured Agreements
- 2.01(a) Existing Letters of Credit
- 4.01(a) Existing Mortgages
- 10.02 Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

- A [Reserved]
- B Notice of Conversion or Continuation
- C [Reserved]
- D Subsidiary Guaranty
- E Assignment and Assumption
- F 13-Week Projection
- G [Reserved]
- H Security Agreement
- I Perfection Certificate
- J Interim Order
- K [Reserved]
- L Lender Addendum

AMENDED AND RESTATED SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This AMENDED AND RESTATED SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT ("Agreement") is entered into as of July 11, 2012, among PATRIOT COAL CORPORATION, a Delaware corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent and L/C Issuer.

PRELIMINARY STATEMENTS:

WHEREAS, On July 11, 2012 (the "Petition Date"), the Borrower, EACC Camps, Inc. and the Subsidiary Guarantors other than Patriot Ventures LLC (collectively, the "Debtors") filed voluntary petitions with the Bankruptcy Court initiating cases pending under Chapter 11 of the Bankruptcy Code (collectively, the "Cases" and each a "Case") and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Borrower, the lenders party thereto, Bank of America, N.A., as Administrative Agent, and the other parties party thereto entered into that certain Credit Agreement, dated as of October 31, 2007 and as amended and restated as of May 5, 2010 (as further amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Existing Credit Agreement");

WHEREAS, pursuant to the terms of the Existing Credit Agreement, the L/C Issuers agreed to issue letters of credit, in each case, on the terms and subject to the conditions set forth in the Existing Credit Agreement; and

WHEREAS, the Borrower has requested this amendment and restatement of the Existing Credit Agreement as set forth herein, and the Lenders have agreed to such request and to restate their irrevocable obligations to reimburse the L/C Issuers for any drawing under each "Letter of Credit" outstanding on the Closing Date under the Existing Credit Agreement on the terms and subject to the conditions set forth herein to (a) induce the L/C Issuers not to deliver notices of non-extension to the beneficiaries of such existing "Letters of Credit" and (b) provide for the continuing effectiveness and automatic renewal of such existing "Letters of Credit", in each case for the purpose of reducing the likelihood of drawings on such "Letters of Credit" during the pendency of the Cases;

WHEREAS, all of the Borrower's obligations under the Facility continue to be guaranteed by the Subsidiary Guarantors. The Lenders are willing to restate their irrevocable reimbursement obligations to the L/C Issuers on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“13-Week Projection” means a projected statement of sources and uses of cash for the Borrower and its Subsidiaries on a weekly basis for the following 13 calendar weeks, in substantially the form of Exhibit F, which shall include (a) a rolling comparative analysis of the actual cash flow for the prior week against the forecast for such week, (b) a cumulative comparative analysis of actual cash flow against the forecast, (c) an explanation for any significant variances between such results and the forecasts and (d) cash balances of all deposit accounts of the Loan Parties as of such date. As used herein, “13-Week Projection” shall initially refer to the “Budget” delivered to the Administrative Agent in connection with the initial borrowings under the Facilities authorized by the Interim Order and dated not more than 5 days prior to the Petition Date and, thereafter, the most recent 13-Week Projection delivered by the Borrowers in accordance with Section 6.02(k) of the First Out Facility.

“Acceptable Reorganization Plan” shall mean a Reorganization Plan that provides for (a) payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable) upon the earlier of (i) substantial consummation of such Reorganization Plan or (ii) the effective date of such Reorganization Plan, and (b) the cancellation, cash collateralization, posting of backstop letters of credit or such other provision for outstanding Letters of Credit on the Consummation Date of such Reorganization Plan, and is otherwise reasonably acceptable to the Arranger and the Required Lenders.

“Accounting Change” means a change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the Securities and Exchange Commission.

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Commitment” means the Aggregate Reimbursement Obligations.

“Aggregate Reimbursement Obligations” means the Reimbursement Obligations of all the Lenders.

“Agreement” means this Amended and Restated Superpriority Secured Debtor-In-Possession Credit Agreement.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Facility represented by such Lender’s Commitment at such time. The initial Applicable Percentage of each Lender in respect of the Facility is set forth on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means (a) with respect to each Letter of Credit, 4.50% per annum, (b) with respect to each L/C Borrowing that bears interest based on the Eurocurrency Rate, 8.00% per annum, and (c) with respect to each L/C Borrowing that bears interest based on the Base Rate, 7.00% per annum.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole book manager.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, changes in shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Bank of America” means Bank of America, N.A. and its successors.

“Bank of America Fee Letter” means the letter agreement, dated July 10, 2012, among the Borrower, the Administrative Agent and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

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

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any appellate court having jurisdiction over the Cases from time to time.

“Base Rate” means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the Eurocurrency Rate plus 1% and (c) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate.” The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate L/C Borrowing” means a L/C Borrowing that bears interest at a rate based on the Base Rate.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” means materials and/or information provided by or on behalf of the Borrower hereunder.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurocurrency Rate L/C Borrowing, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“Capital Lease Obligations” means of any Person as of the date of determination, the aggregate liability of such Person under Financing Leases reflected on a balance sheet of such Person under GAAP.

“Carve-Out” means (i) all fees and interest required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code, (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not exceeding \$200,000, (iii) any and all allowed and unpaid claims of any professional of the Debtors or the statutory committee of unsecured creditors appointed in the Cases (the “Creditors’ Committee”) whose retention is approved by the Bankruptcy Court during the Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses (and the reimbursement of out-of-pocket expenses allowed by the Bankruptcy Court incurred by any members of the Creditors’ Committee (but excluding fees and expenses of third party professionals employed by such members of the Creditors’ Committee)) incurred, subject to the terms of the Orders, (A) prior to the occurrence of an Event of Default and (B) at any time after the occurrence and during the continuance of an Event of Default in an aggregate amount not exceeding \$7,000,000, provided that (x) the dollar limitation in this clause (iii) on fees and

expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent or any Lender or any of the foregoing's respective attorneys, advisors and agents, (y) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above and (z) cash or other amounts on deposit in the Cash Collateral Account shall not be subject to the Carve-Out.

“Cases” has the meaning specified in the Preliminary Statements.

“Cash Collateral” has the meaning specified in Section 2.01(g).

“Cash Collateral Account” means a blocked, interest bearing deposit account of one or more of the Loan Parties at Bank of America in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“Cash Collateralize” has the meaning specified in Section 2.01(g).

“Cash Equivalents” means any of the following types of investments:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof; provided, that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than twelve months from the date of acquisition thereof;

(c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a), (b), and (f) entered into with any financial institution meeting the qualifications specified in clause (b) above;

(d) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody's or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 270 days from the date of acquisition thereof;

(e) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither

Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower;

(f) readily marketable direct obligations issued by any state or commonwealth of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 12 months or less from the date of acquisition;

(g) investments with average maturities of 12 months or less from the date of acquisition in money market funds rated within the top three categories by S&P or Moody's; and

(h) shares of investments companies registered under the Investment Company Act of 1940, substantially all of the investments of which are one or more of the types of securities described in clauses (a) through (g) of this definition.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request or directive (whether or not having the force of law) by any Governmental Authority required to be complied with by any Lender; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" means the first date that all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all of the property of the Loan Parties that is under the terms of the Collateral Documents and the Orders, subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties as security for the Obligations.

“Collateral Documents” means, collectively, the Security Agreement, the Existing Mortgages and each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12 of the First Out Facility, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties or as security for the Obligations or a Lien in favor of the First Out Agent for the benefit of the First Out Secured Parties as security for the First Out Obligations. The Collateral Documents shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

“Commitment” means, as to any Lender, its Reimbursement Obligation.

“Consummation Date” means the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Reorganization Plan that is confirmed pursuant to an order of the Bankruptcy Court.

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

“Control” means 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 ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Creditors’ Committee” has the meaning specified in the definition of “Carve-Out”.

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

“Debtors” has the meaning specified in the introductory statement.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate L/C Borrowings plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate L/C Borrowing, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such L/C Borrowing plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means any Lender that (a) has failed to pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within five Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Designated Letters of Credit” means letters of credit issued with respect to mine reclamation, workers’ compensation and other employee benefit liabilities.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any Real Property Leases, notes or accounts receivable or any rights and claims associated therewith.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary of the Borrower that is organized under the laws of any political subdivision of the United States or the District of Columbia.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) except in the case of an assignee of any L/C Borrowing held by any Arranger or any of its Affiliates, the Administrative Agent, (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to such Person if the Borrower has not responded within 10 Business Days of a request for such approval) and (iii) each L/C Issuer; provided, that notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower or any of the Borrower’s Affiliates or Subsidiaries or any natural person.

“Environment” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, natural resources such as flora or fauna or as otherwise defined in any Environmental Law.

“Environmental Laws” means any and all current and future federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, concessions, grants, franchises, agreements or other governmental restrictions or common law causes of action applicable to the Borrower’s properties and operations relating to (a) protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials, substances or wastes into the environment including ambient air, surface water, ground water, or land, (b) SMCRA, (c) MSHA, (d) human health as affected by hazardous or toxic substances, (e) acid mine drainage and (f) mining operations and activities to the extent relating to environmental protection or reclamation; *provided*, that “Environmental Laws” do not include any laws relating to worker or retiree benefits, including benefits arising out of occupational diseases.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the Environment, (e) Reclamation or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, registrations, certifications, notifications, exemptions and any other authorization required under any applicable Environmental Law (including, without limitation, those necessary under any applicable Environmental Laws for the construction, maintenance and operation of any coal mine or related processing facilities or Reclamation).

“Eurocurrency Rate” means:

(i) for any Interest Period with respect to a Eurocurrency Rate L/C Borrowing, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurocurrency Rate L/C Borrowing being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London interbank eurodollar market at

their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; provided, that in no event shall the Eurocurrency Rate be less than 1.50% per annum; and

(ii) for any interest calculation with respect to a Base Rate L/C Borrowing on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate L/C Borrowing being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination; provided, that in no event shall the Eurocurrency Rate be less than 1.50% per annum.

“Eurocurrency Rate L/C Borrowing” means a L/C Borrowing that bears interest at a rate based on the Eurocurrency Rate.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) branch profits taxes or taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), as a result of a present or former connection between the Administrative Agent, such Lender or such L/C Issuer (or such other recipient) and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent, such Lender, or such L/C Issuer (or such other recipient) having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any Loan Document), (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or any tax that is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law after the date such Foreign Lender becomes a party hereto) to comply with Section 3.01(e); except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment) to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 3.01(a) or (c) any United States withholding tax that is imposed as a result of such Lender's failure to comply with the requirements of Sections 1471 through 1474 of the Code and any regulations promulgated thereunder (“FATCA”) to establish an exemption from withholding thereunder.

“Existing Credit Agreement” has the meaning specified in the Preliminary Statements.

“Existing Letters of Credit” has the meaning specified in Section 2.01(a).

“Existing Mortgages” means the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust entered into in connection with the Existing Credit Agreement and covering the properties listed on Schedule 4.01(a) thereto (together with the Assignments of Leases and Rents referred to therein), in each case as amended, restated, supplemented or otherwise modified from time to time.

“Existing Secured Agreements” means the agreements set forth on Schedule 1.01(b).

“Existing Securitization Facility” means (1) the Purchase and Sale Agreement by and among the Patriot Coal Sales LLC, Magnum Coal Sales LLC (together with Patriot Coal Sales LLC, the “Originators”), the Borrower and Patriot Coal Receivables (SPV) Ltd. (the “SPV”) (as amended, restated, supplemented or otherwise modified), (2) that certain Receivables Purchase Agreement by and among the SPV, the Borrower, the various conduit purchasers, related committed purchasers, L/C participants and purchaser agents from time to time party thereto and Fifth Third Bank, as administrator and as L/C bank (as amended, restated, supplemented or otherwise modified) and (3) that certain Performance Guaranty, by the Borrower for the benefit of Fifth Third Bank, as administrator (on behalf of the beneficiaries) (as amended, restated, supplemented or otherwise modified).

“Existing Senior Notes” means the senior notes of the Borrower issued pursuant to the Senior Notes Indenture as in effect on the Closing Date in an aggregate principal amount of \$250,000,000.

“Existing Swing Line Obligations” obligations in an amount not to exceed \$25,000,000 in respect of Swing Line Loans (as defined in the Existing Credit Agreement) arising under the Existing Credit Agreement prior to the Petition Date.

“Extension Date” means the date at least ten Business Days prior to the then current Maturity Date on which all of the following conditions have been satisfied (a) no Default shall exist, or would result from any L/C Advance or from the occurrence of the Extension Date, (b) the representations and warranties of the Loan Parties contained in this Agreement and in each other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that the representations and warranties contained in Sections 5.05(a) and (b) of the First Out Facility as in effect on the Closing Date and incorporated herein by reference shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the First Out Facility as in effect on the Closing Date and incorporated herein by reference, respectively, (c) an Acceptable Reorganization Plan shall have been filed in the Bankruptcy Court with respect to the Cases, (d) on or prior to the extension of the Maturity Date hereunder, the conditions for the “Extension Date” as defined in the First Out Facility shall have been satisfied and the “Maturity Date” thereunder shall have been extended to December 31, 2013, (e) the Extension Fee and all other fees and expenses due and payable under the Loan Documents

shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable and (f) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying that the foregoing conditions have been satisfied.

“Extension Fee” has the meaning specified in Section 2.06(c).

“Extraordinary Receipt” means any cash received by the Borrower or any of its Subsidiaries as proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) or condemnation awards (and payments in lieu thereof).

“Facility” means, at any time, the aggregate amount of the Lenders’ Reimbursement Obligations at such time.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the Bank of America Fee Letter.

“Final Order” means a final order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications are satisfactory in form and substance to the Administrative Agent).

“First Day Orders” means all orders entered by the Bankruptcy Court on, or within five days of, the Petition Date or based on motions filed on or about the Petition Date.

“First Out Facility” means that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of July 9, 2012, among the Borrower, the lenders party thereto from time to time, the First Out Term Agent and the Revolving Agent.

“First Out Loan Documents” means “Loan Documents” as defined under the First Out Facility.

“First Out Revolving Agent” means the “Revolving Administrative Agent” as defined under the First Out Facility.

“First Out Secured Parties” means “Secured Parties” as defined in the First Out Facility.

“First Out Term Agent” means the “Term Administrative Agent” as defined under the First Out Facility.

“Financing Lease” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

“Foreign Lender” means, with respect to the Borrower, any Lender that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

“Foreign Subsidiary” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia and any Subsidiary thereof.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by any L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s Reimbursement Obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination.

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

“Guarantee” means, as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to the extent the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation in order to induce the creation of such obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, reimbursement obligations under letters of credit and any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary

obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee shall not include ordinary course performance guarantees by any Loan Party of the obligations (other than for the payment of borrowed money) of any other Loan Party and (iii) endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor Subsidiary" means any Subsidiary of the Borrower that is (a) a debtor in a case then pending under chapter 11 of the Bankruptcy Code or any ancillary proceedings, (b) a Domestic Subsidiary and (c) a Foreign Subsidiary, in the case of clause (c) to the extent the Borrower determines in good faith and in its reasonable discretion that no material adverse tax consequences would result; *provided*, that such term shall not include (i) the SPV or (ii) EACC Camps Inc., a West Virginia corporation, so long as Section 5.25 of the First Out Facility and incorporated herein by reference continues to be true and correct in all respects or (iii) (A) WWMV, LLC, (B) Rhino Eastern LLC, (C) White Stallion Coal, LLC, (D) Squaw Creek Coal Company or (E) Tecumseh Coal Corporation, each of which is a non-wholly owned joint venture with a third party.

"Hazardous Materials" means (i) any explosive or radioactive substances or wastes and (ii) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

"Hedge Bank" means any Lender party to a Secured Hedge Agreement.

"Honor Date" shall have the meaning specified in Section 2.01(c)(i).

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, bid, performance and reclamation bonds, surety bonds and similar instruments issued for the account of such Person;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices and accrued expenses incurred in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) Capital Lease Obligations; and
- (g) all Guarantees of such Person in respect of any of the foregoing Indebtedness of any other Person.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such person is liable therefor as a result of such Person's ownership interest in such entity or otherwise, except (other than in the case of general partner liability) to the extent that the terms of such Indebtedness expressly provide that such person is not liable therefor. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Intellectual Property Security Agreements” means the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, each as defined under the Security Agreement.

“Interest Payment Date” means, (a) as to any L/C Borrowing, other than a Base Rate L/C Borrowing, the last day of each Interest Period applicable to such L/C Borrowing and the Maturity Date (or, if sooner, the date on which the Obligations become due and payable pursuant to Section 8.02); provided, however, that if any Interest Period for a Eurocurrency Rate L/C Borrowing exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Unreimbursed Amount, the last Business Day of each month and the Maturity Date.

“Interest Period” means, as to each Eurocurrency Rate L/C Borrowing, the period commencing on the date on which the Letter of Credit drawing resulting in such Eurocurrency Rate L/C Borrowing is made and ending on the date one, two or three months thereafter, as selected by the Borrower in its Notice of Conversion or Continuation; provided, that:

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

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“Interim Order” means an interim order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in the form set forth as Exhibit J, with changes to such form as are reasonably satisfactory to each Arranger in its sole discretion, approving the Loan Documents, which Interim Order shall, among other things (i) have been entered on such prior notice to such parties as may be satisfactory to each Arranger in its sole discretion, (ii) authorize the extensions of credit in respect of the Revolving Facility (as defined in the First Out Facility) and the Term Facility (as defined in the First Out Facility) under the First Out Facility, each in the amounts and on the terms set forth herein, (iii) grant the Superpriority Claim status and other Collateral and Liens referred to herein and in the other Loan Documents, (iv) approve the payment by the Borrowers of the fees provided for herein, (v) approve the repayment in full of the Existing Swing Line Obligations and the Existing Securitization Facility, (vi) authorize the extensions of credit in respect of this Agreement and the roll-up of the obligations under the Existing Credit Agreement and the Existing Letters of Credit, (vii) provide for the waiver of section 506(c) of the Bankruptcy Code by the Debtors as to the Collateral, subject only to and effective upon entry of the Final Order, (viii) provide for approval of certain intercreditor provisions governing priority of payments and liens and exercise remedies among the Secured Parties and First Out Secured Parties and (ix) provide for approval of certain provisions and protections to the Secured Parties and First Out Secured Parties relating to Real Property Leases.

“Interim Order Entry Date” means the date on which the Interim Order is entered by the Bankruptcy Court.

“Investment Grade Rating” shall mean a rating equal to or higher than Baa3 (or equivalent) by Moody’s and BBB- (or equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower and reasonably acceptable to the Administrative Agent.

“IRS” means the United States Internal Revenue Service.

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

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any L/C Issuer and the Borrower (or any Subsidiary) or in favor of any L/C Issuer and relating to any such Letter of Credit.

“Laws” means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made.

“L/C Issuer” means each of Bank of America, PNC Bank, National Association and Fifth Third Bank in its capacity as and issuer of the Existing Letters of Credit hereunder, and any successor thereto.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lender Addendum” means, with respect to any Lender, a Lender Addendum, substantially in the form of Exhibit L, to be executed and delivered by such Lender on the Closing Date as provided in Section 10.16.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letters of Credit” means the Existing Letters of Credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.01(i).

“Liability Assumption Agreements” means (a) the Coal Act Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC and Peabody, (b) the NBCWA Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody, and (c) the Salaried Employee Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Financing Lease having substantially the same economic effect as any of the foregoing).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Subsidiary Guaranty, (c) the Collateral Documents, (d) each Issuer Document, (e) each Secured Hedge Agreement, and (g) each Secured Cash Management Agreement.

“Loan Parties” means, collectively, the Borrower and each Subsidiary Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means a material adverse effect upon (a) the business, assets, operations, property or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole, other than (i) as customarily would occur as a result of the filing of the Cases or the effect of bankruptcy or those circumstances and events leading up thereto specified in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 or (ii) as would occur as a result of non-cash impairment charges or a non-cash selenium charge, each as previously disclosed to the Arrangers or (b) the validity or enforceability of this or any of

the other Loan Documents or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

“Maturity Date” means (i) the date that is 450 days after the Closing Date or (ii) if the Extension Date has occurred, December 31, 2013.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“MSHA” means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq., as amended.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided, that if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary in connection therewith.

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

“Notice of Conversion or Continuation” means a notice by the Borrower to (i) convert Base Rate L/C Borrowings or any portion thereof to Eurocurrency Rate L/C Borrowings or (ii) at the end of any applicable Interest Period, convert Eurocurrency Rate L/C Borrowings or any portion thereof into Base Rate L/C Borrowings or to continue such Eurocurrency Rate L/C Borrowings or any portion thereof for an additional Interest Period, in each case, substantially in the form of Exhibit B.

“Obligations” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due

or to become due, now existing or hereafter arising, including without limitation, the Subsidiary Guarantor Obligations.

“Operating Forecast” means a consolidated business plan and projected operating budget substantially in the form of the budget dated July 5, 2012, previously delivered to the Administrative Agent.

“Orders” means, collectively, the Interim Order and the Final Order.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or the relevant L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 10.06(d).

“Peabody” means Peabody Energy Corporation, a Delaware corporation.

“Perfection Certificate” means a perfection certificate substantially in the form of Exhibit I or any other form approved by the Administrative Agent, as such perfection certificate may be amended, restated, supplemented or otherwise modified from time to time.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” has the meaning specified in the Preliminary Statements.

“Platform” has the meaning specified in Section 6.02 of the First Out Facility.

“Pledged Equity Interests” has the meaning specified in Section 1.1 of the Security Agreement.

“Pledged Debt” has the meaning specified in Section 1.1 of the Security Agreement.

“Prepayment Date” means (i) the date that is 30 days after the Interim Order Entry Date if the Final Order has not been entered by the Bankruptcy Court prior to such date (provided, however, that such date shall be 45 days after the Interim Order Entry Date if entry of the Final Order is delayed by any requirements as a result of an evidentiary hearing or similar hearing or process associated with objections being made to the entry of the Interim Order or the Final Order) or (ii) such later date as approved by the Required Lenders.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all improvements, fixtures, easements, hereditaments, permits and appurtenances relating thereto.

“Real Property Lease” means any lease, license, letting, concession, occupancy agreement, sublease, easement or right of way to which such Person is a party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract minerals from any portion of Real Property not owned in fee by such Person) and every amendment or modification thereof including, without limitation, any Contractual Obligation with respect to any of the foregoing.

“Reclamation” means the reclamation and restoration of land, water and any future, current, abandoned or former mines, and of any other Environment affected by such mines, as required pursuant to SMCRA, any other Environmental Law or any Environmental Permit.

“Register” has the meaning specified in Section 10.06(c).

“Related Documents” means the Separation Agreement, the Tax Separation Agreement and the Liability Assumption Agreements.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and such Person’s and such Person’s Affiliates’ respective managers, administrators, trustees, members, partners, directors, officers, employees, agents, fund managers and advisors.

“Reimbursement Obligation” means, as to each Lender, its absolute and unconditional obligation to make L/C Advances to reimburse each L/C Issuer for amounts drawn under the Existing Letters of Credit up to an aggregate principal amount not to exceed the amount set forth under the caption “Reimbursement Obligation” opposite such Lender’s name on Schedule 2.01. The aggregate amount of the Reimbursement Obligations as of the Closing Date is \$300,760,433.55.

“Reorganization Plan” means a liquidation plan or plan of reorganization in any or all of the Cases of the Debtors.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and (b) aggregate unused Commitments; provided, that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means the chief executive officer, chief restructuring officer, president, or any vice president of the Borrower or, with respect to financial matters, the chief financial officer or treasurer of the Borrower.

“Revolving Credit Facility Collateral” has the meaning given such term in the First Out Facility.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Agreement” means any Secured Cash Management Agreement or Secured Hedge Agreement.

“Secured Cash Management Agreement” means (i) any Cash Management Agreement that is entered into by and between the Borrower and any Cash Management Bank to the extent designated as such by the Borrower and such Cash Management Bank in writing to the Administrative Agent from time to time and (ii) each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Cash Management Agreement”.

“Secured Hedge Agreement” means each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Hedge Agreement”.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks, the Cash Management Banks, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Security Agreement” means that certain Debtor-in-Possession Pledge and Security and Intercreditor Agreement dated as of July 11, 2012, by and among the First Out Term Agent, the Revolving Agent, the Administrative Agent and each of the Grantors party thereto, substantially in the form of Exhibit H, as amended, restated, supplemented or otherwise modified from time to time.

“Separation Agreement” means the Separation Agreement, Plan of Reorganization and Distribution, dated as of October 22, 2007, between Peabody and the Borrower.

“SMCRA” means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201 et seq., as amended.

“SPV” has the meaning specified in the definition of Existing Securitization Facility.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantors” means, collectively, the subsidiaries of the Borrower listed on Schedule 1.01(a), and each other Guarantor Subsidiary of the Borrower that guarantees the Obligations pursuant to Section 6.12 of the First Out Facility.

“Subsidiary Guaranty” means the certain Guarantee made by the Subsidiary Guarantors in favor of the Secured Parties, substantially in the form of Exhibit D, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12 of the First Out Facility.

“Superpriority Claim” means a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

“Swap Contract” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any valid netting agreement relating to such Swap

Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Tax Separation Agreement” means that Tax Separation Agreement, dated as of October 22, 2007, between Peabody and the Borrower.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Facility Collateral” has the meaning given such term in the First Out Facility.

“Termination Date” means the earliest of (i) the Maturity Date, (ii) the date on which the obligation of the L/C Issuers to permit the extension of the expiry date of any Letter of Credit is terminated upon direction from the Administrative Agent pursuant to Section 8.02, (iii) the Prepayment Date, (iv) the Consummation Date and (v) the date of dismissal of the Cases by the Bankruptcy Court.

“Threshold Amount” means \$10,000,000.

“Total Outstandings” means the aggregate Outstanding Amount of all L/C Obligations.

“Transaction” means, collectively, (a) the entering into by the Loan Parties of the Loan Documents to which they are a party and (b) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“Type” means, with respect to any L/C Borrowing, its character as a Base Rate L/C Borrowing or a Eurocurrency Rate L/C Borrowing.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided, that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.01(c)(i).

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms. Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Borrower’s audited financial statements, except as otherwise specifically prescribed herein.

1.04 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

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

ARTICLE II THE LETTERS OF CREDIT

2.01 Letters of Credit. (a) The Letter of Credit Reimbursement Obligations. (i) Subject to the terms and conditions set forth herein and in the Orders, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.01, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to allow each letter of credit issued by it and set forth on Schedule 2.01(a) (the "Existing Letters of Credit") to automatically extend for additional periods in accordance with its terms and (2) to honor conforming drawings under the Existing Letters of Credit; provided, that no Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall exceed such Lender's Reimbursement Obligations. Other than the Existing Letters of Credit, no additional letters of credit may be issued hereunder. Any Existing Letter of Credit that expires or that is drawn upon (whether or not reimbursed) shall not be reissued. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) Other than the Existing Letters of Credit, no L/C Issuer shall issue any Letter of Credit hereunder;

(iii) No L/C Issuer shall be under any obligation to permit the renewal of any Existing Letter of Credit if;

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from permitting the extension of such Existing Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the extension of outstanding letters of credit generally or such Existing Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Existing Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) [Reserved];

(C) a default of any Lender's obligations to fund under Section 2.01(c) exists or any Lender is at such time a Defaulting Lender hereunder, unless such L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender;

(iv) No L/C Issuer shall be under any obligation to amend any Existing Letter of Credit; and

(v) Each L/C Issuer shall act on behalf of the Lenders with respect to any Existing Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Existing Letters of Credit issued by it and Issuer Documents pertaining to such Existing Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to each L/C Issuer.

(b) Auto-Extension. Each Existing Letter of Credit contains provisions that provide for the automatic extension of such Existing Letter of Credit on its expiry date for an additional period. In addition, each Existing Letter of Credit permits the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Existing Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period that was agreed upon at the time such Existing Letter of Credit was issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. The Lenders are deemed to have authorized and the applicable L/C Issuer shall be required to permit the automatic extension of such Existing Letter of Credit in accordance with its terms at any time to an expiry date not later than one year (subject to further extension) after the expiry date then elapsing; provided, however, that (A) the applicable L/C Issuer shall not be required to permit any such extension if such L/C Issuer has determined that it would not have any obligation at such time to permit the extension of such Existing Letter of Credit under the terms hereof by reason of the provisions of clause (iii) of Section 2.01(a) only or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days (or a shorter period if agreed by such L/C Issuer in its sole discretion) before the Non-Extension Notice Date from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations. (i) Upon receipt from the beneficiary of any Existing Letter of Credit of any notice of a drawing under such Existing Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. The Borrower shall have the option to reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing on the date on which the Borrower receives notice of any payment by the applicable L/C Issuer under an Existing Letter of Credit, provided that the Borrower receives notice by 1:00 p.m., New York City time on such date, or on the next Business Day if notice is not received by such time (each

such date, an “Honor Date”). If the Borrower fails to so reimburse such L/C Issuer by the time set forth in the preceding sentence, the applicable L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (the “Unreimbursed Amount”). The Administrative Agent shall promptly notify each Lender thereof and of the amount of such Lender’s Applicable Percentage thereof. Any notice given by such L/C Issuer or the Administrative Agent pursuant to this Section 2.01(c)(i) may be given by telephone 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.

(ii) Each Lender shall upon any notice pursuant to Section 2.01(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer at the Administrative Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.01(c)(iii), each Lender that so makes funds available shall be deemed to have made a portion of a Base Rate L/C Borrowing to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) The Borrower shall be deemed to have incurred from the relevant L/C Issuer a L/C Borrowing in the amount of the Unreimbursed Amount, which L/C Borrowing shall be due and payable on the Maturity Date (together with interest) and shall bear interest initially (until converted to a Eurocurrency Rate L/C Borrowing in accordance with Section 2.02) at the rate applicable to Base Rate L/C Borrowings from the Honor Date. Each Lender’s payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.01(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation as to such L/C Borrowing under this Section 2.01.

(iv) Until each Lender funds its L/C Advance pursuant to this Section 2.01(c) to reimburse the relevant L/C Issuer for any amount drawn under any Existing Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of such L/C Issuer.

(v) Each Lender’s obligation to make L/C Advances to reimburse each L/C Issuer for amounts drawn under Existing Letters of Credit, as contemplated by this Section 2.01(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse each L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender

pursuant to the foregoing provisions of this Section 2.01(c) by the time specified in Section 2.01(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the Overnight Rate, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's L/C Borrowing included in the relevant L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of such L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.01(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. (i) At any time after any L/C Issuer has made a payment under any Existing Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.01(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of any L/C Issuer pursuant to Section 2.01(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse each L/C Issuer for each drawing under each Existing Letter of Credit and to repay each Unreimbursed Amount shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Existing Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Existing Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any Lender, whether in

connection with this Agreement, the transactions contemplated hereby or by such Existing Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Existing Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Existing Letter of Credit, except to the extent caused by applicable L/C Issuer's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment;

(iv) any payment by any L/C Issuer under such Existing Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Existing Letter of Credit, so long as such L/C Issuer shall have determined in the absence of gross negligence or willful misconduct, in good faith and in accordance with the standard of care specified in the Uniform Commercial Code of the State of New York, that the documents (including each draft) delivered under such Existing Letter of Credit in connection with such presentment appear on their face to be in conformity with such Existing Letter of Credit;

(v) any payment made by any L/C Issuer under such Existing Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Existing Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(vi) any other action taken or omitted to be taken by any L/C Issuer under or in connection with any Existing Letter of Credit or the related drafts or documents, whether or not similar to any of the foregoing, that might, but for this Section 2.01(e), constitute a legal or equitable discharge of the Borrower's obligations hereunder .

The Borrower shall promptly examine a copy of each Existing Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the relevant L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against such L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under an Existing Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Existing Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of any L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders

or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Existing Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Existing Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Notwithstanding anything to the contrary herein the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final, non-appealable judgment. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign an Existing 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.

(g) Cash Collateral. (i) Upon the request of the Administrative Agent, if, as of the Letter of Credit Expiration Date or the Termination Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of such L/C Obligation.

(ii) Sections 2.01, 2.03 2.05, 2.12 and 8.02(c) set forth certain additional requirements to deliver cash collateral hereunder. For purposes of this Section 2.01, Section 2.03, Section 2.04, Section 2.05, Section 2.12 and Section 8.02(c), "Cash Collateralize" means to pledge to the Administrative Agent and deposit in the Cash Collateral Account, for the benefit of the each Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount of at least 105% of the L/C Obligations pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Lenders). The term "Cash Collateral" and other derivatives of such term shall have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of each L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in the Cash Collateral Account. If at any time the Administrative Agent determines that any funds held in the Cash Collateral Account are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited in the Cash Collateral Account, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held in the Cash Collateral Account that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are

on deposit in the Cash Collateral Account, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse each L/C Issuer for (i) the amount of such drawing, (ii) Letter of Credit Fees and (iii) any applicable fronting fee and other fees under Section 2.01(k).

(h) Applicability of ISP. Unless otherwise expressly agreed by the relevant L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Existing Letter of Credit.

(i) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate for Letters of Credit times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. Letter of Credit Fees shall be (i) computed on a monthly basis in arrears and (ii) due and payable on the first Business Day after the end of each calendar month, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate of 0.25% per annum on the face amount drawn under each Letter of Credit, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each calendar month in respect of the most recently-ended monthly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. In addition, the Borrower shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that an Existing Letter of Credit deemed issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the relevant L/C Issuer hereunder for any and all drawings under such Existing Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures

to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

2.02 Conversions and Continuations of L/C Borrowings. (a) Each conversion of L/C Borrowings from one Type to the other, and each continuation of Eurocurrency Rate L/C Borrowings shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any conversion to or continuation of Eurocurrency Rate L/C Borrowings or of any conversion of Eurocurrency Rate L/C Borrowings, and (ii) one Business Day prior to the requested date of any conversion to Base Rate L/C Borrowings. Not later than 11:00 a.m., three Business Days before the requested date of such conversion or continuation of Eurocurrency Rate L/C Borrowings, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Notice of Conversion or Continuation, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or continuation of Eurocurrency Rate L/C Borrowings shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Each Notice of Continuation or Conversion (whether telephonic or written) shall specify (i) whether the Borrower is requesting a conversion of L/C Borrowings from one Type to the other or a continuation of L/C Borrowings that are Eurocurrency Rate L/C Borrowings, and (ii) specifying (A) the amount and Type of L/C Borrowing being converted or continued, (B) in the case of a conversion to or a continuation of Eurocurrency Rate L/C Borrowings, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion. If the Borrower fails to give a timely Notice of Conversion or Continuation with respect to Eurocurrency Rate L/C Borrowings, then the applicable L/C Borrowings shall be made as, or converted to, Base Rate L/C Borrowings. Any such automatic conversion to Base Rate L/C Borrowings shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate L/C Borrowings. If the Borrower requests a conversion to, or continuation of Eurocurrency Rate L/C Borrowings in any such Notice of Conversion or Continuation, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Unless the Lenders are compensated for any losses under 3.04(e), a Eurocurrency Rate L/C Borrowing may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate L/C Borrowing. During the existence of a Default, no L/C Borrowings may be converted to or continued as Eurocurrency Rate L/C Borrowing if the Required Lenders or the Administrative Agent so notify the Borrower.

(c) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate L/C Borrowings upon determination of such interest rate. At any time that Base Rate L/C Borrowings are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(d) After giving effect to all conversions of L/C Borrowings from one Type to the other, and all continuations of L/C Borrowings as the same Type, there shall not be more than fifteen (15) Interest Periods in effect hereunder.

2.03 Prepayments. (a) Optional. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay L/C Borrowings in whole or in part without premium or penalty; *provided*, that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to any date of prepayment of Eurocurrency Rate L/C Borrowings and (ii) on the date of prepayment of Base Rate L/C Borrowings; (ii) any prepayment of Eurocurrency Rate L/C Borrowings shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (iii) any prepayment of Base Rate L/C Borrowings shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type of L/C Borrowings to be prepaid and, if Eurocurrency Rate L/C Borrowings are to be prepaid, the Interest Period(s) of such L/C Borrowings. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate L/C Borrowings shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to 3.04(e). Any prepayment of a L/C Borrowings may not be reborrowed.

(b) Mandatory. Subject in each case to the terms of the Security Agreement,

(i) [Reserved].

(ii) If the Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition permitted by Section 7.05 (a), (b), (c) or (k) of the First Out Facility as in effect on the Closing Date) (A) which results in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all other such Dispositions since the Closing Date, exceed \$5,000,000, the Borrower shall apply an amount equal to 50% of such excess Net Cash Proceeds or (B) which results in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all such other Dispositions since the Closing Date exceed of \$100,000,000, the Borrower shall apply an amount equal to 100% of such excess Net Cash Proceeds, in each case, immediately upon receipt thereof by such Person to the Obligations (such prepayments to be applied as set forth in clauses (v) and (vi) below).

(iii) [Reserved].

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Subsidiaries, and not otherwise included in clause (ii) of this Section 2.03(b), the Borrower shall apply an amount equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or

such Subsidiary to the Obligations (such amounts to be applied as set forth in clauses (v) and (vi) below); provided, however, that at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of receipt of such cash proceeds), and so long as no Default shall have occurred and be continuing, the Borrower or such Subsidiary may apply within 90 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received or reinvest in other operating assets; and provided, further, however, that any cash proceeds not so applied shall be applied to the Obligations as set forth in this Section 2.03(b)(iii) at the end of such 90 day period.

(v) If the Administrative Agent notifies the Borrower at any time that the Total Outstandings at such time exceed the Aggregate Reimbursement Obligations then in effect, then, within one Business Day after receipt of such notice, the Borrower shall Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Aggregate Reimbursement Obligations then in effect.

(vi) Prepayments of the Facility made pursuant to this Section 2.03(b), first, shall be applied to the Obligations under the First Out Facility to the extent required under the Security Agreement, second, shall be applied ratably to the L/C Borrowings and third, shall be used to Cash Collateralize the remaining L/C Obligations; and the amount remaining, if any after the prepayment in full of all L/C Borrowings outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held in the Cash Collateral Account shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the relevant L/C Issuer or the Lenders, as applicable.

2.04 Repayment of L/C Borrowings. On the Termination Date the Borrower shall (a) repay to the Lenders on the Termination Date the aggregate principal amount of all L/C Borrowings outstanding on such date, (b) pay all other Obligations hereunder (other than contingent obligations, indemnities or expenses related thereto not then payable or in existence) and (c) Cash Collateralize all outstanding Letters of Credit in accordance with Section 2.01(g) .

2.05 Interest. (a) Subject to the provisions of Section 2.05(b), (A) each Eurocurrency Rate L/C Borrowing shall bear interest on the outstanding principal amount thereof for each Interest Period a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate and (B) each Base Rate L/C Borrowing shall bear interest on the outstanding principal amount thereof from the applicable borrowing date a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal or interest of any Obligations is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(iv) Interest on each L/C Borrowing shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein.

2.06 Fees. In addition to certain fees described in Sections 2.01(i) and (j):

(a) Upfront Fee. The Borrower shall pay to the Administrative Agent, for the account of each Lender, fees in the amounts and at the times specified in the Fee Letter.

(b) Other Fees. The Borrower shall pay to each Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(c) Extension Fee. If the Borrower elects, subject to the occurrence of the Extension Date, to extend the Maturity Date of the Facilities, the Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an extension fee (the "Extension Fee") equal to 0.50% of the aggregate L/C Obligations of all Lenders outstanding on the Extension Date.

2.07 Computation of Interest and Fees. All computations of interest for Base Rate L/C Borrowings shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each L/C Borrowing for the day on which the L/C Borrowing is incurred, and shall not accrue on a L/C Borrowing, or any portion thereof, for the day on which the L/C Borrowing or such portion is paid, provided, that any L/C Borrowing that is repaid on the same day on which it is made shall, subject to Section 2.09(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.08 Evidence of Debt. (a) The L/C Advances made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the L/C Advances made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any

Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(b) In addition to the accounts and records referred to in Section 2.08(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.09 Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or such L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.09(b) shall be conclusive, absent manifest error.

(c) Obligations of Lenders Several. The obligations of the Lenders hereunder (a) to fund participations in Letters of Credit and (b) to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender (x) to fund any such participation or (y) to make payment under Section 10.04(c) on any date required hereunder shall not relieve any

other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to do so.

(d) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any L/C Borrowing in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any L/C Borrowing in any particular place or manner.

2.10 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations or subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided, that:

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

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation or subparticipations in L/C Obligations to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply), or (C) any payments pursuant to the Fee Letter.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.11 Defaulting Lender.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders; and

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer hereunder; third, to Cash Collateralize each L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.01(g); fourth, to the payment of any amounts owing to the Lenders or any L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the L/C Borrowings owed to all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any L/C Borrowings owed to such Defaulting Lender until such time as all funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Applicable Percentage without giving effect to Section 2.11(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.11(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.01(g).

(B) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Borrower shall (x) ratably pay to each L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to L/C Issuer's Fronting Exposure to such Defaulting Lender, and (y) not be required to pay the remaining amount of any such fee.

(iv) [Reserved]

(v) Cash Collateral. The Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize each L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.01(g).

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and each L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, take such other actions as the Administrative Agent may determine to be necessary to cause the L/C Borrowings and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with their respectable Applicable Percentages (without giving effect to Section 2.11(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) Extended Letters of Credit. So long as any Lender is a Defaulting Lender, no L/C Issuer shall be required to extend or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

2.12 No Discharge; Survival of Claims. The Borrower agrees that to the extent that its obligations under the Loan Documents have not been satisfied in full in cash, (i) its obligations under the Loan Documents shall not be discharged by the entry of an order confirming a Reorganization Plan (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders and the Liens granted to the Administrative Agent and the Lenders pursuant to the Orders shall not be affected in any manner by the entry of an order confirming a Reorganization Plan.

2.13 Priority and Liens. (a) The Borrower hereby covenants and agrees that upon the entry of an Interim Order (and when applicable, the Final Order):

(i) the Obligations pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim in the Cases subject only to the Carve-Out;

(ii) subject to the terms of the Orders and the Security Agreement, the Obligations pursuant to Section 364 of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable perfected (A) first priority Lien on all of the Term Facility Collateral of each Loan Party, which Lien will also secure the Term Facility Obligations and Revolving Credit Obligations (each as defined in the First Out Facility) and (B) junior Lien (subject only to the Lien securing the Revolving Credit Facility Obligations under the First Out Facility) on all of the Revolving Credit Facility Collateral of each Loan Party, which Lien will also secure the Term Facility Obligations (as defined in the First Out Facility) subject, in each case, to the Carve-Out;

(b) [Reserved].

(c) The relative priorities of the Liens described in this Section 2.13 with respect to the Revolving Credit Facility Collateral of the Debtors and the Term Facility Collateral of the Debtors shall be as set forth in the Interim Order (and, when entered, the Final Order) and Section 10 of the Security Agreement. All of the Liens described in this Section 2.13 shall be effective and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order.

(d) Notwithstanding anything to the contrary herein, not more than 65% of the voting equity interests of any CFC shall be pledged in favor of any Lender or the Administrative Agent.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes. (a) Payments Free of Taxes. Any and all payments by or on behalf of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided, that if the Borrower or other Person making payments on behalf of the Borrower shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions including deductions applicable to additional sums payable under this Section 3.01(a) (after payment of all Indemnified Taxes and Other Taxes) the Administrative Agent, any Lender or any L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or other Person shall make such deductions and (iii) the Borrower or other Person shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 3.01(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within 30 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or such L/C Issuer or any of their respective Affiliates, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or such L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or such L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent

(e) Status of Lenders. Each Lender that is a “U.S. Person” as defined in section 7701(a)(30) of the Code that has not otherwise established to the reasonable satisfaction of the Borrower and Administrative Agent (or, in the case of a Participant purchasing its participation from a Foreign Lender, to the Lender from which the related participation shall have been purchased) that it is an exempt recipient (as defined in section 6049(b)(4) of the Code and the regulations thereunder) shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable law or upon the reasonable request of the Borrower or Administrative Agent), two duly completed and executed copies of Internal Revenue Service Form W-9.

Any Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable or any subsequent version thereof or successor thereto:

(i) duly completed and executed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed and executed copies of Internal Revenue Service Form W-8ECI relating to all payments to be received by such Foreign Lender hereunder or under any other Loan Document,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of section

881(c)(3)(B) of the Code, or (3) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

In the event that, pursuant to Section 10.06(d), a Participant is claiming the benefits of this Section 3.01, such Participant shall provide the forms required above to the Lender from which the related participation was purchased, and if such Lender is a Foreign Lender, such Lender shall, promptly upon receipt thereof (but in no event later than the next scheduled payment under this Agreement) forward such documentation to the Borrower and the Administrative Agent, together with such additional forms as are required by law.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender’s status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to the Administrative Agent or the Borrower, as the Administrative Agent or the Borrower shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter (including upon the expiration or obsolescence of any such forms or documents and promptly after the occurrence of any event requiring a change from the most recent forms previously delivered), such other documents and forms as would reduce or avoid any Indemnified Taxes in respect of all payments to be made to such Lender outside of the U.S. by the Borrower pursuant to this Agreement or otherwise to establish such Lender’s status for withholding tax purposes in such other jurisdiction; provided, that in such Lender’s reasonable judgment such documentation or forms would not materially prejudice such Lender. Each Lender shall promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction. Notwithstanding any other provision of this Section 3.01(e), a Lender shall not be required to deliver any form, document or other information pursuant to this Section 3.01(e) that such Lender is not legally able to deliver.

If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or any L/C Issuer receives a refund with respect to Indemnified Taxes or Other Taxes paid by the Borrower, which in the sole discretion and good faith judgment of the Administrative Agent, any Lender or any L/C Issuer is allocable to such payment, it shall promptly pay such refund (but only to the extent of the Indemnified Taxes or Other Taxes paid by the Borrower giving rise to such refund) to the Borrower, net of all out-of-pocket expenses of the Administrative Agent, such Lender or such L/C Issuer incurred in obtaining such refund (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent, such Lender or such L/C Issuer in good faith and in its sole discretion, and as will leave the Administrative Agent, such Lender or such L/C Issuer in no worse position than it would be in if no such Indemnified Taxes or Other Taxes had been imposed and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that the Borrower agrees to promptly return such amount (plus any penalties, interest or other charges imposed by the relevant Governmental Authority), net of any reasonable incremental additional costs, to the Administrative Agent or the applicable Lender or L/C Issuer, as the case may be, if it receives notice from the Administrative Agent, Lender or L/C Issuer that the Administrative Agent, such Lender or such L/C Issuer is required to repay such refund. This subsection shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02 Illegality. If any Lender determines that as a result of any Change in Law it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate L/C Borrowings, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate L/C Borrowings or to convert Base Rate L/C Borrowings to Eurocurrency Rate L/C Borrowings, shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all such Eurocurrency Rate L/C Borrowings of such Lender to Base Rate L/C Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate L/C Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate L/C Borrowings. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate L/C Borrowing or a conversion to or continuation thereof that (a) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate L/C Borrowing, or (b) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate L/C Borrowing does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate L/C Borrowing, the

Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate L/C Borrowings shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate L/C Borrowings or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate L/C Borrowings in the amount specified therein.

3.04 Increased Costs; Reserves on Eurocurrency Rate L/C Borrowings. (a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate contemplated by Section 3.04(e)) or any L/C Issuer; or

(ii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such L/C Issuer of participating in, maintaining any Letter of Credit (or of maintaining its obligation to participate in any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; provided, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, in its reasonable discretion, in any legal, economic or regulatory manner) to designate a different Eurocurrency Rate lending office if the making of such designation would allow the Lender or its Eurocurrency Rate lending office to continue to perform its obligation to make Eurocurrency Rate L/C Borrowings or to continue to fund or maintain Eurocurrency Rate L/C Borrowings and avoid the need for, or reduce the amount of, such increased cost.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital requirements has the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Reimbursement Obligations of such Lender or the participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or

such L/C Issuer's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, describing the basis therefore and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided, that the Borrower shall not be required to compensate a Lender or a L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 90-days prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency Rate funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate L/C Borrowing equal to the actual costs of such reserves allocated to such L/C Borrowing by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Reimbursement Obligations or the funding of the Eurocurrency Rate L/C Borrowings, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Reimbursement Obligation or L/C Borrowing by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such L/C Borrowing, provided the Borrower shall have received at least 10 Business Days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender describing the basis therefor and showing the calculation thereof in reasonable detail. If a Lender fails to give notice 10 Business Days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable within 30 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any conversion, payment or prepayment of any Eurocurrency Rate L/C Borrowing, and any conversion of a Base Rate L/C Borrowing to a Eurocurrency Rate L/C Borrowing, on a day other than the last day of the Interest Period for such L/C Borrowing (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower to prepay or continue any Eurocurrency Rate L/C Borrowing, or to convert a Base Rate L/C Borrowing to a Eurocurrency Rate L/C Borrowing, on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurocurrency Rate L/C Borrowing on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such L/C Borrowing or from fees payable to terminate the deposits from which such funds were obtained, but excluding any loss of anticipated profits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this 3.04(e), each Lender shall be deemed to have funded each L/C Advance made by it in respect of any Eurocurrency Rate L/C Borrowing at the Eurocurrency Rate for such L/C Borrowing by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such L/C Advance in respect of such Eurocurrency Rate L/C Borrowing was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders. (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the Administrative Agent or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its L/C Borrowings hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender

gives a notice pursuant to Section 3.02 or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Reimbursement Obligations and repayment of all other Obligations hereunder.

ARTICLE IV CONDITIONS PRECEDENT TO EFFECTIVENESS

4.01 Conditions of Effectiveness. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a duly authorized officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement and a Lender Addendum executed and delivered by the Required Lenders (as defined in the Existing Credit Agreement) and accepted by the Borrower;

(ii) [Reserved]

(iii) the Security Agreement executed by each Loan Party and each other party thereto;

(iv) proper financing statements (except for any as-extracted collateral filing or UCC fixture filing) in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary in order to perfect the Liens and security interests created or purported to be created under the Interim Order and the Security Agreement, covering the Collateral described therein;

(v) the Perfection Certificate, executed by each Loan Party;

(vi) such certificates of resolutions or other action, incumbency certificates and/or other certificates of duly authorized officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each officer of a Loan Party executing the Loan Documents to which such Loan Party is a party;

(vii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or

operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(viii) the executed opinion of Davis Polk & Wardwell LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(ix) the executed opinion of Joseph W. Bean, Esq., special Missouri counsel and in-house counsel to the Loan Parties, addressed to the Administrative Agent, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(x) (x) a certificate of a duly authorized officer of each Loan Party (A) either (1) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (2) stating that no such consents, licenses or approvals are so required; and (B) stating that all consents, licenses and approvals required in connection with the consummation of such Loan Party of the Transaction has been received;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that, except as disclosed in writing by the Borrower to the Administrative Agent and the Lenders or in filings made with the SEC and press releases, in each case prior to the Closing Date, since December 31, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect;

(xii) executed counterparts of the Subsidiary Guaranty; and

(xiii) such other assurances, certificates and documents as the Administrative Agent reasonably may require.

(b) [Reserved].

(c) Any fees required to be paid on or before the Closing Date to the Administrative Agent, any Arranger or the Lenders (i) pursuant to the Fee Letter or (ii) otherwise for which invoices have been received at least one Business Day prior to the Closing Date shall have been paid.

(d) The Administrative Agent shall have received copies of all Real Property Leases of the Loan Parties.

(e) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent

(directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least one Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing and customary post-closing proceedings included in such invoices (provided, that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)

(f) The Administrative Agent shall have received (i) the Audited Financial Statements for the fiscal year ended December 31, 2011 and (ii) interim unaudited quarterly consolidated financial statements of the Borrower for each completed fiscal quarter ending not less than 45 days prior to the Closing Date.

(g) The Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act, to the extent requested at least 5 Business Days prior to the Closing Date.

(h) Concurrently with the Closing Date hereunder, the obligations of the Borrower and the other Loan Parties (other than contingent indemnification obligations) under the Existing Credit Agreement (to the extent not re-evidenced hereby) and the Existing Securitization Facility shall have been paid in full (or, in the case of obligations in respect of outstanding letters of credit, cash collateralized or otherwise provided for in a manner satisfactory to the applicable issuing bank), and the Administrative Agent shall have received customary payoff letters.

(i) The Administrative Agent shall have received the cash management arrangements of the Loan Parties (or with the cash management arrangements required to be put in place by the Loan Parties pursuant to Section 6.23 of the First Out Facility) in the forms delivered to the Administrative Agent under the First Out Facility.

(j) The Petition Date shall have occurred on or prior to July 11, 2012.

(k) The First Day Orders sought by the Borrower and entered on the Closing Date (including a cash management order) shall be satisfactory to the Administrative Agent or Arranger.

(l) The Interim Order Entry Date shall have occurred prior to the Closing Date and not later than 5 Business Days following the Petition Date, and the Interim Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to each Arranger and shall not be subject to a stay.

(m) All of the Liens described in Section 2.13 shall have been created and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth

in the Interim Order. The Interim Order shall have been effective to create the relative priorities of the Liens described in Section 2.13 with respect to the Collateral. The automatic stay under the Bankruptcy Code shall have been automatically vacated, subject to the terms of the Interim Order, to permit enforcement of the Secured Parties' rights and remedies under this Agreement and the other Loan Documents.

(n) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(o) The Operating Forecast and the initial 13-Week Projection in the forms delivered to the Administrative Agent under the First Out Facility shall have been received by the Administrative Agent prior to the date hereof.

(p) [Reserved].

(q) There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases) that could reasonably be expected to have a Material Adverse Effect.

(r) The First Out Loan Documents shall have been executed by all parties thereto on terms and subject to conditions acceptable to the Arrangers (as defined in the First Out Facility) and the initial extensions of credit shall have been made thereunder.

Without limiting the generality of the provisions of the last paragraph of Section 8.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to Letter of Credit Renewal. At any time (but no later than five (5) Business Days (or a shorter period if agreed to by the relevant L/C Issuer in its sole discretion) prior to the Non-Extension Notice Date) during the fifteen (15) Business Day period prior to any Non-Extension Notice Date with respect to any Existing Letter of Credit, the Administrative Agent may, and at the direction of the Required Lenders shall, direct the relevant L/C Issuer to not permit the extension of such Existing Letter of Credit if any of the following conditions are not met at such time:

(a) The representations and warranties of (i) the Borrower contained in Article V and (ii) each Loan Party contained in each other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of such time, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in

Sections 5.05(a) and (b) of the First Out Facility (and incorporated by reference herein) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the First Out Facility (and incorporated by reference herein), respectively.

(b) No Default shall exist, or would result from the proposed extension subject to the rights of the First Out Term Agent under the Security Agreement to waive certain Defaults.

(c) The Interim Order or Final Order, as applicable, shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Administrative Agent.

(d) The extension of such Letter of Credit shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

ARTICLE V REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party (a) (i) is duly organized or formed and, validly existing and (ii) in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) subject to the entry of the Orders and subject to the terms thereof, has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents and Related Documents to which it is a party and consummate the Transaction, and (c) is duly qualified and is licensed and, as applicable, in good standing, under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. Subject to the entry of the Orders and subject to the terms thereof, the execution, delivery and performance by each Loan Party of each Loan Document, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation (except in respect of the Existing Senior Notes) to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law, except to the extent any such violation could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. (a) Subject to the entry of the Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority and (b) no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with any other Person, in each case, is necessary or required in connection with (i) the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents or (iii) the perfection of the Liens created under the Collateral Documents (including the first priority nature thereof to the extent provided in the Orders), (x) except for those approvals, consents, exemptions, authorizations or other actions which have already been obtained, taken, given or made and are in full force and effect and (y) those landlord consents required with respect to Real Property Leases that constitute Collateral.

5.04 Binding Effect. Subject to the entry of the Orders, this Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Orders, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.

5.05 Litigation. There are no unstayed actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transaction.

5.06 No Default. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.07 Incorporation by Reference of First Out Facility Provisions. The representations and warranties set forth in Article 5 (other than Sections 5.01, 5.02, 5.03, 5.04, 5.06(a) and the second sentence of Section 5.07) of the First Out Facility (together with the definitions of such terms as may be used therein and as such representations and warranties and definitions are in effect as of the Closing Date) are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety and are true and correct.

It is the express intent of the parties hereto that the representations and warranties deemed to be set forth herein be identical in all respects, mutatis mutandis, to those set forth in Article 5 of the First Out Facility and that any misrepresentation or breach of warranty under the equivalent provisions of Article 5 of the First Out Facility shall constitute a misrepresentation or breach of warranty hereunder.

ARTICLE VI
AFFIRMATIVE AND NEGATIVE COVENANTS

So long as any Lender shall have any Reimbursement Obligation hereunder, any Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and expenses related thereto not then payable or in existence as of the later of the Maturity Date or the Letter of Credit Expiration Date), or any Letter of Credit shall remain outstanding, the Borrower shall, and shall cause each Subsidiary to observe and perform all of the covenants applicable to it and its Subsidiaries set forth in Article 6 and Article 7 of the First Out Facility, which covenants (together with the definitions of such terms as may be used therein and as such covenants and such definitions are in effect as of the Closing Date) are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety.

It is the express intent of the parties hereto that the covenants deemed to be set forth herein be identical in all respects to those set forth in Article 6 and Article 7 of the First Out Facility, mutatis mutandis, and that any breach of a covenant set forth in Article 6 or Article 7 of the First Out Facility shall constitute a breach of covenant hereunder.

ARTICLE VII
REAL PROPERTY LEASES

The provisions of Article 8 of the First Out Facility, together with the definitions of such terms as may be used therein and as such provisions and such definitions are in effect as of the Closing Date, are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety. It being understood that it is the express intent of the parties hereto that the provisions of such Article 8 deemed to be set forth herein be identical in all respects to those set forth in Article 8 of the First Out Facility, mutatis mutandis, and shall provide to the Administrative Agent and the Secured Parties the same rights and obligations as are provided to the “Administrative Agent” and “Secured Parties” under the First Out Facility.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any L/C Obligation or (ii) within three days after the same becomes due, any interest on any L/C Borrowing or on any L/C Obligation, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement incorporated by reference into Article VI (to the extent such term, covenant or agreement is incorporated from any of Sections 6.03, 6.05, 6.07, 6.08, 6.10, 6.11, 6.12, 6.15, 6.16, 6.18, 6.21, 6.22 or 6.23 or Article 7 or Article 8 of the First Out Facility), (ii) any of the Subsidiary Guarantors fails to perform or observe any term, covenant or agreement in Section IV of the Subsidiary Guaranty (but only to the extent it

relates to a default under Article VI arising under one of the covenants incorporated by reference therein and listed in the parenthetical contained in clause (i) above), (iii) any representation, warranty, certification or statement of fact made or deemed made under Section 2.01(a) by or on behalf of the Borrower shall be incorrect or misleading in any material respect when made or deemed made or (iv) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in Section 10 of the Security Agreement; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in or incorporated by reference into any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Borrower or any Subsidiary (ii) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder, Indebtedness under Swap Contracts or Guarantees of the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date), in each case having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit agreement) of more than the Threshold Amount, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee was created or (iii) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; (iv) there occurs under any Swap Contract (excluding any Swap Contract that was entered into prior to the Petition Date) an Early Termination Date (as defined under such Swap Contract) resulting from (v) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (vi) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or (vii) there occurs under any Liability Assumption Agreement an early termination of such agreement for any reason which could reasonably be expected to have an adverse effect on any Loan Party or that would impair the ability of the Lenders to be repaid in full hereunder; or

(f) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(g) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or Article VI shall for any reason (other than pursuant to the terms hereof or thereof, including as a result of a transaction permitted by Section 7.04 or 7.05 of the First Out Facility as in effect on the Closing Date) cease to create a valid and perfected Lien, with the priority required hereby or thereby (subject to Liens permitted by Section 7.01 of the First Out Facility as in effect on the Closing Date), on the Collateral purported to be covered thereby, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied or failed to acknowledge coverage; or

(h) Events of Default Under First Out Facility. Any "Event of Default" under Section 9.01 (other than clauses (a), (b), (c), (d), (e), (j) or (l) of such Section 9.01) of the First Out Facility (which "Events of Default", together with the definitions of such terms as may be used therein and as such Events of Default and such definitions are in effect as of the Closing Date, are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety) shall have occurred (it being understood that it is the express intent of the parties hereto that the "Events of Default" deemed to be set forth herein be identical in all respects to those set forth in Section 9.01 of the First Out Facility, mutatis mutandis, and that any "Event of Default" thereunder shall constitute and Event of Default hereunder).

8.02 Remedies Upon Event of Default. (a) If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the unpaid principal amount of all outstanding L/C Borrowing, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(ii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof);

(iii) subject to the provisions of Section 10 of the Security Agreement, exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents or applicable law;

(iv) require any Loan Party to promptly complete, pursuant to Section 363 of the Bankruptcy Code, subject to the rights of the Secured Parties to credit bid, a Disposition of its Real Property Leases or any portion thereof in one or more parcels at public or private sales, at any of the Administrative Agent's offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable;

(v) exercise any of its rights with respect to Real Property Leases under Section 8.01 of the First Out Facility;

provided, however, that with respect to the enforcement of Liens or other remedies with respect to the Collateral of the Loan Parties under the preceding clause (iii), the Administrative Agent shall provide the Borrower (with a copy to counsel for the Creditors' Committee in the Cases and to the United States Trustee for the Southern District of New York) with seven (7) days' prior written notice prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing.

(b) Upon the occurrence of the Termination Date the L/C Borrowings, all interest thereon and all other amounts and Obligations shall automatically become due and payable in cash, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower and the other Loan Parties.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the L/C Borrowings have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and L/C Issuers (including fees and time charges for attorneys who may be employees of any Lender or L/C Issuer) and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the L/C Borrowings and amounts owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

provided, that the application to the Obligations pursuant to this Section 8.03 of amounts received in respect of Collateral that is Revolving Credit Facility Collateral and in respect of Collateral that is Term Facility Collateral is expressly subject to the priorities set forth in Article 10 of the Security Agreement and in the Interim Order (and, when entered, the Final Order), and all such amounts shall first be allocated in accordance with such priorities before being applied to the Obligations pursuant to this Section 8.03.

Subject to Section 2.01(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX ADMINISTRATIVE AGENT

9.01 Appointment and Authority. (a) Each of the Lenders and the L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (in its capacities as a Lender, potential Hedge Bank and potential Cash Management Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuers for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of

the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or the Orders, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

(c) In connection with the exercise by the Administrative Agent of any consent right to any amendment, modification or waiver pursuant to Section 10.05(b) of the Security Agreement, the Administrative Agent shall seek direction from the Lenders, and shall grant its consent upon the direction of the requisite number of Lenders that would be required to consent to the amendment, modification or waiver were such amendment, modification or waiver directly submitted for a Lender vote hereunder.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to

or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or any L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents or the Orders, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower (such approval not to be unreasonably withheld), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided, that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such

successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Except as expressly set forth herein, none of the “Sole Lead Book Manager”, “Sole Lead Arranger” or other titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or a L/C Issuer hereunder.

9.09 Collateral and Guaranty Matters. The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01; and

(b) to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release any Lien or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower’s expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or Orders or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.10 Indemnification. If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender or L/C Issuer due to a failure on the part of such Lender or L/C Issuer (because the appropriate form was not delivered, was not properly executed, or because such Lender or L/C Issuer failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender or L/C Issuer shall indemnify and hold the Administrative Agent harmless for all amounts paid, directly or indirectly, by the Administrative Agent, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section 9.11, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the L/C Issuers under this subsection shall survive the payment of all Obligations hereunder and the resignation or replacement of the Administrative Agent.

ARTICLE X MISCELLANENOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments hereunder without the written consent of each Lender directly adversely affected thereby;

(c) reduce the principal of, or the stated rate of interest specified herein on, any Unreimbursed Amount, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant incorporated by reference hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any L/C Borrowing or to reduce any fee payable hereunder;

(d) change Section 2.10 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(e) change any provision of this Section 10.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(f) other than as permitted by Section 9.10, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(g) release all or substantially all of the Subsidiary Guarantors, without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(h) amend or modify the Superpriority Claim status of the Lenders under the Orders or under any other Loan Document without the written consent of each Lender affected thereby;

(i) grant any Lien on the Collateral (i) which is senior to the Liens created by the First Out Loan Documents or pari passu with such Liens or (ii) which is senior to the Liens created by the Loan Documents or pari passu with such Liens (other than Liens on Revolving Credit Facility Collateral securing the Revolving Credit Facility Obligations under the First Out Facility), in each case without the written consent of each Lender;

(j) affect the relative priority of Liens created under the First Out Loan Documents and the Loan Documents, without the written consent of each Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace each non-consenting Lender in accordance with Section 10.13; provided, that such amendment, waiver, consent or release can be effected as a result of all such assignments.

Any such waiver and any such amendment or modification pursuant to this Section 10.01 shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the L/C Issuers, the Administrative Agent and all future holders of the L/C Obligations and

Reimbursement Obligations. In the case of any waiver, the Borrower, the Lenders, the L/C Issuers and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 10.01 shall be deemed to be cured and not continuing during the period of such waiver.

10.02 Notices; Effectiveness; Electronic Communications. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or any L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or on Schedule 1 to the Lender Addendum to which such Lender is a party.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided, that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article II if such Lender or L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to the Lenders and L/C Issuers to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or

communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Each Lender agrees that notice to it specifying that any Borrower Materials or other notices or communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender, the Administrative Agent shall deliver a copy of the Borrower Materials, notices or other communications to such Lender by email or fax.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender, L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and each L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied

from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. None of the Secured Parties shall by any act (except by a written instrument pursuant to Section 10.01), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure by any Lender, L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion.. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.04 Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of counsel and industry advisors for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery, administration and enforcement of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Letters of Credit issued hereunder, including all such all reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable out-of-pocket costs and expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or

thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by a L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) have resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction in a final, non-appealable judgment or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.09(d).

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or any L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages result from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction..

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent or any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Reimbursement Obligations and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, any L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Reimbursement Obligation (including for purposes of this Section 10.06(b), participations in L/C Obligations) at the time owing to it); provided, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Reimbursement Obligation and the L/C Obligations at the time owing

to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Reimbursement Obligation (which for this purpose includes L/C Obligations outstanding thereunder) or, if the Reimbursement Obligation is not then in effect, the principal outstanding balance of the L/C Borrowings of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the L/C Borrowings or the Reimbursement Obligation assigned;

(iii) any assignment of a Reimbursement Obligation must be approved by the Administrative Agent and each L/C Issuer unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Reimbursement Obligations of, and principal amounts of the L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and the L/C Issuers, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Reimbursement Obligations (including such Lender's participations in L/C Obligations) owing to it); provided, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), (b), (c) and (f) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment; provided, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the L/C Borrowings or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement

notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America or any other L/C Issuer assigns all of its Reimbursement Obligation pursuant to Section 10.06(b), Bank of America or any L/C Issuer may, upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of such L/C Issuer, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuers hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto. Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to such L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of

the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto or the First Out Secured Parties, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section or (i) to the Bankruptcy Court, the Office of the United States Trustee or any other Person as directed thereby or required under the Bankruptcy Code (including local practice rules).

For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided, that in the case of information received from the Borrower or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care to protect such Information, and in no event less than the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities laws.

10.08 Right of Setoff. Subject to the Orders, upon any amount becoming due and payable hereunder (whether at stated maturity, by acceleration or otherwise), each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C

Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided, that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the L/C Borrowings or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or of a Lender Addendum by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any L/C Advance, and shall continue in full force and effect as long as any L/C Borrowing or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a “Nonconsenting Lender” (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided, that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) neither the Administrative Agent nor any Lender shall be obligated to be or to find the assignee.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. In the event that (x) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto and (y) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “Nonconsenting”

Lender.” Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

10.14 Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 Delivery of Lender Addenda. Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, the Borrower and the Administrative Agent.

10.17 [Reserved].

10.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Arranger are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and any Arranger, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and any Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and any Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.19 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender)

hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.


10.20 Time of the Essence. Time is of the essence of the Loan Documents.

10.21 Amendment and Restatement. It is the intention of each of the parties hereto that the Existing Credit Agreement be amended and restated in its entirety pursuant to this Agreement so as to preserve and continue the perfection and priority of all Liens securing Indebtedness and Obligations under the Existing Credit Agreement and that all Indebtedness and Obligations of the Borrower and the Subsidiary Guarantors hereunder shall be secured by the Liens evidenced under the Collateral Documents and that this Agreement does not constitute a novation or termination of the Indebtedness and Obligations existing under the Existing Credit Agreement (or serve to terminate Section 10.04 of the Existing Credit Agreement or any of the Borrower’s obligations thereunder with respect to the existing Lenders). In addition, unless specifically amended hereby, each of the Loan Documents shall continue in full force and effect and that, from and after the Closing Date, all references to the “Credit Agreement” contained therein shall be deemed to refer to this Agreement.


10.22 Security Agreement Governs. Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Administrative Agent pursuant to the Loan Documents and the exercise of any right or remedy by the Administrative Agent under any Loan Document are subject to the provisions of the Security Agreement. In the event of any conflict between the terms of the Security Agreement and this Agreement, the terms of the Security Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
duly executed as of the date first above written.

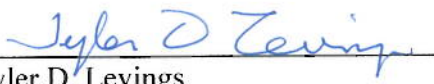
PATRIOT COAL CORPORATION

By: 
Name: Mark N. Schroeder
Title: Senior Vice President &
Chief Financial Officer

BANK OF AMERICA, N.A., as
Administrative Agent

By: 
Name: Tyler D. Levings
Title: Director

BANK OF AMERICA, N.A., as a Lender and L/C
Issuer

By: 

Name: Tyler D. Levings

Title: Director

FIFTH THIRD BANK, as a Lender and L/C Issuer

By:  _____

Name: Timothy R. Fergan

Title: Vice President

PNC BANK, NATIONAL ASSOCIATION,
as a Lender and L/C Issuer

By: Christopher B. Gribble
Name: Christopher B. Gribble
Title: Vice President

AMENDED AND RESTATED
SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of July ~~10~~11, 2012

among

PATRIOT COAL CORPORATION,
a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as the Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent and an L/C Issuer

and

The Other Lenders Party Hereto

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Sole Lead Arranger and Sole Lead Book Manager

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	
1.01	Defined Terms..... 2
1.02	Other Interpretive Provisions..... 24 <u>25</u>
1.03	Accounting Terms..... 25
1.04	Times of Day..... 25
1.05	Letter of Credit Amounts..... 25 <u>26</u>
ARTICLE II THE LETTERS OF CREDIT	
2.01	Letters of Credit..... 26
2.02	Conversions and Continuations of L/C Borrowings..... 32 <u>33</u>
2.03	Prepayments..... 34
2.04	Repayment of L/C Borrowings..... 35
2.05	Interest..... 35
2.06	Fees..... 36
2.07	Computation of Interest and Fees..... 36
2.08	Evidence of Debt..... 37 <u>36</u>
2.09	Payments Generally; Administrative Agent's Clawback..... 37
2.10	Sharing of Payments by Lenders..... 38
2.11	Defaulting Lender..... 39
2.12	No Discharge; Survival of Claims..... 40
2.13	Priority and Liens..... 41 <u>40</u>
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY	
3.01	Taxes..... 41
3.02	Illegality..... 44
3.03	Inability to Determine Rates..... 45 <u>44</u>
3.04	Increased Costs; Reserves on Eurocurrency Rate L/C Borrowings..... 45
3.05	Compensation for Losses..... 47
3.06	Mitigation Obligations; Replacement of Lenders..... 47
3.07	Survival..... 48
ARTICLE IV CONDITIONS PRECEDENT TO EFFECTIVENESS	
4.01	Conditions of Effectiveness..... 48
4.02	Conditions to Letter of Credit Renewal..... 51

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01	Existence, Qualification and Power.....	52
5.02	Authorization; No Contravention.....	52
5.03	Governmental Authorization; Other Consents.....	53
5.04	Binding Effect.....	53
5.05	Litigation.....	53
5.06	No Default.....	53
5.07	Incorporation by Reference of First Out Facility Provisions.....	53

ARTICLE VI
AFFIRMATIVE AND NEGATIVE COVENANTS

ARTICLE VII
REAL PROPERTY LEASES

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01	Events of Default.....	54
8.02	Remedies Upon Event of Default.....	56
8.03	Application of Funds.....	57

ARTICLE IX
ADMINISTRATIVE AGENT

9.01	Appointment and Authority.....	58
9.02	Rights as a Lender.....	59
9.03	Exculpatory Provisions.....	59
9.04	Reliance by Administrative Agent.....	60
9.05	Delegation of Duties.....	60
9.06	Resignation of Administrative Agent.....	60 61
9.07	Non-Reliance on Administrative Agent and Other Lenders.....	61 62
9.08	No Other Duties, Etc.....	62
9.09	Collateral and Guaranty Matters.....	62
9.10	Indemnification.....	62 63

ARTICLE X
MISCELLANENOUS

10.01	Amendments, Etc.....	63
10.02	Notices; Effectiveness; Electronic Communications.....	65
10.03	No Waiver; Cumulative Remedies.....	67
10.04	Expenses; Indemnity; Damage Waiver.....	67

10.05	Payments Set Aside.....	69
10.06	Successors and Assigns.....	69
10.07	Treatment of Certain Information; Confidentiality.....	72
10.08	Right of Setoff.....	73
10.09	Interest Rate Limitation.....	74
10.10	Counterparts; Integration; Effectiveness.....	74
10.11	Survival of Representations and Warranties.....	74
10.12	Severability.....	74 <u>75</u>
10.13	Replacement of Lenders.....	75
10.14	Governing Law; Jurisdiction; Etc.....	76
10.15	Waiver of Jury Trial.....	76 <u>77</u>
10.16	Delivery of Lender Addenda.....	77
10.17	[Reserved].....	77
10.18	No Advisory or Fiduciary Responsibility.....	77
10.19	USA PATRIOT Act Notice.....	77
10.20	Time of the Essence.....	78
10.21	Amendment and Restatement.....	78
<u>10.22</u>	<u>Security Agreement Governs.....</u>	<u>78</u>

SCHEDULES

- 1.01(a) Subsidiary Guarantors
- 1.01(b) Existing Secured Agreements
- 2.01(a) Existing Letters of Credit
- [4.01\(a\) Existing Mortgages](#)
- 10.02 Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

- A [\[Reserved\]](#)
- B Notice of Conversion or Continuation
- C [\[Reserved\]](#)
- D Subsidiary Guaranty
- E Assignment and Assumption
- F 13-Week Projection
- G [\[Reserved\]](#)
- H Security Agreement
- I Perfection Certificate
- J Interim Order
- K [\[Reserved\]](#)
- L Lender Addendum

AMENDED AND RESTATED SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This AMENDED AND RESTATED SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT ("Agreement") is entered into as of July ~~11~~, 2012, among PATRIOT COAL CORPORATION, a Delaware corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent and L/C Issuer.

PRELIMINARY STATEMENTS:

WHEREAS, On July ~~11~~, 2012 (the "Petition Date"), the Borrower, EACC Camps, Inc. and the Subsidiary Guarantors other than Patriot Ventures LLC (collectively, the "Debtors") filed voluntary petitions with the Bankruptcy Court initiating cases pending under Chapter 11 of the Bankruptcy Code (collectively, the "Cases" and each a "Case") and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Borrower, the lenders party thereto, Bank of America, N.A., as Administrative Agent, and the other parties party thereto entered into that certain Credit Agreement, dated as of October 31, 2007 and as amended and restated as of May 5, 2010 (as further amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "OriginalExisting Credit Agreement");

WHEREAS, pursuant to the terms of the OriginalExisting Credit Agreement, the L/C Issuers agreed to issue letters of credit, in each case, on the terms and subject to the conditions set forth in the OriginalExisting Credit Agreement; and

WHEREAS, the Borrower has requested this amendment and restatement of the OriginalExisting Credit Agreement as set forth herein, and the Lenders have agreed to such request and to restate their irrevocable obligations to reimburse the L/C Issuers for any drawing under each "Letter of Credit" outstanding on the Closing Date under the OriginalExisting Credit Agreement on the terms and subject to the conditions set forth herein to (a) induce the L/C Issuers not to deliver notices of non-extension to the beneficiaries of such existing "Letters of Credit" and (b) provide for the continuing effectiveness and automatic renewal of such existing "Letters of Credit", in each case for the purpose of reducing the likelihood of drawings on such "Letters of Credit" during the pendency of the Cases;

WHEREAS, all of the Borrower's obligations under the FacilitiesFacility continue to be guaranteed by the Subsidiary Guarantors. The Lenders are willing to restate their irrevocable reimbursement obligations to the L/C Issuers on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“13-Week Projection” means a projected statement of sources and uses of cash for the Borrower and its Subsidiaries on a weekly basis for the following 13 calendar weeks, in substantially the form of Exhibit F, which shall include (a) a rolling comparative analysis of the actual cash flow for the prior week against the forecast for such week, (b) a cumulative comparative analysis of actual cash flow against the forecast, (c) an explanation for any significant variances between such results and the forecasts and (d) cash balances of all deposit accounts of the Loan Parties as of such date. As used herein, “13-Week Projection” shall initially refer to the “Budget” delivered to the Administrative Agent in connection with the initial borrowings under the Facilities authorized by the Interim Order and dated not more than 5 days prior to the Petition Date and, thereafter, the most recent 13-Week Projection delivered by the Borrowers in accordance with Section 6.02(k) of the First Out Facility.

“Acceptable Reorganization Plan” shall mean a Reorganization Plan that provides for (a) payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable) upon the earlier of (i) substantial consummation of such Reorganization Plan or (ii) the effective date of such Reorganization Plan, and (b) the cancellation, cash collateralization, posting of backstop letters of credit or such other provision for outstanding Letters of Credit on the Consummation Date of such Reorganization Plan, and is otherwise reasonably acceptable to the Arranger and the Required Lenders.

“Accounting Change” means a change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the Securities and Exchange Commission.

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Commitment” means the Aggregate Reimbursement Obligations.

“Aggregate Reimbursement Obligations” means the Reimbursement Obligations of all the Lenders.

“Agreement” means this Amended and Restated Superpriority Secured Debtor-In-Possession Credit Agreement.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Facility represented by such Lender’s Commitment at such time. The initial Applicable Percentage of each Lender in respect of the Facility is set forth on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means (a) with respect to each Letter of Credit, 4.50% per annum, (b) with respect to each L/C Borrowing that bears interest based on the Eurocurrency Rate, 8.00% per annum, and (c) with respect to each L/C Borrowing that bears interest based on the Base Rate, 7.00% per annum.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole book manager.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, in respect of any Capital Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, changes in shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Bank of America” means Bank of America, N.A. and its successors.

“Bank of America Fee Letter” means the letter agreement, dated July ~~10~~, 2012, among the Borrower, the Administrative Agent and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

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

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any appellate court having jurisdiction over the Cases from time to time.

“Base Rate” means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the Eurocurrency Rate plus 1% and (c) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate.” The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate L/C Borrowing” means a L/C Borrowing that bears interest at a rate based on the Base Rate.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” means materials and/or information provided by or on behalf of the Borrower hereunder.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurocurrency Rate L/C Borrowing, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“Capital Lease Obligations” means of any Person as of the date of determination, the aggregate liability of such Person under Financing Leases reflected on a balance sheet of such Person under GAAP.

“Carve-Out” means (i) all fees and interest required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code, (ii) all reasonable fees and expenses incurred by a trustee under Section 726(b) of the Bankruptcy Code in an amount not exceeding ~~\$75,000~~, 200,000, (iii) any and all allowed and unpaid claims of any professional of the Debtors or the statutory committee of unsecured creditors appointed in the Cases (the “Creditors’ Committee”) whose retention is approved by the Bankruptcy Court during the Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code for unpaid fees and expenses (and the reimbursement of out-of-pocket expenses allowed by the Bankruptcy Court incurred by any members of the Creditors’ Committee (but excluding fees and expenses of third party professionals employed by such members of the Creditors’ Committee)) incurred, subject to the terms of the Orders, (A) prior to the occurrence of an Event of Default and (B) at any time after the occurrence and during the continuance of an Event of Default in an aggregate amount not exceeding \$7,000,000, provided that (x) the dollar limitation in this clause (iii) on fees and

expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent or any Lender or any of the foregoing's respective attorneys, advisors and agents, (y) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (A) and (B) above and (z) cash or other amounts on deposit in the Cash Collateral Account shall not be subject to the Carve-Out.

"Cases" has the meaning specified in the ~~introductory—statement hereto~~ [Preliminary Statements](#).

"Cash Collateral" has the meaning specified in [Section 2.01\(g\)](#).

"Cash Collateral Account" means a blocked, interest bearing deposit account of one or more of the Loan Parties at Bank of America in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

"Cash Collateralize" has the meaning specified in [Section 2.01\(g\)](#).

"Cash Equivalents" means any of the following types of investments:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 24 months from the date of acquisition thereof; provided, that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than twelve months from the date of acquisition thereof;

(c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a), (b), and (f) entered into with any financial institution meeting the qualifications specified in clause (b) above;

(d) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 270 days from the date of acquisition thereof;

(e) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower;

(f) readily marketable direct obligations issued by any state or commonwealth of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P with maturities of 12 months or less from the date of acquisition;

(g) investments with average maturities of 12 months or less from the date of acquisition in money market funds rated within the top three categories by S&P or Moody's; and

(h) shares of investments companies registered under the Investment Company Act of 1940, substantially all of the investments of which are one or more of the types of securities described in clauses (a) through (g) of this definition.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

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

“Closing Date” means the first date that all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all of the property of the Loan Parties that is under the terms of the Collateral Documents and the Orders, subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties as security for the Obligations.

“Collateral Documents” means, collectively, the Security Agreement, ~~the Mortgages~~, the Existing Mortgages and each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12 of the First Out Facility, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties or as security for the Obligations or a Lien in favor of the First Out Agent for the benefit of the First Out Secured Parties as security for the First Out Obligations. The Collateral Documents shall supplement, and shall not limit, the grant of Collateral pursuant to the Orders.

“Commitment” means, as to any Lender, its Reimbursement Obligation.

“Consummation Date” means the date of the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Reorganization Plan that is confirmed pursuant to an order of the Bankruptcy Court.

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

“Control” means 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 ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Creditors’ Committee” has the meaning specified in the definition of “Carve-Out”.

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

“Debtors” has the meaning specified in the introductory statement.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate L/C Borrowings plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate L/C Borrowing, the Default Rate shall be an interest rate equal to

the interest rate (including any Applicable Rate) otherwise applicable to such ~~Loan~~L/C Borrowing plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means any Lender that (a) has failed to pay to the Administrative Agent, any L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within ~~two~~five Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. ~~Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.11(b) upon delivery of written notice of such determination to the Borrower, each L/C Issuer and each Lender.~~

“Designated Letters of Credit” means letters of credit issued with respect to mine reclamation, workers’ compensation and other employee benefit liabilities.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any Real Property Leases, notes or accounts receivable or any rights and claims associated therewith.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary of the Borrower that is organized under the laws of any political subdivision of the United States or the District of Columbia.

“Eligible Assignee” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) except in the case of an assignee of any ~~Loan~~L/C Borrowing held by any Arranger or any of its Affiliates,

the Administrative Agent, (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed; provided that the Borrower shall be deemed to have consented to such Person if the Borrower has not responded within 10 Business Days of a request for such approval) and (iii) each L/C Issuer; provided, that notwithstanding the foregoing, “Eligible Assignee” shall not include the Borrower or any of the Borrower’s Affiliates or Subsidiaries or any natural person.

“Environment” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, natural resources such as flora or fauna or as otherwise defined in any Environmental Law.

“Environmental Laws” means any and all current and future federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, concessions, grants, franchises, agreements or other governmental restrictions or common law causes of action applicable to the Borrower’s properties and operations relating to (a) protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials, substances or wastes into the environment including ambient air, surface water, ground water, or land, (b) SMCRA, (c) MSHA, (d) human health as affected by hazardous or toxic substances, (e) acid mine drainage and (f) mining operations and activities to the extent relating to environmental protection or reclamation; *provided*, that “Environmental Laws” do not include any laws relating to worker or retiree benefits, including benefits arising out of occupational diseases.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the Environment, (e) Reclamation or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permits” means any and all permits, licenses, registrations, certifications, notifications, exemptions and any other authorization required under any applicable Environmental Law (including, without limitation, those necessary under any applicable Environmental Laws for the construction, maintenance and operation of any coal mine or related processing facilities or Reclamation).

“Eurocurrency Rate” means:

(i) for any Interest Period with respect to a Eurocurrency Rate L/C Borrowing, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the

commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurocurrency Rate L/C Borrowing being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; provided, that in no event shall the Eurocurrency Rate be less than 1.50% per annum; and

(ii) for any interest calculation with respect to a Base Rate L/C Borrowing on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate L/C Borrowing being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination; provided, that in no event shall the Eurocurrency Rate be less than 1.50% per annum.

“Eurocurrency Rate L/C Borrowing” means a L/C Borrowing that bears interest at a rate based on the Eurocurrency Rate.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) branch profits taxes or taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), as a result of a present or former connection between the Administrative Agent, such Lender or such L/C Issuer (or such other recipient) and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent, such Lender, or such L/C Issuer (or such other recipient) having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any Loan Document), (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or any tax that is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law after the date such Foreign Lender becomes a party hereto) to comply with Section 3.01(e); except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment) to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 3.01(a) or (c) any United States withholding tax that is

imposed as a result of such Lender's failure to comply with the requirements of Sections 1471 through 1474 of the Code and any regulations promulgated thereunder ("FATCA") to establish an exemption from withholding thereunder.

~~"Existing Credit Agreement" means that certain Amended and Restated Credit Agreement dated as of May 5, 2010 among the Borrower, the lenders party thereto and Bank of America, N.A., as administrative agent (as amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, supplemented or otherwise modified);~~ has the meaning specified in the Preliminary Statements.

"Existing Letters of Credit" has the meaning specified in Section 2.01(a).

"Existing Mortgages" means the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust entered into in connection with the Existing Credit Agreement and covering the properties listed on Schedule 4.01(a) thereto (together with the Assignments of Leases and Rents referred to therein), in each case as amended, restated, supplemented or otherwise modified from time to time.

"Existing Secured Agreements" means the agreements set forth on Schedule 1.01(b).

"Existing Securitization Facility" means (1) the Purchase and Sale Agreement by and among the Patriot Coal Sales LLC, Magnum Coal Sales LLC (together with Patriot Coal Sales LLC, the "Originators"), the Borrower and Patriot Coal Receivables (SPV) Ltd. (the "SPV") (as amended, restated, supplemented or otherwise modified), (2) that certain Receivables Purchase Agreement by and among the SPV, the Borrower, the various conduit purchasers, related committed purchasers, L/C participants and purchaser agents from time to time party thereto and Fifth Third Bank, as administrator and as L/C bank (as amended, restated, supplemented or otherwise modified) and (3) that certain Performance Guaranty, by the Borrower for the benefit of Fifth Third Bank, as administrator (on behalf of the beneficiaries) (as amended, restated, supplemented or otherwise modified).

"Existing Senior Notes" means the senior notes of the Borrower issued pursuant to the Senior Notes Indenture as in effect on the Closing Date in an aggregate principal amount of \$250,000,000.

"Existing Swing Line Obligations" obligations in an amount not to exceed \$25,000,000 in respect of Swing Line Loans (as defined in the Existing Credit Agreement) arising under the Existing Credit Agreement prior to the Petition Date.

"Extension Date" means the date at least ten Business Days prior to the then current Maturity Date on which all of the following conditions have been satisfied (a) no Default shall exist, or would result from any L/C Advance or from the occurrence of the Extension Date, (b) the representations and warranties of the Loan Parties contained in this Agreement and in each other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier

date, and except that the representations and warranties contained in Sections 5.05(a) and (b) of the First Out Facility as in effect on the Closing Date and incorporated herein by reference shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the First Out Facility as in effect on the Closing Date and incorporated herein by reference, respectively, (c) an Acceptable Reorganization Plan shall have been filed in the Bankruptcy Court with respect to the Cases, (d) on or prior to the extension of the Maturity Date hereunder, the conditions for the “Extension Date” as defined in the First Out Facility shall have been satisfied and the “Maturity Date” thereunder shall have been extended to December 31, 2013, (e) the Extension Fee and all other fees and expenses due and payable under the Loan Documents shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable and (f) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer certifying that the foregoing conditions have been satisfied.

“Extension Fee” has the meaning specified in Section 2.06(c).

“Extraordinary Receipt” means any cash received by the Borrower or any of its Subsidiaries as proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) or condemnation awards (and payments in lieu thereof).

“Facility” means, at any time, the aggregate amount of the Lenders’ Reimbursement Obligations at such time.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the Bank of America Fee Letter.

“Final Order” means a final order of the Bankruptcy Court in substantially the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications are satisfactory in form and substance to the Administrative Agent).

“First Day Orders” means all orders entered by the Bankruptcy Court on, or within five days of, the Petition Date or based on motions filed on or about the Petition Date.

“First Out Facility” means that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of July 9, 2012, among the Borrower, the lenders party thereto from time to time, the First Out Term Agent and the ~~Second Out~~Revolving Agent.

“First Out Loan Documents” means “Loan Documents” as defined under the First Out Facility.

“First Out Revolving Agent” means the “Revolving Administrative Agent” as defined under the First Out Facility.

“First Out Secured Parties” means “Secured Parties” as defined in the First Out Facility.

“First Out Term Agent” means the “Term Administrative Agent” as defined under the First Out Facility.

“Financing Lease” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

“Foreign Lender” means, with respect to the Borrower, any Lender that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

“Foreign Subsidiary” means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia and any Subsidiary thereof.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by any L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s Reimbursement Obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination.

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

“Guarantee” means, as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to the extent the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation in order to induce the creation of such obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, reimbursement obligations under letters of credit and any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee shall not include ordinary course performance guarantees by any Loan Party of the obligations (other than for the payment of borrowed money) of any other Loan Party and (iii) endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor Subsidiary” means any Subsidiary of the Borrower that is (a) a debtor in a case then pending under chapter 11 of the Bankruptcy Code or any ancillary proceedings, (b) a Domestic Subsidiary and (c) a Foreign Subsidiary, in the case of clause (c) to the extent the Borrower determines in good faith and in its reasonable discretion that no material adverse tax consequences would result; *provided*, that such term shall not include (i) the SPV or (ii) EACC Camps Inc., a West Virginia corporation, so long as Section 5.25 of the First Out Facility and incorporated herein by reference continues to be true and correct in all respects or (iii) (A) WWMV, LLC, (B) Rhino Eastern LLC, (C) White Stallion Coal, LLC, (D) Squaw Creek Coal Company or (E) Tecumseh Coal Corporation, each of which is a non-wholly owned joint venture with a third party.

“Hazardous Materials” means (i) any explosive or radioactive substances or wastes and (ii) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

“Hedge Bank” means any Lender party to a Secured Hedge Agreement.

“Honor Date” shall have the meaning specified in Section 2.01(c)(i).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, bid, performance and reclamation bonds, surety bonds and similar instruments issued for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices and accrued expenses incurred in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Lease Obligations; and

(g) all Guarantees of such Person in respect of any of the foregoing Indebtedness of any other Person.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such person is liable therefor as a result of such Person’s ownership interest in such entity or otherwise, except (other than in the case of general partner liability) to the extent that the terms of such Indebtedness expressly provide that such person is not liable therefor. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Intellectual Property Security Agreements” means the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, each as defined under the Security Agreement.

“Interest Payment Date” means, (a) as to any L/C Borrowing, other than a Base Rate L/C Borrowing, the last day of each Interest Period applicable to such L/C Borrowing and the Maturity Date (or, if sooner, the date on which the Obligations become due and payable pursuant to Section 8.02); provided, however, that if any Interest Period for a Eurocurrency Rate L/C Borrowing exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Unreimbursed Amount, the last Business Day of each month and the Maturity Date.

“Interest Period” means, as to each Eurocurrency Rate L/C Borrowing, the period commencing on the date on which the Letter of Credit drawing resulting in such Eurocurrency Rate L/C Borrowing is made and ending on the date ~~one month~~, two or three months thereafter, as selected by the Borrower in its Notice of Conversion or Continuation; provided, that:

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

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“Interim Order” means an interim order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms hereof) in the form set forth as Exhibit J, with changes to such form as are reasonably satisfactory to each Arranger in its sole discretion, approving the Loan Documents, which Interim Order shall, among other things (i) have been entered on such prior notice to such parties as may be satisfactory to each Arranger in its sole discretion, (ii) authorize the extensions of credit in respect of the Revolving Facility (as defined in the First Out Facility) and the Term Facility (as defined in the First Out Facility) under the First Out Facility, each in the amounts and on the terms set forth herein, (iii) grant the Superpriority Claim status and other Collateral and Liens referred to herein and in the other Loan Documents, (iv) approve the payment by the Borrowers of the fees provided for herein, (v) approve the repayment in full of the Existing Swing Line Obligations and the Existing Securitization Facility, (vi) authorize the extensions of credit in respect of this Agreement and the roll-up of the obligations under the Existing Credit Agreement and the Existing Letters of Credit, (vii) provide for the waiver of section 506(c) of the Bankruptcy Code by the Debtors as to the Collateral, subject only to and effective upon entry

of the Final Order, (viii) provide for approval of certain intercreditor provisions governing priority of payments and liens and exercise remedies among the Secured Parties and First Out Secured Parties and (ix) provide for approval of certain provisions and protections to the Secured Parties and First Out Secured Parties relating to Real Property Leases.

“Interim Order Entry Date” means the date on which the Interim Order is entered by the Bankruptcy Court.

“Investment Grade Rating” shall mean a rating equal to or higher than Baa3 (or equivalent) by Moody’s and BBB- (or equivalent) by S&P, or an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower and reasonably acceptable to the Administrative Agent.

“IRS” means the United States Internal Revenue Service.

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

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any L/C Issuer and the Borrower (or any Subsidiary) or in favor of any L/C Issuer and relating to any such Letter of Credit.

“Laws” means, as to any Person, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made.

“L/C Issuer” means each of Bank of America, PNC Bank, National Association and Fifth Third Bank in its capacity as and issuer of the Existing Letters of Credit hereunder, and any successor thereto.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06.1.05. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lender Addendum” means, with respect to any ~~initial~~ Lender, a Lender Addendum, substantially in the form of Exhibit L, to be executed and delivered by such Lender on the Closing Date as provided in Section 10.16.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“~~Letter~~Letters of Credit” means the Existing Letters of Credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by any L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.01(i).

“Liability Assumption Agreements” means (a) the Coal Act Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC and Peabody, (b) the NBCWA Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody, and (c) the Salaried Employee Liability Assumption Agreement, dated as of October 22, 2007, among the Borrower, Peabody Holding Company, LLC, Peabody Coal Company, LLC (k/n/a Heritage Coal Company LLC) and Peabody.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Financing Lease having substantially the same economic effect as any of the foregoing).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Subsidiary Guaranty, (c) the Collateral Documents, (d) each Issuer Document, (e) each Secured Hedge Agreement, and (g) each Secured Cash Management Agreement.

“Loan Parties” means, collectively, the Borrower and each Subsidiary Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means a material adverse effect upon (a) the business, assets, operations, property or condition (financial or otherwise) of the Borrower and its

Subsidiaries taken as a whole, other than (i) as customarily would occur as a result of the filing of the Cases or the effect of bankruptcy or those circumstances and events leading up thereto specified in the Declaration of Mark N. Schroeder pursuant to Local Bankruptcy Rule 1007-2 or (ii) as would occur as a result of non-cash impairment charges or a non-cash selenium charge, each as previously disclosed to the Arrangers or (b) the validity or enforceability of this or any of the other Loan Documents or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

“Maturity Date” means (i) the date that is 450 days after the Closing Date or (ii) if the Extension Date has occurred, December 31, 2013.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

~~“Mortgage” means the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust (a) entered into in connection with the Original Credit Agreement and covering the properties listed on Schedule 4.01(a) thereto (together with the Assignments of Leases and Rents referred to therein) and (b) each deed of trust, trust deed, deed to secure debt, mortgage, leasehold mortgage and leasehold deed of trust in form and substance reasonably satisfactory to the Administrative Agent delivered pursuant to this Agreement or the other Loan Documents, in each case as amended, restated, supplemented or otherwise modified from time to time.~~

“MSHA” means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq., as amended.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided, that if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting

discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary in connection therewith.

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

“Notice of Conversion or Continuation” means a notice by the Borrower to (i) convert Base Rate L/C Borrowings or any portion thereof to Eurocurrency Rate L/C Borrowings or (ii) at the end of any applicable Interest Period, convert Eurocurrency Rate L/C Borrowings or any portion thereof into Base Rate L/C Borrowings or to continue such Eurocurrency Rate L/C Borrowings or any portion thereof for an additional Interest Period, in each case, substantially in the form of Exhibit B.

“Obligations” means all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, including without limitation, the Subsidiary Guarantor Obligations.

“Operating Forecast” means a consolidated business plan and projected operating budget substantially in the form of the budget dated July 5, 2012, previously delivered to the Administrative Agent.

“Orders” means, collectively, the Interim Order and the Final Order.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

~~“Original Credit Agreement” has the meaning specified in the Preliminary Statements.~~

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any changes in the

aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Overnight Rate” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or the relevant L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 10.06(d).

“Peabody” means Peabody Energy Corporation, a Delaware corporation.

“Perfection Certificate” means a perfection certificate substantially in the form of Exhibit I or any other form approved by the Administrative Agent, as such perfection certificate may be amended, restated, supplemented or otherwise modified from time to time.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” has the meaning specified in the ~~introductory statement hereto~~ Preliminary Statements.

“Platform” has the meaning specified in Section 6.02 of the First Out Facility.

“Pledged Equity Interests” has the meaning specified in Section 1.1 of the Security Agreement.

“Pledged Debt” has the meaning specified in Section 1.1 of the Security Agreement.

“Prepayment Date” means (i) the date that is 30 days after the Interim Order Entry Date if the Final Order has not been entered by the Bankruptcy Court prior to such date (provided, however, that such date shall be 45 days after the Interim Order Entry Date if entry of the Final Order is delayed by any requirements as a result of an evidentiary hearing or similar hearing or process associated with objections being made to the entry of the Interim Order or the Final Order) or (ii) such later date as approved by the Required Lenders.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all improvements, fixtures, easements, hereditaments, permits and appurtenances relating thereto.

“Real Property Lease” means any lease, license, letting, concession, occupancy agreement, sublease, easement or right of way to which such Person is a party and is granted a possessory interest in or a right to use or occupy all or any portion of the Real Property (including, without limitation, the right to extract minerals from any portion of Real Property not owned in fee by such Person) and every amendment or modification thereof including, without limitation, any Contractual Obligation with respect to any of the foregoing.

“Reclamation” means the reclamation and restoration of land, water and any future, current, abandoned or former mines, and of any other Environment affected by such mines, as required pursuant to SMCRA, any other Environmental Law or any Environmental Permit.

“Register” has the meaning specified in Section 10.06(c).

“Related Documents” means the Separation Agreement, the Tax Separation Agreement and the Liability Assumption Agreements.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and such Person’s and such Person’s Affiliates’ respective managers, administrators, trustees, members, partners, directors, officers, employees, agents, fund managers and advisors.

“Reimbursement Obligation” means, as to each Lender, its absolute and unconditional obligation to make L/C Advances to reimburse each L/C Issuer for amounts drawn under the Existing Letters of Credit up to an aggregate principal amount not to exceed the amount set forth under the caption “Reimbursement Obligation” opposite such Lender’s name on Schedule 2.01. The aggregate amount of the Reimbursement Obligations as of the Closing Date is \$300,760,433.55.

“Reorganization Plan” means a liquidation plan or plan of reorganization in any or all of the Cases of the Debtors.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition) and (b) aggregate unused Commitments; provided, that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Responsible Officer” means the chief executive officer, chief restructuring officer, president, or any vice president of the Borrower or, with respect to financial matters, the chief financial officer or treasurer of the Borrower.

“Revolving Credit Facility Collateral” has the meaning given such term in the First Out Facility.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Agreement” means any Secured Cash Management Agreement or Secured Hedge Agreement.

“Secured Cash Management Agreement” means (i) any Cash Management Agreement that is entered into by and between the Borrower and any Cash Management Bank to the extent designated as such by the Borrower and such Cash Management Bank in writing to the Administrative Agent from time to time and (ii) each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Cash Management Agreement”.

“Secured Hedge Agreement” means each Existing Secured Agreement listed on Schedule 1.01(b) as an “Existing Secured Hedge Agreement”.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuers, the Hedge Banks, the Cash Management Banks, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Security Agreement” means that certain Debtor-in-Possession Pledge and Security and Intercreditor Agreement dated as of July ~~9,11~~, 2012, by and among the First Out Term Agent, the Revolving Agent, the Administrative Agent and each of the Grantors party thereto, substantially in the form of Exhibit H, as amended, restated, supplemented or otherwise modified from time to time.

“Separation Agreement” means the Separation Agreement, Plan of Reorganization and Distribution, dated as of October 22, 2007, between Peabody and the Borrower.

“SMCRA” means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§1201 et seq., as amended.

“SPV” has the meaning specified in the definition of Existing Securitization Facility.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantors” means, collectively, the subsidiaries of the Borrower listed on Schedule 1.01(a), and each other Guarantor Subsidiary of the Borrower that guarantees the Obligations pursuant to Section 6.12 of the First Out Facility.

“Subsidiary Guaranty” means the certain Guarantee made by the Subsidiary Guarantors in favor of the Secured Parties, substantially in the form of Exhibit D, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12 of the First Out Facility.

“Superpriority Claim” means a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any and all administrative

expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

“Swap Contract” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any valid netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Tax Separation Agreement” means that Tax Separation Agreement, dated as of October 22, 2007, between Peabody and the Borrower.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Facility Collateral” has the meaning given such term in the First Out Facility.

“Termination Date” means the earliest of (i) the Maturity Date, (ii) the date on which the obligation of the L/C Issuers to permit the extension of the expiry date of any Letter of Credit is terminated upon direction from the Administrative Agent pursuant to Section 8.02, (iii) the Prepayment Date, (iv) the Consummation Date and (v) the date of dismissal of the Cases by the Bankruptcy Court.

“Threshold Amount” means ~~\$5,000,000~~ 10,000,000.

“Total Outstandings” means the aggregate Outstanding Amount of all L/C Obligations.

“Transaction” means, collectively, (a) the entering into by the Loan Parties of the Loan Documents to which they are a party and (b) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“Type” means, with respect to any L/C Borrowing, its character as a Base Rate L/C Borrowing or a Eurocurrency Rate L/C Borrowing.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided, that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.01(c)(i).

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms. Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Borrower’s audited financial statements, except as otherwise specifically prescribed herein.

1.04 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

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

ARTICLE II THE LETTERS OF CREDIT

2.01 Letters of Credit. (a) The Letter of Credit Reimbursement Obligations.

(i) Subject to the terms and conditions set forth herein and in the Orders, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.01, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to allow each ~~Letter~~letter of ~~Credit~~credit issued by it and set forth on Schedule 2.01(a) (the “Existing Letters of Credit”) to automatically extend for additional periods in accordance with its terms and (2) to honor conforming drawings under the Existing Letters of Credit; provided, that no Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations shall exceed such Lender’s Reimbursement Obligations. Other than the Existing Letters of Credit, no additional letters of credit may be issued hereunder. Any Existing Letter of Credit that expires or that is drawn upon (whether or not reimbursed) shall not be reissued. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) Other than the Existing Letters of Credit, no L/C Issuer shall issue any Letter of Credit hereunder;

(iii) No L/C Issuer shall be under any obligation to permit the renewal of any Existing Letter of Credit if;

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from permitting the extension of such Existing Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the extension of outstanding letters of credit generally or such Existing Letter of Credit in particular or shall impose upon such L/C Issuer with respect to such Existing Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the ~~Restatement~~Closing Date and which such L/C Issuer in good faith deems material to it;

(B) [Reserved—~~TBD~~];

(C) a default of any Lender's obligations to fund under Section 2.01(c) exists or any Lender is at such time a Defaulting Lender hereunder, unless such L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate such L/C Issuer's risk with respect to such Lender;

(iv) No L/C Issuer shall be under any obligation to amend any Existing Letter of Credit; and

(v) Each L/C Issuer shall act on behalf of the Lenders with respect to any Existing Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Existing Letters of Credit issued by it and Issuer Documents pertaining to such Existing Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to each L/C Issuer.

(b) Auto-Extension. Each Existing Letter of Credit contains provisions that provide for the automatic extension of such Existing Letter of Credit on its expiry date for an additional period. In addition, each Existing Letter of Credit permits the applicable L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Existing Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period that was agreed upon at the time such Existing Letter of Credit was issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to the applicable L/C Issuer for any such extension. The Lenders are deemed to have authorized and the applicable L/C Issuer shall be required to permit the automatic extension of such Existing Letter of Credit in accordance with its terms at any time to an expiry date not later than one year (subject to further extension) after the expiry date then elapsing; provided, however, that (A) the applicable L/C Issuer shall not be required to permit any such extension if such L/C Issuer has determined that it would not have any obligation at such time to permit the extension of such

Existing Letter of Credit under the terms hereof by reason of the provisions of clause (iii) of Section 2.01(a) only or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days (or a shorter period if agreed by such L/C Issuer in its sole discretion) before the Non-Extension Notice Date from the Administrative Agent or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the applicable L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations. (i) Upon receipt from the beneficiary of any Existing Letter of Credit of any notice of a drawing under such Existing Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. The Borrower shall have the option to reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing on the date on which the Borrower receives notice of any payment by the applicable L/C Issuer under an Existing Letter of Credit, provided that the Borrower receives notice by 1:00 p.m., New York City time on such date, or on the next Business Day if notice is not received by such time (each such date, an “Honor Date”). If the Borrower fails to so reimburse such L/C Issuer by the time set forth in the preceding sentence, the applicable L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (the “Unreimbursed Amount”). The Administrative Agent shall promptly notify each Lender thereof and of the amount of such Lender’s Applicable Percentage thereof. Any notice given by such L/C Issuer or the Administrative Agent pursuant to this Section 2.01(c)(i) may be given by telephone 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.

(ii) Each Lender shall upon any notice pursuant to Section 2.01(c)(i) make funds available to the Administrative Agent for the account of the relevant L/C Issuer at the Administrative Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.01(c)(iii), each Lender that so makes funds available shall be deemed to have made a portion of a Base Rate L/C Borrowing to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant L/C Issuer.

(iii) The Borrower shall be deemed to have incurred from the relevant L/C Issuer a L/C Borrowing in the amount of the Unreimbursed Amount ~~that is not so refinanced~~, which L/C Borrowing shall be due and payable on the Maturity Date (together with interest) and shall bear interest initially (until converted to a Eurocurrency Rate L/C Borrowing in accordance with Section 2.02) at the rate applicable to Base Rate L/C Borrowings from the Honor Date. Each Lender’s payment to the Administrative Agent for the account of the relevant L/C Issuer pursuant to Section 2.01(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation as to such L/C Borrowing under this Section 2.01.

(iv) Until each Lender funds its L/C Advance pursuant to this Section 2.01(c) to reimburse the relevant L/C Issuer for any amount drawn under any Existing Letter of

Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of such L/C Issuer.

(v) Each Lender's obligation to make L/C Advances to reimburse each L/C Issuer for amounts drawn under Existing Letters of Credit, as contemplated by this Section 2.01(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse each L/C Issuer for the amount of any payment made by such L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the relevant L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.01(c) by the time specified in Section 2.01(c)(ii), such L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the Overnight Rate, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's ~~Loan~~L/C Borrowing included in the relevant L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of such L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.01(c)(vi) shall be conclusive absent manifest error.

(d) Repayment of Participations. (i) At any time after any L/C Issuer has made a payment under any Existing Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.01(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of any L/C Issuer pursuant to Section 2.01(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable

Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse each L/C Issuer for each drawing under each Existing Letter of Credit and to repay each Unreimbursed Amount shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Existing Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Existing Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any Lender, whether in connection with this Agreement, the transactions contemplated hereby or by such Existing Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Existing Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Existing Letter of Credit, except to the extent caused by applicable L/C Issuer's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment;

(iv) any payment by any L/C Issuer under such Existing Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Existing Letter of Credit, so long as such L/C Issuer shall have determined in the absence of gross negligence or willful misconduct, in good faith and in accordance with the standard of care specified in the Uniform Commercial Code of the State of New York, that the documents (including each draft) delivered under such Existing Letter of Credit in connection with such presentment appear on their face to be in conformity with such Existing Letter of Credit;

(v) any payment made by any L/C Issuer under such Existing Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Existing Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(vi) any other action taken or omitted to be taken by any L/C Issuer under or in connection with any Existing Letter of Credit or the related drafts or documents, whether or not similar to any of the foregoing, that might, but for this Section 2.01(e), constitute a legal or equitable discharge of the Borrower's obligations hereunder .

The Borrower shall promptly examine a copy of each Existing Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the relevant L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against such L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under an Existing Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Existing Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of any L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Existing Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Existing Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Notwithstanding anything to the contrary herein the Borrower may have a claim against an L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by such L/C Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final, non-appealable judgment. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign an Existing 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.

(g) Cash Collateral. (i) Upon the request of the Administrative Agent, if, as of the Letter of Credit Expiration Date or the Termination Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of such L/C Obligation.

(ii) Sections 2.01, 2.03 2.05, 2.12 and 8.02(c) set forth certain additional requirements to deliver cash collateral hereunder. For purposes of this Section 2.01, Section 2.03, Section 2.04, Section 2.05, Section 2.12 and Section 8.02(c), "Cash Collateralize" means to pledge to the Administrative Agent and deposit in the Cash Collateral Account, for the benefit of the each Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount of at least 105% of the L/C Obligations pursuant to documentation in form and substance reasonably satisfactory

to the Administrative Agent and the relevant L/C Issuer (which documents are hereby consented to by the Lenders). The term “Cash Collateral” and other derivatives of such term shall have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of each L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in the Cash Collateral Account. If at any time the Administrative Agent determines that any funds held in the Cash Collateral Account are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited in the Cash Collateral Account, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held in the Cash Collateral Account that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit in the Cash Collateral Account, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse each L/C Issuer for (i) the amount of such drawing, (ii) Letter of Credit Fees and (iii) any applicable fronting fee and other fees under Section 2.01(k).

(h) Applicability of ISP. Unless otherwise expressly agreed by the relevant L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Existing Letter of Credit.

(i) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the “Letter of Credit Fee”) for each Letter of Credit equal to the Applicable Rate for Letters of Credit times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. Letter of Credit Fees shall be (i) computed on a monthly basis in arrears and (ii) due and payable on the first Business Day after the end of each calendar month, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate of 0.25% per annum on the face amount drawn under each Letter of Credit, computed on the daily amount available to be drawn under such Letter of Credit on a monthly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each calendar month in respect of the most recently-ended monthly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in

accordance with Section 1.05. In addition, the Borrower shall pay directly to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that an Existing Letter of Credit deemed issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the relevant L/C Issuer hereunder for any and all drawings under such Existing Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

2.02 Conversions and Continuations of L/C Borrowings. (a) Each conversion of L/C Borrowings from one Type to the other, and each continuation of Eurocurrency Rate L/C Borrowings shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any conversion to or continuation of Eurocurrency Rate L/C Borrowings or of any conversion of Eurocurrency Rate L/C Borrowings, and (ii) one Business Day prior to the requested date of any conversion to Base Rate L/C Borrowings; ~~provided, however, that if the Borrower wishes to request Eurocurrency Rate L/C Borrowings having an Interest Period other than one, two, three, or six months, the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such conversion or continuation of Eurocurrency Rate L/C Borrowings, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them.~~ Not later than 11:00 a.m., three Business Days before the requested date of such conversion or continuation of Eurocurrency Rate L/C Borrowings, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Notice of Conversion or Continuation, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or continuation of Eurocurrency Rate L/C Borrowings shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Each Notice of Continuation or Conversion (whether telephonic or written) shall specify (i) whether the Borrower is requesting a conversion of L/C Borrowings from one Type to the other or a continuation of L/C Borrowings that are Eurocurrency Rate L/C Borrowings, and (ii) specifying (A) the amount and Type of L/C Borrowing being converted or continued, (B) in the case of a conversion to or a continuation of Eurocurrency Rate L/C Borrowings, the applicable Interest Period and (C) in the case of a conversion, the date of such conversion. If the Borrower fails to give a timely Notice of Conversion or Continuation with respect to Eurocurrency Rate L/C Borrowings, then the applicable L/C Borrowings shall be made as, or converted to, Base Rate L/C Borrowings. Any

such automatic conversion to Base Rate L/C Borrowings shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate L/C Borrowings. If the Borrower requests a conversion to, or continuation of Eurocurrency Rate L/C Borrowings in any such Notice of Conversion or Continuation, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Unless the Lenders are compensated for any losses under 3.04(e), a Eurocurrency Rate L/C Borrowing may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate L/C Borrowing. During the existence of a Default, no L/C Borrowings may be converted to or continued as Eurocurrency Rate L/C Borrowing if the Required Lenders or the Administrative Agent so notify the Borrower.

(c) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate L/C Borrowings upon determination of such interest rate. At any time that Base Rate L/C Borrowings are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(d) After giving effect to all conversions of L/C Borrowings from one Type to the other, and all continuations of L/C Borrowings as the same Type, there shall not be more than fifteen (15) Interest Periods in effect hereunder.

2.03 Prepayments. (a) Optional. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay L/C Borrowings in whole or in part without premium or penalty; *provided*, that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to any date of prepayment of Eurocurrency Rate L/C Borrowings and (ii) on the date of prepayment of Base Rate L/C Borrowings; (ii) any prepayment of Eurocurrency Rate L/C Borrowings shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (iii) any prepayment of Base Rate L/C Borrowings shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type of L/C Borrowings to be prepaid and, if Eurocurrency Rate L/C Borrowings are to be prepaid, the Interest Period(s) of such L/C Borrowings. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate L/C Borrowings shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to 3.04(e). Any prepayment of a L/C Borrowings may not be reborrowed.

(b) Mandatory. Subject in each case to the terms of the Security Agreement,

(i) [Reserved].

(ii) If the Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition permitted by Section 7.05 (a), (b), (c) or (k) of the First Out Facility as in effect on the Closing Date) (A) which results in the realization by such Person of Net Cash Proceeds that, when taken in the aggregate with the Net Cash Proceeds of all ~~such~~ other such Dispositions since the Closing Date, ~~exceeds~~exceed \$5,000,000, the Borrower shall apply an amount equal to 50% of such excess Net Cash Proceeds or (B) which results in the realization by such Person of Net Cash Proceeds ~~then~~that, when taken in the aggregate with the Net Cash Proceeds of all such other Dispositions ~~in excess~~since the Closing Date exceed of \$100,000,000, the Borrower shall apply an amount equal to ~~75~~100% of such excess Net Cash Proceeds, in each case, immediately upon receipt thereof by such Person to the Obligations (such prepayments to be applied as set forth in clauses (v) and (vi) below).

(iii) [Reserved].

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Subsidiaries, and not otherwise included in clause ~~(i) or~~ (ii) of this Section 2.03(b), the Borrower shall apply an amount equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or such Subsidiary to the Obligations (such amounts to be applied as set forth in clauses (v) and (vi) below); provided, however, that at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of receipt of such cash proceeds), and so long as no Default shall have occurred and be continuing, the Borrower or such Subsidiary may apply within 90 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received or reinvest in other operating assets; and provided, further, however, that any cash proceeds not so applied shall be applied to the Obligations as set forth in this Section 2.03(b)(iii) at the end of such 90 day period.

(v) If the Administrative Agent notifies the Borrower at any time that the Total Outstandings at such time exceed the Aggregate Reimbursement Obligations then in effect, then, within one Business Day after receipt of such notice, the Borrower shall Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Aggregate Reimbursement Obligations then in effect.

(vi) Prepayments of the Facility made pursuant to this Section 2.03(b), first, shall be applied to the Obligations under the First Out Facility to the extent required under the Security Agreement, second, shall be applied ratably to the L/C Borrowings and ~~second~~third, shall be used to Cash Collateralize the remaining L/C Obligations; and the amount remaining, if any after the prepayment in full of all L/C Borrowings outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held in the Cash Collateral Account shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the relevant L/C Issuer or the Lenders, as applicable.

2.04 Repayment of L/C Borrowings. On the Termination Date the Borrower shall (a) repay to the Lenders on the Termination Date the aggregate principal amount of all L/C Borrowings outstanding on such date, (b) pay all other Obligations hereunder (other than contingent obligations, indemnities or expenses related thereto not then payable or in existence) and (c) Cash Collateralize all outstanding Letters of Credit in accordance with Section 2.01(g) .

2.05 Interest. (a) Subject to the provisions of Section 2.05(b), (A) each Eurocurrency Rate L/C Borrowing shall bear interest on the outstanding principal amount thereof for each Interest Period a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate and (B) each Base Rate L/C Borrowing shall bear interest on the outstanding principal amount thereof from the applicable borrowing date a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal or interest of any Obligations is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(iv) Interest on each ~~Loan~~ L/C Borrowing shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein.

2.06 Fees. In addition to certain fees described in Sections 2.01(i) and (j):

(a) Upfront Fee. The Borrower shall pay to the Administrative Agent, for the account of each Lender, fees in the amounts and at the times specified in the Fee Letter.

(b) Other Fees. The Borrower shall pay to each Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(c) Extension Fee. If the Borrower elects, subject to the occurrence of the Extension Date, to extend the Maturity Date of the Facilities, the Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an extension fee (the "Extension Fee") equal to 0.50% of the aggregate L/C Obligations of all Lenders outstanding on the Extension Date.

2.07 Computation of Interest and Fees. All computations of interest for Base Rate L/C Borrowings shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each L/C Borrowing for the day on which the L/C Borrowing is incurred, and shall not accrue on a L/C Borrowing, or any portion thereof, for the day on which the L/C Borrowing or such portion is paid, provided, that any L/C Borrowing that is repaid on the same day on which it is made shall, subject to Section 2.09(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.08 Evidence of Debt. (a) The L/C Advances made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the L/C Advances made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(b) In addition to the accounts and records referred to in Section 2.08(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.09 Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on

which any payment is due to the Administrative Agent for the account of the Lenders or an L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or such L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.09(b) shall be conclusive, absent manifest error.

(c) Obligations of Lenders Several. The obligations of the Lenders hereunder (a) to fund participations in Letters of Credit and (b) to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender (x) to fund any such participation or (y) to make payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to do so.

(d) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any ~~Loan~~L/C Borrowing in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any ~~Loan~~L/C Borrowing in any particular place or manner.

2.10 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations or subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided, that:

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

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation or subparticipations in L/C Obligations to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply), or (C) any payments pursuant to the Fee Letter.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.11 Defaulting Lender.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders; and

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer hereunder; third, to Cash Collateralize each L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.01(g); fourth, to the payment of any amounts owing to the Lenders or any L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such

Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the L/C Borrowings owed to all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any L/C Borrowings owed to such Defaulting Lender until such time as all funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Applicable Percentage without giving effect to Section 2.11(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.11(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.01(g).

(B) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Borrower shall (x) ratably pay to each L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to L/C Issuer's Fronting Exposure to such Defaulting Lender, and (y) not be required to pay the remaining amount of any such fee.

(iv) [Reserved]

(v) Cash Collateral. The Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize each L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.01(g).

(b) ~~(e)~~ Defaulting Lender Cure. If the Borrower, the Administrative Agent and each L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, take such other actions as the Administrative Agent may determine to be necessary to cause the ~~Loans~~ L/C Borrowings and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with their respectable Applicable Percentages (without giving effect to Section 2.11(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change

hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) ~~(d)~~ Extended Letters of Credit. So long as any Lender is a Defaulting Lender, no L/C Issuer shall be required to extend or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

2.12 No Discharge; Survival of Claims. The Borrower agrees that to the extent that its obligations under the Loan Documents have not been satisfied in full in cash, (i) its obligations under the Loan Documents shall not be discharged by the entry of an order confirming a Reorganization Plan (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders and the Liens granted to the Administrative Agent and the Lenders pursuant to the Orders shall not be affected in any manner by the entry of an order confirming a Reorganization Plan.

2.13 Priority and Liens. (a) The Borrower hereby covenants and agrees that upon the entry of an Interim Order (and when applicable, the Final Order):

(i) the Obligations pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim in the Cases subject only to the Carve-Out;

(ii) subject to the terms of the Orders and the Security Agreement, the Obligations pursuant to Section 364 of the Bankruptcy Code, shall at all times be secured by a valid, binding, continuing, enforceable perfected (A) first priority Lien on all of the Term Facility Collateral of each Loan Party, which Lien will also secure the Term Facility Obligations and Revolving Credit Obligations (each as defined in the First Out Facility) and (B) junior Lien (subject only to the Lien securing the Revolving Credit Facility Obligations under the First Out Facility) on all of the Revolving Credit Facility Collateral of each Loan Party, which Lien will also secure the Term Facility Obligations (as defined in the First Out Facility) subject, in each case, to the Carve-Out;

(b) ~~(e)~~ [Reserved].

(c) ~~(f)~~ The relative priorities of the Liens described in this Section 2.13 with respect to the Revolving Credit Facility Collateral of the Debtors and the Term Facility Collateral of the Debtors shall be as set forth in the Interim Order (and, when entered, the Final Order) and Section 10 of the Security Agreement. All of the Liens described in this Section 2.13 shall be effective and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order.

(d) ~~(g)~~ Notwithstanding anything to the contrary herein, not more than 65% of the voting equity interests of any CFC shall be pledged in favor of any Lender or the Administrative Agent.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes. (a) Payments Free of Taxes. Any and all payments by or on behalf of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided, that if the Borrower or other Person making payments on behalf of the Borrower shall be required by applicable law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions including deductions applicable to additional sums payable under this Section 3.01(a) (after payment of all Indemnified Taxes and Other Taxes) the Administrative Agent, any Lender or any L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or other Person shall make such deductions and (iii) the Borrower or other Person shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 3.01(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, each Lender and each L/C Issuer, within 30 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or such L/C Issuer or any of their respective Affiliates, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or such L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or such L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent

(e) Status of Lenders. Each Lender that is a "U.S. Person" as defined in section 7701(a)(30) of the Code that has not otherwise established to the reasonable satisfaction of the Borrower and Administrative Agent (or, in the case of a Participant purchasing its participation from a Foreign Lender, to the Lender from which the related participation shall have been purchased) that it is an exempt recipient (as defined in section 6049(b)(4) of the Code and the regulations thereunder) shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable law or upon the reasonable request of the Borrower

or Administrative Agent), two duly completed and executed copies of Internal Revenue Service Form W-9.

Any Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), two copies of whichever of the following is applicable or any subsequent version thereof or successor thereto:

(i) duly completed and executed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed and executed copies of Internal Revenue Service Form W-8ECI relating to all payments to be received by such Foreign Lender hereunder or under any other Loan Document,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed and executed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

In the event that, pursuant to Section 10.06(d), a Participant is claiming the benefits of this Section 3.01, such Participant shall provide the forms required above to the Lender from which the related participation was purchased, and if such Lender is a Foreign Lender, such Lender shall, promptly upon receipt thereof (but in no event later than the next scheduled payment under this Agreement) forward such documentation to the Borrower and the Administrative Agent, together with such additional forms as are required by law.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender’s status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to the Administrative Agent or the Borrower, as the Administrative Agent or the Borrower shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter (including upon the expiration or obsolescence of any such forms or documents and promptly after the occurrence of any event requiring a change from the most recent forms previously delivered), such other documents and forms as would reduce or avoid any Indemnified Taxes in respect of all payments to be made to such Lender outside of the U.S. by the Borrower pursuant to this Agreement or otherwise to establish such Lender’s status

for withholding tax purposes in such other jurisdiction; provided, that in such Lender's reasonable judgment such documentation or forms would not materially prejudice such Lender. Each Lender shall promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction. Notwithstanding any other provision of this Section 3.01(e), a Lender shall not be required to deliver any form, document or other information pursuant to this Section 3.01(e) that such Lender is not legally able to deliver.

If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. If the Administrative Agent, any Lender or any L/C Issuer receives a refund with respect to Indemnified Taxes or Other Taxes paid by the Borrower, which in the sole discretion and good faith judgment of the Administrative Agent, any Lender or any L/C Issuer is allocable to such payment, it shall promptly pay such refund (but only to the extent of the Indemnified Taxes or Other Taxes paid by the Borrower giving rise to such refund) to the Borrower, net of all out-of-pocket expenses of the Administrative Agent, such Lender or such L/C Issuer incurred in obtaining such refund (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent, such Lender or such L/C Issuer in good faith and in its sole discretion, and as will leave the Administrative Agent, such Lender or such L/C Issuer in no worse position than it would be in if no such Indemnified Taxes or Other Taxes had been imposed and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that the Borrower agrees to promptly return such amount (plus any penalties, interest or other charges imposed by the relevant Governmental Authority), net of any reasonable incremental additional costs, to the Administrative Agent or the applicable Lender or L/C Issuer, as the case may be, if it receives notice from the Administrative Agent, Lender or L/C Issuer that the Administrative Agent, such Lender or such L/C Issuer is required to repay such refund. This subsection shall not be construed to require the Administrative Agent, any Lender or any L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.02 Illegality. If any Lender determines that as a result of any Change in Law it becomes unlawful, or that any Governmental Authority asserts that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate L/C Borrowings, or to determine or charge interest rates based upon the Eurocurrency Rate, or any

Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurocurrency Rate L/C Borrowings or to convert Base Rate L/C Borrowings to Eurocurrency Rate L/C Borrowings, shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all such Eurocurrency Rate L/C Borrowings of such Lender to Base Rate L/C Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate L/C Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate L/C Borrowings. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate L/C Borrowing or a conversion to or continuation thereof that (a) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate L/C Borrowing, or (b) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate L/C Borrowing does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate L/C Borrowing, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate L/C Borrowings shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate L/C Borrowings or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate L/C Borrowings in the amount specified therein.

3.04 Increased Costs; Reserves on Eurocurrency Rate L/C Borrowings. (a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate contemplated by Section 3.04(e)) or any L/C Issuer; or

(ii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such L/C Issuer of participating in, maintaining any Letter of Credit (or of maintaining its obligation to participate in any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount)

then, upon written request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; provided, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, in its reasonable discretion, in any legal, economic or regulatory manner) to designate a different Eurocurrency Rate lending office if the making of such designation would allow the Lender or its Eurocurrency Rate lending office to continue to perform its obligation to make Eurocurrency Rate L/C Borrowings or to continue to fund or maintain Eurocurrency Rate L/C Borrowings and avoid the need for, or reduce the amount of, such increased cost.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital requirements has the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Reimbursement Obligations of such Lender or the participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, describing the basis therefore and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided, that the Borrower shall not be required to compensate a Lender or a L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than 90-days prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency Rate funds or deposits (currently known as “Eurocurrency liabilities”), additional interest on the unpaid principal amount of each Eurocurrency Rate L/C Borrowing equal to the actual costs of such reserves allocated to such L/C Borrowing by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Reimbursement Obligations or the funding of the Eurocurrency Rate L/C Borrowings, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Reimbursement Obligation or L/C Borrowing by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such L/C Borrowing, provided the Borrower shall have received at least 10 Business Days’ prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender describing the basis therefor and showing the calculation thereof in reasonable detail. If a Lender fails to give notice 10 Business Days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable within 30 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any conversion, payment or prepayment of any Eurocurrency Rate L/C Borrowing, and any conversion of a Base Rate L/C Borrowing to a Eurocurrency Rate L/C Borrowing, on a day other than the last day of the Interest Period for such L/C Borrowing (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower to prepay or continue any Eurocurrency Rate L/C Borrowing, or to convert a Base Rate L/C Borrowing to a Eurocurrency Rate L/C Borrowing, on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurocurrency Rate L/C Borrowing on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such L/C Borrowing or from fees payable to terminate the deposits from which such funds were obtained, but excluding any loss of anticipated profits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this 3.04(e), each Lender shall be deemed to have funded each L/C Advance made by it in respect of any Eurocurrency Rate L/C Borrowing at the Eurocurrency Rate for such L/C

Borrowing by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such L/C Advance in respect of such Eurocurrency Rate L/C Borrowing was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders. (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the Administrative Agent or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its L/C Borrowings hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender gives a notice pursuant to Section 3.02 or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Reimbursement Obligations and repayment of all other Obligations hereunder.

ARTICLE IV CONDITIONS PRECEDENT TO EFFECTIVENESS

4.01 Conditions of Effectiveness. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a duly authorized officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement and a Lender Addendum executed and delivered by the Required Lenders (as defined in the Existing Credit Agreement) and accepted by the Borrower;

(ii) [Reserved]

(iii) the Security Agreement executed by each Loan Party and each other party thereto;

(iv) proper financing statements (except for any as-extracted collateral filing or UCC fixture filing) in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary in order to perfect the Liens and security interests created or purported to be created under the Interim Order and the Security Agreement, covering the Collateral described therein;

(v) the Perfection Certificate, executed by each Loan Party;

(vi) such certificates of resolutions or other action, incumbency certificates and/or other certificates of duly authorized officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each officer of a Loan Party executing the Loan Documents to which such Loan Party is a party;

(vii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(viii) the executed opinion of Davis Polk & Wardwell LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(ix) the executed opinion of Joseph W. Bean, Esq., special Missouri counsel and in-house counsel to the Loan Parties, addressed to the Administrative Agent, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(x) (x) a certificate of a duly authorized officer of each Loan Party (A) either (1) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (2) stating that no such consents, licenses or approvals are so required; and (B) stating that all consents, licenses and approvals required in connection with the consummation of such Loan Party of the Transaction has been received;

(xi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that, except as disclosed in writing by the Borrower to the

Administrative Agent and the Lenders or in filings made with the SEC and press releases, in each case prior to the Closing Date, ~~there has not occurred since December 31, 2011, a material adverse change in the business, assets, operations, property or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole~~there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect;

(xii) executed counterparts of the Subsidiary Guaranty; and

(xiii) such other assurances, certificates and documents as the Administrative Agent reasonably may require.

(b) [Reserved].

(c) Any fees required to be paid on or before the Closing Date to the Administrative Agent, any Arranger or the Lenders (i) pursuant to the Fee Letter or (ii) otherwise for which invoices have been received at least one Business Day prior to the Closing Date shall have been paid.

(d) The Administrative Agent shall have received copies of all Real Property Leases of the Loan Parties.

(e) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least one Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing and customary post-closing proceedings included in such invoices (provided, that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)

(f) The Administrative Agent shall have received (i) the Audited Financial Statements for the fiscal year ended December 31, 2011 and (ii) interim unaudited quarterly consolidated financial statements of the Borrower for each completed fiscal quarter ending not less than 45 days prior to the Closing Date.

(g) The Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act, to the extent requested at least 5 Business Days prior to the Closing Date.

(h) Concurrently with the Closing Date hereunder, the obligations of the Borrower and the other Loan Parties (other than contingent indemnification obligations) under the Existing Credit Agreement (to the extent not re-evidenced hereby) and the Existing Securitization Facility shall have been paid in full (or, in the case of obligations in respect of outstanding letters of credit, cash collateralized or otherwise provided for in

a manner satisfactory to the applicable issuing bank), and the Administrative Agent shall have received customary payoff letters.

(i) The Administrative Agent shall have received the cash management arrangements of the Loan Parties (or with the cash management arrangements required to be put in place by the Loan Parties pursuant to Section 6.23 of the First Out Facility) in the forms delivered to the Administrative Agent under the First Out Facility.

(j) The Petition Date shall have occurred on or prior to July 11, 2012.

(k) The First Day Orders sought by the Borrower and entered on the Closing Date (including a cash management order) shall be satisfactory to the Administrative Agent or Arranger.

(l) The Interim Order Entry Date shall have occurred prior to the Closing Date and not later than 5 Business Days following the Petition Date, and the Interim Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to each Arranger and shall not be subject to a stay.

(m) All of the Liens described in Section 2.13 shall have been created and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent of, or over, any Collateral, as set forth in the Interim Order. The Interim Order shall have been effective to create the relative priorities of the Liens described in Section 2.13 with respect to the Collateral. The automatic stay under the Bankruptcy Code shall have been automatically vacated, subject to the terms of the Interim Order, to permit enforcement of the Secured Parties' rights and remedies under this Agreement and the other Loan Documents.

(n) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(o) The Operating Forecast and the initial 13-Week Projection in the forms delivered to the Administrative Agent under the First Out Facility shall have been received by the Administrative Agent prior to the date hereof.

(p) [Reserved].

(q) There shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Borrower) threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases) that could reasonably be expected to have a Material Adverse Effect.

(f) The First Out Loan Documents shall have been executed by all parties thereto on terms and subject to conditions acceptable to the Arrangers (as defined in the First Out Facility) and the initial extensions of credit shall have been made thereunder.

Without limiting the generality of the provisions of the last paragraph of Section 8.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to Letter of Credit Renewal. At any time ~~during the 10~~(but no later than five (5) Business Days (or a shorter period if agreed to by the relevant L/C Issuer in its sole discretion) prior to the Non-Extension Notice Date) during the fifteen (15) Business Day period prior to any Non-Extension Notice Date with respect to any Existing Letter of Credit, the Administrative Agent may, and at the direction of the Required Lenders shall, direct the relevant L/C Issuer to not permit the extension of such Existing Letter of Credit if any of the following conditions are not met at such time:

(a) The representations and warranties of (i) the Borrower contained in Article V and (ii) each Loan Party contained in each other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of such time, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) of the First Out Facility (and incorporated by reference herein) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the First Out Facility (and incorporated by reference herein), respectively.

(b) No Default shall exist, or would result from the proposed extension subject to the rights of the First Out Term Agent under the Security Agreement to waive certain Defaults.

(c) The Interim Order or Final Order, as applicable, shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Administrative Agent.

(d) The extension of such Letter of Credit shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party (a) (i) is duly organized or formed and, validly existing and (ii) in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) subject to the entry of the Orders and subject to the terms thereof, has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents and Related Documents to which it is a party and consummate the Transaction, and (c) is duly qualified and is licensed and, as applicable, in good standing, under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. Subject to the entry of the Orders and subject to the terms thereof, the execution, delivery and performance by each Loan Party of each Loan Document, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (except for any Liens that may arise under the Loan Documents) under, or require any payment to be made under (A) any Contractual Obligation (except in respect of the Existing Senior Notes) to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law, except to the extent any such violation could not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents. (a) Subject to the entry of the Orders, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority and (b) no material approval, consent, exemption, authorization, or other action by, or notice to, or filing with any other Person, in each case, is necessary or required in connection with (i) the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, or for the consummation of the Transaction, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents or (iii) the perfection of the Liens created under the Collateral Documents (including the first priority nature thereof to the extent provided in the Orders), (x) except for those approvals, consents, exemptions, authorizations or other actions which have already been obtained, taken, given or made and are in full force and effect and (y) those landlord consents required with respect to Real Property Leases that constitute Collateral.

5.04 Binding Effect. Subject to the entry of the Orders, this Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Orders, this

Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law and an implied covenant of good faith and fair dealing.

5.05 Litigation. There are no unstayed actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that purport to affect or pertain to this Agreement, any other Loan Document, any Related Document or the consummation of the Transaction.

5.06 No Default. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.07 Incorporation by Reference of First Out Facility Provisions. The representations and warranties set forth in Article 5 (other than Sections 5.01, 5.02, 5.03, 5.04, 5.06(a) and the second sentence of Section 5.07) of the First Out Facility (together with the definitions of such terms as may be used therein and as such representations and warranties and definitions are in effect as of the Closing Date) are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety and are true and correct.

It is the express intent of the parties hereto that the representations and warranties deemed to be set forth herein be identical in all respects, mutatis mutandis, to those set forth in Article 5 of the First Out Facility and that any misrepresentation or breach of warranty under the equivalent provisions of Article 5 of the First Out Facility shall constitute a misrepresentation or breach of warranty hereunder.

ARTICLE VI AFFIRMATIVE AND NEGATIVE COVENANTS

So long as any Lender shall have any Reimbursement Obligation hereunder, any Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and expenses related thereto not then payable or in existence as of the later of the Maturity Date or the Letter of Credit Expiration Date), or any Letter of Credit shall remain outstanding, the Borrower shall, and shall cause each Subsidiary to observe and perform all of the covenants applicable to it and its Subsidiaries set forth in Article 6 and Article 7 of the First Out Facility, which covenants (together with the definitions of such terms as may be used therein and as such covenants and such definitions are in effect as of the Closing Date) are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety.

It is the express intent of the parties hereto that the covenants deemed to be set forth herein be identical in all respects to those set forth in Article 6 and Article 7 of the First Out Facility, mutatis mutandis, and that any breach of a covenant set forth in Article 6 or Article 7 of the First Out Facility shall constitute a breach of covenant hereunder.

ARTICLE VII
REAL PROPERTY LEASES

The provisions of Article 8 of the First Out Facility, together with the definitions of such terms as may be used therein and as such provisions and such definitions are in effect as of the Closing Date, are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety. It being understood that it is the express intent of the parties hereto that the provisions of such Article 8 deemed to be set forth herein be identical in all respects to those set forth in Article 8 of the First Out Facility, mutatis mutandis, and shall provide to the Administrative Agent and the Secured Parties the same rights and obligations as are provided to the “Administrative Agent” and “Secured Parties” under the First Out Facility.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any L/C Obligation or (ii) within three days after the same becomes due, any interest on any ~~Loan~~ L/C Borrowing or on any L/C Obligation, any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement incorporated by reference into Article VI (to the extent such term, covenant or agreement is incorporated from any of Sections 6.03, 6.05, 6.07, 6.08, 6.10, 6.11, 6.12, 6.15, 6.16, 6.18, 6.20, 6.21, 6.22 or 6.23 or Article 7 or Article 8 of the First Out Facility), (ii) any of the Subsidiary Guarantors fails to perform or observe any term, covenant or agreement in Section IV of the Subsidiary Guaranty (but only to the extent it relates to a default under Article VI arising under one of the covenants incorporated by reference therein and listed in the parenthetical contained in clause (i) above), (iii) any representation, warranty, certification or statement of fact made or deemed made under Section 2.01(a) by or on behalf of the Borrower shall be incorrect or misleading in any material respect when made or deemed made or (iv) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in Section 4 and 10 of the Security Agreement; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in or incorporated by reference into any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in

connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) The Borrower or any Subsidiary (ii) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder, Indebtedness under Swap Contracts or Guarantees of the Obligations and any Indebtedness of any Debtor that was incurred prior to the Petition Date), in each case having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit agreement) of more than the Threshold Amount, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee was created or (iii) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity, or such Guarantee to become due or payable; (iv) there occurs under any Swap Contract (excluding any Swap Contract that was entered into prior to the Petition Date) an Early Termination Date (as defined under such Swap Contract) resulting from (v) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (vi) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or (vii) there occurs under any Liability Assumption Agreement an early termination of such agreement for any reason which could reasonably be expected to have an adverse effect on any Loan Party or that would impair the ability of the Lenders to be repaid in full hereunder; or

(f) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(g) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or Article VI shall for any reason (other than pursuant to the terms hereof or thereof, including as a result of a transaction permitted by Section 7.04 or 7.05 of the First Out Facility as in effect on the Closing Date) cease to create a valid and perfected Lien, with the priority required hereby or thereby (subject to Liens permitted by Section 7.01 of the First Out Facility as in effect on the Closing Date), on the Collateral purported to be covered thereby, except to the extent that any such loss of perfection or

priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied or failed to acknowledge coverage; or

(h) Events of Default Under First Out Facility. Any "Event of Default" under Section 9.01 (other than clauses (a), (b), (c), (d), (e), (j) or (l) of such Section 9.01) of the First Out Facility (which "Events of Default", together with the definitions of such terms as may be used therein and as such Events of Default and such definitions are in effect as of the Closing Date, are hereby incorporated herein by reference mutatis mutandis as if set forth herein in their entirety) shall have occurred (it being understood that it is the express intent of the parties hereto that the "Events of Default" deemed to be set forth herein be identical in all respects to those set forth in Section 9.01 of the First Out Facility, mutatis mutandis, and that any "Event of Default" thereunder shall constitute and Event of Default hereunder).

8.02 Remedies Upon Event of Default. (a) If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the unpaid principal amount of all outstanding L/C Borrowing, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(ii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof);

(iii) subject to the provisions of Section 10 of the Security Agreement, exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents or applicable law;

(iv) require any Loan Party to promptly complete, pursuant to Section 363 of the Bankruptcy Code, subject to the rights of the Secured Parties to credit bid, a Disposition of its Real Property Leases or any portion thereof in one or more parcels at public or private sales, at any of the Administrative Agent's offices or elsewhere, for cash, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable;

(v) exercise any of its rights with respect to Real Property Leases under Section 8.01 of the First Out Facility;

provided, however, that with respect to the enforcement of Liens or other remedies with respect to the Collateral of the Loan Parties under the preceding clause (iii), the Administrative Agent shall provide the Borrower (with a copy to counsel for the

Creditors' Committee in the Cases and to the United States Trustee for the Southern District of New York) with seven (7) days' prior written notice prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing.

(b) Upon the occurrence of the Termination Date the L/C Borrowings, all interest thereon and all other amounts and Obligations shall automatically become due and payable in cash, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower and the other Loan Parties.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the L/C Borrowings have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and L/C Issuers (including fees and time charges for attorneys who may be employees of any Lender or L/C Issuer) and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the L/C Borrowings and amounts owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

provided, that the application to the Obligations pursuant to this Section 8.03 of amounts received in respect of Collateral that is Revolving Credit Facility Collateral and in respect of Collateral that is Term Facility Collateral is expressly subject to the priorities set forth in Article 10 of the Security Agreement and in the Interim Order (and, when entered, the Final Order), and all such amounts shall first be allocated in accordance with such priorities before being applied to the Obligations pursuant to this Section 8.03.

Subject to Section 2.01(c), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

ARTICLE IX ADMINISTRATIVE AGENT

9.01 Appointment and Authority. (a) Each of the Lenders and the L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (in its capacities as a Lender, potential Hedge Bank and potential Cash Management Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuers for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or the Orders, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

(c) In connection with the exercise by the Administrative Agent of any consent right to any amendment, modification or waiver pursuant to Section 10.05(b) of the Security Agreement, the Administrative Agent shall seek direction from the Lenders, and shall grant its consent upon the direction of the requisite number of Lenders that would be required to consent to the amendment, modification or waiver were such amendment, modification or waiver directly submitted for a Lender vote hereunder.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or ~~the~~any L/C Issuers/Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability,

effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents or the Orders, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower (such approval not to be unreasonably withheld), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided, that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative

Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Except as expressly set forth herein, none of the "Sole Lead Book Manager", "Sole Lead Arranger" or other titles listed on the cover page hereof

shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or a L/C Issuer hereunder.

9.09 Collateral and Guaranty Matters. The Lenders and the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01; and

(b) to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Lien or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or Orders or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.10 Indemnification. If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender or L/C Issuer due to a failure on the part of such Lender or L/C Issuer (because the appropriate form was not delivered, was not properly executed, or because such Lender or L/C Issuer failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender or L/C Issuer shall indemnify and hold the Administrative Agent harmless for all amounts paid, directly or indirectly, by the Administrative Agent, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section 9.11, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the L/C Issuers under this subsection shall survive the payment of all Obligations hereunder and the resignation or replacement of the Administrative Agent.

ARTICLE X
MISCELLANENOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments hereunder without the written consent of each Lender directly adversely affected thereby;

(c) reduce the principal of, or the stated rate of interest specified herein on, any Unreimbursed Amount, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant incorporated by reference hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any L/C Borrowing or to reduce any fee payable hereunder;

(d) change Section 2.132.10 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(f) other than as permitted by Section 9.10, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(g) release all or substantially all of the Subsidiary Guarantors, without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(h) amend or modify the Superpriority Claim status of the Lenders under the Orders or under any other Loan Document without the written consent of each Lender affected thereby;

(i) grant any Lien on the Collateral (i) which is senior to the Liens created by the First Out Loan Documents or pari passu with such Liens or (ii) which is senior to the Liens created by the Loan Documents or pari passu with such Liens (other than Liens on Revolving Credit Facility Collateral securing the Revolving Credit Facility Obligations under the First Out Facility), in each case without the written consent of each Lender;

(j) affect the relative priority of Liens created under the First Out Loan Documents and the Loan Documents, without the written consent of each Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace each non-consenting Lender in accordance with Section 10.13; provided, that such amendment, waiver, consent or release can be effected as a result of all such assignments.

Any such waiver and any such amendment or modification pursuant to this Section 10.01 shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the L/C Issuers, the Administrative Agent and all future holders of the L/C Obligations and Reimbursement Obligations. In the case of any waiver, the Borrower, the Lenders, the L/C Issuers and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 10.01 shall be deemed to be cured and not continuing during the period of such waiver.

10.02 Notices; Effectiveness; Electronic Communications. (a) Notices

Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or any L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or on Schedule 1 to the Lender Addendum to which such Lender is a party.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided, that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to Article II if such Lender or L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to the Lenders and L/C Issuers to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Each Lender agrees that notice to it specifying that any Borrower Materials or other notices or communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender, the Administrative Agent shall deliver a copy of the Borrower Materials, notices or other communications to such Lender by email or fax.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender, L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent and each L/C Issuer may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and each L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. None of the Secured Parties shall by any act (except by a written instrument pursuant to Section 10.01), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure by any Lender, L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion.. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.04 Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of counsel and industry advisors for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery, administration and enforcement of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by any L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the reasonable and documented fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Letters of Credit issued hereunder, including all such all reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable out-of-pocket costs and expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by a L/C Issuer to honor a

demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) have resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction in a final, non-appealable judgment or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.09(d).

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or any L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages result from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by the final nonappealable judgment of a court of competent jurisdiction..

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent or any L/C Issuer, the replacement of any Lender, the termination of the Aggregate Reimbursement Obligations and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, any L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Reimbursement Obligation (including for purposes of this Section 10.06(b), participations in L/C Obligations) at the time owing to it); provided, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Reimbursement Obligation and the L/C Obligations at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Reimbursement Obligation (which for this purpose includes L/C Obligations outstanding thereunder) or,

if the Reimbursement Obligation is not then in effect, the principal outstanding balance of the L/C Borrowings of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the L/C Borrowings or the Reimbursement Obligation assigned;

(iii) any assignment of a Reimbursement Obligation must be approved by the Administrative Agent and each L/C Issuer unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and

addresses of the Lenders, and the Reimbursement Obligations of, and principal amounts of the L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and the L/C Issuers, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower’s Affiliates or Subsidiaries) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Reimbursement Obligations (including such Lender’s participations in L/C Obligations) owing to it); provided, that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), (b), (c) and (f) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment; provided, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the LoansL/C Borrowings or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the U.S. Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America or any other L/C Issuer assigns all of its Reimbursement Obligation pursuant to Section 10.06(b), Bank of America or any L/C Issuer may, upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of such L/C Issuer, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuers hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto. Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to such L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information

and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto or the First Out Secured Parties, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower~~or~~, (h) to the extent such Information becomes publicly available other than as a result of a breach of this Section or (i) to the Bankruptcy Court, the Office of the United States Trustee or any other Person as directed thereby or required under the Bankruptcy Code (including local practice rules).

For purposes of this Section, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided, that in the case of information received from the Borrower or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care to protect such Information, and in no event less than the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities laws.

10.08 Right of Setoff. Subject to the Orders, upon any amount becoming due and payable hereunder (whether at stated maturity, by acceleration or otherwise), each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, each L/C Issuer and their respective

Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided, that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the L/C Borrowings or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or of a Lender Addendum by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any L/C Advance, and shall continue in full force and effect as long as any Loan L/C Borrowing or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the

economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Replacement of Lenders. If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a “Nonconsenting Lender” (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided, that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) neither the Administrative Agent nor any Lender shall be obligated to be or to find the assignee.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. In the event that (x) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto and (y) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “Nonconsenting Lender.” Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

10.14 Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING

DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 Delivery of Lender Addenda. Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, the Borrower and the Administrative Agent.

10.17 [Reserved].

10.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Arranger are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and any Arranger, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and any Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and any Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.19 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the

name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

10.20 Time of the Essence. Time is of the essence of the Loan Documents.

10.21 Amendment and Restatement. It is the intention of each of the parties hereto that the ~~Original~~Existing Credit Agreement be amended and restated in its entirety pursuant to this Agreement so as to preserve and continue the perfection and priority of all Liens securing Indebtedness and Obligations under the ~~Original~~Existing Credit Agreement and that all Indebtedness and Obligations of the Borrower and the Subsidiary Guarantors hereunder shall be secured by the Liens evidenced under the Collateral Documents and that this Agreement does not constitute a novation or termination of the Indebtedness and Obligations existing under the ~~Original~~Existing Credit Agreement (or serve to terminate Section 10.04 of the ~~Original~~Existing Credit Agreement or any of the Borrower's obligations thereunder with respect to the existing Lenders). In addition, unless specifically amended hereby, each of the Loan Documents shall continue in full force and effect and that, from and after the Closing Date, all references to the "Credit Agreement" contained therein shall be deemed to refer to this Agreement.

10.22 Security Agreement Governs. Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Administrative Agent pursuant to the Loan Documents and the exercise of any right or remedy by the Administrative Agent under any Loan Document are subject to the provisions of the Security Agreement. In the event of any conflict between the terms of the Security Agreement and this Agreement, the terms of the Security Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
duly executed as of the date first above written.

PATRIOT COAL CORPORATION

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as
Administrative Agent

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A., as a Lender and L/C
Issuer

By: _____

Name: _____

Title: _____

{FIFTH THIRD BANK}, as a Lender and L/C
Issuer

By: _____

Name: _____

Title: _____

{PNC BANK}, NATIONAL ASSOCIATION, as a
Lender and L/C Issuer

By: _____

Name: _____

Title: _____

Document comparison by Workshare Compare on Sunday, July 15, 2012
 4:34:06 PM

Input:	
Document 1 ID	interwovenSite://NYCDMS/NewYork/8092341/1
Description	#8092341v1<NewYork> - compare LC
Document 2 ID	interwovenSite://NYCDMS/NewYork/8043685/15
Description	#8043685v15<NewYork> - Patriot - Roll-Up LC Facility
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	104
Deletions	90
Moved from	7
Moved to	7
Style change	0
Format changed	0
Total changes	208

PATRIOT COAL CORPORATION

**DEBTOR-IN-POSSESSION
PLEDGE AND SECURITY
AND INTERCREDITOR AGREEMENT**

dated as of July 11, 2012

between

EACH OF THE GRANTORS PARTY HERETO,

**CITIBANK, N.A.,
as Revolving Agent and as First Out Term Agent**

and

**BANK OF AMERICA, N.A.,
as Second Out Term Agent**

TABLE OF CONTENTS

Page

ARTICLE 1

Definitions; Grant of Security

Section 1.01.	<i>General Definitions</i>	2
Section 1.02.	<i>Definitions; Interpretation</i>	11

ARTICLE 2

Grant Of Security

Section 2.01.	<i>Grant of Security in Revolving Collateral</i>	12
Section 2.02.	<i>Certain Limited Exclusions to Revolving Collateral</i>	13
Section 2.03.	<i>Grant of Security in Term Collateral</i>	13
Section 2.04.	<i>Certain Limited Exclusions to Term Collateral</i>	14

ARTICLE 3

Security For Obligations; Priorities

Section 3.01.	<i>Security for Obligations</i>	15
Section 3.02.	<i>Continuing Liability Under Collateral</i>	15
Section 3.03.	<i>Lien Priorities</i>	16
Section 3.04.	<i>Contesting Liens</i>	16

ARTICLE 4

Certain Perfection Requirements

Section 4.01.	<i>Delivery Requirements</i>	16
Section 4.02.	<i>[Reserved]</i>	17
Section 4.03.	<i>Intellectual Property Recording Requirements</i>	17
Section 4.04.	<i>Other Actions</i>	17

ARTICLE 5

Representations And Warranties

Section 5.01.	<i>Grantor Information & Status</i>	18
Section 5.02.	<i>Collateral Identification, Special Collateral</i>	18
Section 5.03.	<i>Ownership of Collateral and Absence of Other Liens</i>	19
Section 5.04.	<i>Status of Security Interests</i>	19
Section 5.05.	<i>Goods & Receivables</i>	19
Section 5.06.	<i>Pledged Equity Interests, Investment Related Property</i>	20
Section 5.07.	<i>Intellectual Property</i>	20

ARTICLE 6

Covenants And Agreements

Section 6.01.	<i>Grantor Information & Status</i>	22
Section 6.02.	<i>Collateral Identification; Special Collateral</i>	22
Section 6.03.	<i>Ownership of Collateral and Absence of Other Liens</i>	22
Section 6.04.	<i>Status of Security Interests</i>	23
Section 6.05.	<i>Goods & Receivables</i>	23

Section 6.06. *Pledged Equity Interests, Investment Related Property*24
 Section 6.07. *Intellectual Property*26
 Section 6.08. *[Reserved];*.....27
 Section 6.09. *As-Extracted Collateral*27

ARTICLE 7

Access; Right Of Inspection And Further Assurances; Additional Grantors

Section 7.01. *[Reserved]*.....27
 Section 7.02. *Further Assurances*.....27
 Section 7.03. *Additional Grantors*28

ARTICLE 8

Agents Appointed Attorneys-in-fact

Section 8.01. *Power of Attorney*29
 Section 8.02. *No Duty on the Part of Agents or Secured Parties*30

ARTICLE 9

Remedies

Section 9.01. *Generally*.....30
 Section 9.02. *Application of Proceeds*.....31
 Section 9.03. *Sales on Credit*.....32
 Section 9.04. *Investment Related Property*.....32
 Section 9.05. *Grant of Intellectual Property License*32
 Section 9.06. *[Reserved]*.....33
 Section 9.07. *Cash Proceeds; Deposit Accounts*33

ARTICLE 10

Intercreditor

Section 10.01. *Turnover*.....33
 Section 10.02. *Similar Liens and Agreements; Agreement to Cooperate*.....35
 Section 10.03. *Bailee for Perfection*35
 Section 10.04. *Exercise of Remedies*36
 Section 10.05. *Voting; Amendments*39
 Section 10.06. *Automatic Release of Liens Securing Junior Obligations*42
 Section 10.07. *No Additional Rights for the Grantors Hereunder*42
 Section 10.08. *Actions Upon Breach*43
 Section 10.09. *Application of Proceeds of Collateral*43
 Section 10.10. *Payments*46
 Section 10.11. *Effect of Refinancing*.....46

ARTICLE 11

Purchase Right

Section 11.01. *Purchase Right*.....46
 Section 11.02. *Purchase Notice*47
 Section 11.03. *Purchase Price*48
 Section 11.04. *Purchase Closing*48
 Section 11.05. *Actions After Purchase Closing*49

Section 11.06. <i>No Recourse or Warranties; Defaulting Creditors</i>	49
ARTICLE 12	
Agency	
Section 12.01. <i>First Out Agents</i>	50
Section 12.02. <i>Second Out Term Agent</i>	51
ARTICLE 13	
Continuing Security Interest; Transfer Of Loans	50
ARTICLE 14	
Standard Of Care; Agents May Perform	51
ARTICLE 15	
Miscellaneous	51
Section 15.01. <i>Amendment and Restatement; Preservation of Liens</i>	52
Section 15.02. <i>Subordination Agreement</i>	53
Section 15.03. <i>Notices; No Waiver; Rights Cumulative; Etc</i>	53
Section 15.04. <i>Successors and Assigns; Entire Agreement, Etc</i>	53
Section 15.05. <i>Consensual Plan Treatment in Respect of the Second Out Term Credit Obligations</i>	53
Section 15.06. <i>Counterparts</i>	54
Section 15.07. <i>GOVERNING LAW</i>	54
Section 15.08. <i>JURISDICTION; VENUE; SERVICE; WAIVER OF JURY TRIAL</i>	54

SCHEDULE 5.1 — GENERAL INFORMATION
SCHEDULE 5.2 — COLLATERAL IDENTIFICATION
SCHEDULE 5.5 — GOVERNMENT RECEIVABLES; LOCATION OF EQUIPMENT AND
INVENTORY
SCHEDULE 6.9 — AS-EXTRACTED COLLATERAL

EXHIBIT A — PLEDGE SUPPLEMENT
EXHIBIT B — TRADEMARK SECURITY AGREEMENT
EXHIBIT C — COPYRIGHT SECURITY AGREEMENT
EXHIBIT D — PATENT SECURITY AGREEMENT

This **DEBTOR-IN-POSSESSION PLEDGE AND SECURITY AND INTERCREDITOR AGREEMENT**, dated as of July 11, 2012 (this “**Agreement**”), between PATRIOT COAL CORPORATION (the “**Borrower**”), each of the subsidiaries of the Borrower party hereto from time to time, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (together with the Borrower, the “**Grantors**”), CITIBANK, N.A. as administrative collateral agent for the Revolving Secured Parties (as defined in the First Out Credit Agreement referenced below) (in such capacity, together with its successors and permitted assigns, the “**Revolving Agent**”) and as administrative and collateral agent for the Term Secured Parties (as defined in the First Out Credit Agreement referenced below) (in such capacity, together with its successors and permitted assigns, the “**First Out Term Agent**”) and, BANK OF AMERICA, N.A., as administrative and collateral agent for the Second Out Secured Parties (as defined in the Second Out Credit Agreement referenced below) (in such capacity, together with its successors and permitted assigns, the “**Second Out Term Agent**”, and together with the First Out Term Agent, the “**Term Agents**”).

RECITALS:

WHEREAS, reference is made to that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of the date hereof (as it may be amended, restated, refinanced, replaced, supplemented or otherwise modified from time to time, the “**First Out Credit Agreement**”), by and among the Borrower, certain Subsidiaries of the Borrower, the lenders under the revolving facility party thereto from time to time (the “**Revolving Lenders**”), the lenders under the term loan facility (the “**First Out Term Lenders**) Citibank, N.A., in its capacity as administrative agent, the Revolving Lenders and the First Out Term Lenders.

WHEREAS, reference is made to that certain Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Second Out Credit Agreement**”), by and among Borrower, the lenders party thereto from time to time (the “**Second Out Term Lenders**”), Bank of America N.A., in its capacity as administrative agent (the “**Second Out Term Agent**”) and a letter of credit issuer thereunder.

WHEREAS, subject to the terms and conditions of the Credit Agreements, certain Grantors have or may from time to time enter into one or more Secured Hedge Agreements with one or more Hedge Banks and one or more Secured Cash Management Agreements with one or more Cash Management Banks;

WHEREAS, in consideration of (i) the extensions of credit and other accommodations of the Revolving Lenders, the First Out Lenders, Hedge Banks and Cash Management Banks as set forth in the First Out Credit Agreement, the First Out Secured Hedge Agreements and First Out Secured Cash Management Agreements, respectively, and (ii) the extensions of credit and other accommodations of the Second Out Term Lenders, Hedge Banks and Cash Management Banks as set forth in the Second Out Credit Agreement, the Second Out Secured Hedge Agreements and the Second Out Cash Management Agreements, respectively, each Grantor has agreed to supplement the Orders, without in any way diminishing or limiting the effect of the Orders or the security interests, pledge and Liens granted thereunder, and secure such Grantor’s obligations (x)

under the First Out Loan Documents and (y) under the Second Out Loan Documents, in each case, as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and each Agent agrees as follows:

ARTICLE 1
DEFINITIONS; GRANT OF SECURITY

Section 1.01. *General Definitions.* In this Agreement, the following terms shall have the following meanings:

“**Additional Grantors**” shall have the meaning assigned in Section 7.03.

“**Agents**” shall mean, collectively, the Term Agents and the Revolving Agent.

“**Agreement**” shall have the meaning set forth in the preamble.

“**Borrower**” shall have the meaning set forth in the preamble.

“**Cash Collateral**” shall have the meaning given to such term in the First Out Credit Agreement.

“**Collateral Records**” shall mean books, records, ledger cards, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer software and related documentation, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“**Collateral**” shall mean, collectively, the Revolving Collateral and the Term Collateral.

“**Control**” shall mean: (1) with respect to any Deposit Accounts, control within the meaning of Section 9-104 of the UCC, (2) with respect to any Securities Accounts, Security Entitlements, Commodity Contract or Commodity Account, control within the meaning of Section 9-106 of the UCC, (3) with respect to any Uncertificated Securities, control within the meaning of Section 8-106(c) of the UCC, (4) with respect to any Certificated Security, control within the meaning of Section 8-106(a) or (b) of the UCC, (5) with respect to any Electronic Chattel Paper, control within the meaning of Section 9-105 of the UCC, (6) with respect to Letter of Credit Rights, control within the meaning of Section 9-107 of the UCC and (7) with respect to any “transferable record”(as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), control within the meaning of Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16

of the Uniform Electronic Transactions Act as in effect in the jurisdiction relevant to such transferable record.

“Copyright Licenses” shall mean any and all agreements, licenses and covenants (whether or not in writing) providing for the granting of any right in or to any Copyright or otherwise providing for a covenant not to sue with respect to any Copyright (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Copyright Licenses” (as such schedule may be amended or supplemented from time to time).

“Copyrights” shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and all rights in and to databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered and whether or not the underlying works of authorship have been published, moral rights, reversionary interests, termination rights, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications required to be listed in Schedule 5.2(II) under the heading “Copyrights” (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) the rights to sue or otherwise recover for past, present and future infringements thereof, and (iv) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit now or hereafter due and/or payable with respect thereto, and (v) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“Default Remedies” means (a) all rights and remedies of any Secured Party in respect of (i) any Collateral, the exercise of which is contingent upon default or Event of Default (however defined) and (ii) any Collateral constituting Real Property, including, for the avoidance of doubt, all rights of the First Out Term Secured Parties under Article 8 of the First Out Credit Agreement and all rights of the Second Out Secured Parties under Article 7 of the Second Out Credit Agreement, in each case, whether arising pursuant to the First Out Credit Agreement, the Second Out Credit Agreement, the First Out Collateral Documents, the Second Out Collateral Documents, the Orders or applicable law and (b) all rights of first refusal and all credit bid rights of any Secured Party with respect to any sales or dispositions of Collateral, whether arising pursuant to the First Out Credit Agreement, the Second Out Credit Agreement, the First Out Collateral Documents, the Second Out Collateral Documents, the Orders or applicable law. “Default Remedies” shall include any agreement by the First Out Term Agent or Revolving Agent with any Grantor pursuant to which such Grantor has agreed to commence the sale of any Collateral under Section 363 of the Bankruptcy Code in lieu of exercising secured creditor remedies.

“Defaulting Creditor” shall have the meaning given to such term in Section 11.05(c).

“Disposition” shall have the meaning given to such term in the First Out Credit Agreement.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement dated as of May 5, 2010 among the Borrower, the lenders party thereto and Bank of

America, N.A., as administrative agent (as amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, supplemented or otherwise modified).

“Existing Security Agreement” shall mean that certain Pledge and Security Agreement, dated as of October 31, 2007, among the grantors named therein and Bank of America, N.A., as administrative agent (as amended, supplemented or otherwise modified from time to time).

“First Out Collateral Documents” shall mean the “Collateral Documents” as defined in the First Out Credit Agreement.

“First Out Credit Agreement” shall have the meaning set forth in the recitals.

“First Out Loan Documents” shall mean the “Loan Documents” as defined in the First Out Credit Agreement.

“First Out Secured Cash Management Agreements” shall mean the “Secured Cash Management Agreements” as defined in the First Out Credit Agreement.

“First Out Secured Hedge Agreements” shall mean the “Secured Hedge Agreements” as defined in the First Out Credit Agreement.

“First Out Term Agent” shall have the meaning set forth in the preamble; *provided*, that after the First Out Term Termination Date, references to the First Out Term Agent shall be deemed to be references to the Revolving Agent, and after the Revolving Termination Date such references shall be deemed to be references to the Second Out Term Agent, in each case, where the context requires.

“First Out Term Lenders” shall have the meaning set forth in the recitals.

“First Out Term Obligations” shall mean the “Term Facility Obligations” as such term is defined in the First Out Credit Agreement.

“First Out Term Secured Parties” shall mean “Term Secured Parties” as such term is defined in the First Out Credit Agreement.

“First Out Termination Date” shall mean the date on which all First Out Term Obligations are Paid in Full.

“Grantors” shall have the meaning set forth in the preamble.

“Insurance” shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether any Agent is the loss payee thereof) and (ii) any key man life insurance policies.

“Intellectual Property Licenses” shall mean, collectively, the Copyright Licenses, Patent Licenses, Trademark Licenses and Trade Secret Licenses.

“Intellectual Property” shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under the United States or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses, and the right to sue or otherwise recover for past, present and future infringement, misappropriation, dilution or other impairment or violation thereof, including the right to receive all Proceeds therefrom, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

“Investment Accounts” shall mean the Securities Accounts and Commodities Accounts.

“Investment Related Property” shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

“Majority Holder” shall have the meaning set forth in Article 12.

“Material Contracts” means the Related Documents (as defined in the First Out Credit Agreement).

“Material Intellectual Property” shall mean any Intellectual Property included in the Collateral which is material to the business of any Grantor.

“Maximum First Out Principal Amount” means, as of any date of determination, (a) \$525,000,000 **minus** (b) the sum of all principal payments of Term Loans (including voluntary and mandatory prepayments) and permanent reductions of Revolving Credit Commitments after the date hereof **plus** (c) interest, fees, costs, expenses, indemnities and other amounts payable pursuant to the terms of the First Out Loan Documents or as contemplated by the Syndication Letter, whether or not the same are added to the principal amount of the First Out Term Obligations and including the same as would accrue and become due but for the commencement of the Cases, whether or not such amounts are allowed or allowable in whole or in part by the Bankruptcy Court.

“Obligations” shall mean, collectively, the Revolving Obligations and the Term Obligations.

“Paid in Full” or **“Payment in Full”** means, with respect to any Obligations, that: (a) all of such Obligations (other than contingent indemnification obligations for which no underlying claim has been asserted) have been paid, performed or discharged in full (with all such Obligations consisting of monetary or payment obligations having been paid in full in cash), (b) no Person has any further right to obtain any loans, letters of credit, bankers’ acceptances, or other extensions of credit under the documents relating to such Obligations and (c) any and all letters of credit, bankers’ acceptances or similar instruments issued under such documents have been cancelled and returned (or backed by stand-by guarantees or cash collateralized) in accordance with the terms of such documents.

“Patent Licenses” shall mean all agreements, licenses and covenants (whether or not in writing) providing for the granting of any right in or to any Patent or otherwise providing for a covenant not to sue with respect to any Patent (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Patent Licenses” (as such schedule may be amended or supplemented from time to time).

“Patents” shall mean all United States and foreign patents and certificates of invention, inventions or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application required to be listed in Schedule 5.2(II) under the heading “Patents” (as such schedule may be amended or supplemented from time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all improvements thereto, (iv) all rights to sue or otherwise recover for past, present and future infringements thereof, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“Permitted Second Out Obligation Payments” means (a) regularly scheduled payments of accrued interest and fees on the Second Out Term Obligations due and payable on a non-accelerated basis and payments on the Second Out Secured Hedge Agreements, in each case, in accordance with the terms of the Second Out Loan Documents, (b) mandatory prepayments of principal together with all accrued and unpaid interest and fees to the date of such repayment on the amount prepaid on the Second Out Term Obligations in accordance with the terms of the Second Out Credit Agreement and Section 2.06(b)(v) or 2.06(b)(vi) of the First Out Credit Agreement; provided, however, that no mandatory prepayments of principal permitted pursuant to this clause (b) in respect of proceeds of Term Collateral shall be applied to the Second Out Term Obligations during the continuance of any Event of Default (as defined in the First Out Credit Agreement) or upon the sale of all or substantially all the assets of the Grantors and (c) payments of costs, expenses and indemnities of the Second Out Term Agent payable or reimbursable by the Loan Parties under the Second Out Loan Documents.

“Pledge Supplement” shall mean an agreement substantially in the form of Exhibit A hereto.

“Pledge Supplement” shall mean any supplement to this agreement in substantially the form of Exhibit A.

“Pledged Debt” shall mean all indebtedness for borrowed money owed to such Grantor, whether or not evidenced by any Instrument, including, without limitation, all indebtedness described on Schedule 5.2(I) under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments, if any, evidencing such any of the foregoing, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing.

“Pledged Equity Interests” shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and any other participation rights, title or interests in any equity or profits of any business entity, whether or not certificated, including, without limitation, any trust.

“Pledged LLC Interests” shall mean all rights, title and interests in any limited liability company and each series thereof including, without limitation, all limited liability company interests listed on Schedule 5.2(I) under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time), all rights, title and interest under any limited liability company agreement and the certificates, if any, representing such limited liability company interests and any right, title and interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

“Pledged Partnership Interests” shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 5.2(I) under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time), and all right, title and interest in, to and under any partnership agreement and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

“Pledged Stock” shall mean all shares of capital stock owned by such Grantor, including, without limitation, all shares of capital stock described on Schedule 5.2(I) under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

“Purchase Date” means the date on which a purchase pursuant Article 11 is consummated.

“Purchase Event” shall have the meaning given to such term in Section 11.01.

“Purchase Notice” shall have the meaning given to such term in Section 11.02.

“Purchase Obligations” shall have the meaning given to such term in Section 11.01(a)(ii).

“Purchase Price” shall have the meaning given to such term in Section 11.03(a)(ii).

“**Purchasing Creditors**” shall have the meaning given to such term in Section 11.02(a).

“**Real Property Lease**” shall have the meaning given to such term in the First Out Credit Agreement.

“**Real Property**” shall have the meaning given to such term in the First Out Credit Agreement.

“**Receivables Records**” shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors, secured parties or agents thereof, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

“**Receivables**” shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivable Records.

“**Refinance**”, “**Refinancings**” and “**Refinanced**” means, in respect of the First Out Obligations or the Revolving Obligations, to issue other indebtedness in exchange or replacement for such Obligations, in whole or in part.

“**Revolving Agent**” shall have the meaning set forth in the preamble; *provided*, that after the Revolving Termination Date, references to the Revolving Agent shall be deemed to be references to the First Out Term Agent, and after the First Out Termination Date such references shall be deemed to be references to the Second Out Term Agent, in each case, where the context requires.

“**Revolving Cash Collateral Account**” shall mean any account established by the Revolving Agent that is a “Revolving Collateral Account” as such term is defined in the First Out Credit Agreement.

“**Revolving Cash Proceeds**” shall have the meaning assigned in Section 9.07.

“**Revolving Collateral**” shall have the meaning given to such term in Section 2.01.

“Revolving Liens” shall mean, collectively, the fully perfected Liens on the Revolving Collateral to secure securing the Revolving Obligations, subject in priority only to Liens permitted under the First Out Credit Agreement and the Interim Order (and, when applicable, the Final Order).

“Revolving Obligations” shall mean all “Revolving Credit Facility Obligations” and all “Related Obligations” as such terms are defined in the First Out Credit Agreement.

“Revolving Secured Parties” shall have the meaning given to such term in the First Out Credit Agreement.

“Revolving Termination Date” shall mean the date on which all Revolving Obligations have been Paid in Full.

“Second Out Collateral Documents” shall mean the “Collateral Documents” as defined in the Second Out Credit Agreement.

“Second Out Credit Agreement” shall have the meaning set forth in the recitals.

“Second Out Loan Documents” shall mean the “Loan Documents” as defined in the Second Out Credit Agreement.

“Second Out Secured Cash Management Agreements” shall mean the “Secured Cash Management Agreements” as such term is defined in the Second Out Credit Agreement.

“Second Out Secured Hedge Agreements” shall mean the “Secured Hedge Agreements” as such term is defined in the Second Out Credit Agreement.

“Second Out Term Agent” shall have the meaning set forth in the preamble.

“Second Out Term Obligations” shall mean the “Obligations” as such term is defined in the Second Out Credit Agreement.

“Second Out Term Secured Parties” shall mean the “Secured Parties” as defined in the Second Out Credit Agreement.

“Second Out Termination Date” shall mean the date on which all Second Out Term Obligations are Paid in Full.

“Secured Parties” shall mean, collectively, the Term Secured Parties and the Revolving Secured Parties.

“Securities Act” shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

“Securities” shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured,

convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“**Standstill Period**” shall have the meaning given to such term in Section 10.04(c)(ii)(A).

“**Syndication Letter**” shall mean that certain Syndication Letter dated as of the date hereof by and between Citigroup Global Markets Inc., Barclays Bank PLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and the Borrower.

“**Term Agents**” shall have the meaning set forth in the preamble.

“**Term Cash Collateral**” shall mean any cash or Cash Equivalents in any Term Cash Collateral Account.

“**Term Cash Collateral Account**” shall mean any account established by the Revolving Agent that is a “Term Cash Collateral Account” as such term is defined in the First Out Credit Agreement.

“**Term Cash Proceeds**” shall have the meaning assigned in Section 9.07.

“**Term Collateral**” shall have the meaning given to such term in Section 2.03.

“**Term Obligations**” shall mean, collectively, the First Out Term Obligations and the Second Out Term Obligations.

“**Term Secured Parties**” shall mean the First Out Term Secured Parties and the Second Out Term Secured Parties.

“**Term Termination Date**” shall mean the date on which all Term Obligations have been Paid in Full.

“**Trade Secret Licenses**” shall mean any and all agreements (whether or not in writing) providing for the granting of any right in or to Trade Secrets (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Trade Secret Licenses” (as such schedule may be amended or supplemented from time to time).

“**Trade Secrets**” shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue or otherwise recover for past, present and future misappropriation or other violation thereof, (ii) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto; and (iii) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“**Trademark Licenses**” shall mean any and all agreements, licenses and covenants (whether or not in writing) providing for the granting of any right in or to any Trademark or otherwise providing for a covenant not to sue or permitting co-existence with respect to any Trademark (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Trademark Licenses” (as such schedule may be amended or supplemented from time to time).

“**Trademarks**” shall mean all United States, and foreign trademarks, trade names, trade dress, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, whether or not registered, and with respect to any and all of the foregoing: (i) all registrations and applications for any of the foregoing including, but not limited to, the registrations and applications required to be listed in Schedule 5.2(II) under the heading “Trademarks”(as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill of the foregoing, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“**Type**” means either (i) Revolving Collateral or (ii) Term Collateral, as the case may be.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“**United States**” shall mean the United States of America.

“**Vehicles**” means all vehicles covered by a certificate of title law of any state.

Section 1.02. *Definitions; Interpretation.*

(a) In this Agreement, the following capitalized terms shall have the meaning given to them in the UCC (and, if defined in more than one Article of the UCC, shall have the meaning given in Article 9 thereof): Account, Account Debtor, As-Extracted Collateral, Bank, Certificated Security, Chattel Paper, Consignee, Consignment, Consignor, Commercial Tort Claims, Commodity Account, Commodity Contract, Deposit Account, Document, Entitlement Order, Equipment, Electronic Chattel Paper, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivable, Instrument, Inventory, Investment Property, Letter of Credit Right, Manufactured Home, Money, Payment Intangible, Proceeds, Record, Securities Account, Securities Intermediary, Security Certificate, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) All other capitalized terms used herein (including the recitals and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the First Out Credit Agreement (or if the context requires, the Second Out Credit Agreement). The incorporation by reference of terms defined in the First Out Credit Agreement and the Second Out Credit Agreement shall survive any termination of such agreements until this agreement is terminated as provided in Article 12 hereof. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. If any conflict or inconsistency exists between this Agreement and the First Out Credit Agreement, the First Out Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

ARTICLE 2
GRANT OF SECURITY

Section 2.01. *Grant of Security in Revolving Collateral.* In addition to the security interest set forth in the Interim Order (and, when applicable, the Final Order) and subject to Section 2.02(a), each Grantor hereby grants to (i) the Revolving Agent for the benefit of the Revolving Secured Parties, (ii) the First Out Term Agent for the benefit of the First Out Term Secured Parties and (iii) the Second Out Term Agent for the Second Out Term Secured Parties, in each case, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under the following personal property of such Grantor, in each case whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereinafter collectively referred to as the “**Revolving Collateral**”):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Deposit Accounts;
- (d) Securities Accounts, Commodities Accounts and all Commodities Contracts and Investment Property related thereto;
- (e) Money;
- (f) Receivables and Receivable Records; and
- (g) to the extent related evidencing, governing, securing or otherwise relating to the items referred to in the preceding clauses (a) through (f), General Intangibles, Documents,

Instruments, and, to the extent not otherwise included above, Collateral Records, Collateral Support and Supporting Obligations; and

(h) all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Section 2.02. *Certain Limited Exclusions to Revolving Collateral.* (a) Except as set forth in the Interim Order (and, when applicable, the Final Order), in no event shall the Revolving Collateral include or the security interests granted under Section 2.01 attach to (i) any Term Cash Collateral Account, (ii) any Proceeds of property that was Term Collateral when such Proceeds arose to the extent such Proceeds are segregated and distinguishable from other property of such Loan Party and (ii) any assets currently securing the obligations under the Existing Credit Agreement.

(b) Notwithstanding the foregoing, the creation (other than by this Agreement or the Orders) or perfection (other than by the Orders) of pledges of or security interests in particular assets shall not be required if, and for so long as, in the reasonable judgment of the Revolving Agent, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance in respect of such assets shall be excessive in view of the benefits to be obtained by the Revolving Secured Parties therefrom.

Section 2.03. *Grant of Security in Term Collateral.* In addition to the security interest set forth in the Interim Order (and, when applicable, the Final Order) and subject to Section 2.04(a), each Grantor hereby grants to (i) the Revolving Agent for the benefit of the Revolving Secured Parties, (ii) the First Out Term Agent for the benefit of the First Out Term Secured Parties and (iii) the Second Out Term Agent for the Second Out Term Secured Parties, in each case, a security interest in and continuing lien on all of such Grantor's right, title and interest in, to and under all real and personal property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereinafter collectively referred to as the "**Term Collateral**"):

- (a) As-Extracted Collateral;
- (b) Documents;
- (c) General Intangibles (including, for the avoidance of doubt, each Material Contract);
- (d) Goods (including, without limitation, Equipment and Inventory (which, for the avoidance of doubt, shall include Coal));
- (e) Instruments;
- (f) Insurance;
- (g) Intellectual Property;

- (h) Investment Related Property;
- (i) Letter of Credit Rights;
- (j) Vehicles;
- (k) Commercial Tort Claims now or hereafter described on Schedule 5.2;
- (l) Term Cash Collateral Accounts;
- (m) to the extent constituting an investment of Term Cash Collateral, General Intangibles, Documents, and Instruments;
- (n) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing;
- (o) all Real Property (including, for the avoidance of doubt, all Real Property Leases);
- (p) all property of any Grantor held by any Term Agent or any other Term Secured Party, including all property of every description, in the possession or custody of or in transit to such Term Agent or such Term Secured Party for any purpose including safekeeping collection or pledge for the account of such Grantor or as to which Grantor might have any right or voting power; and
- (q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Section 2.04. *Certain Limited Exclusions to Term Collateral.* (a) Except as set forth in the Interim Order (and, when applicable, the Final Order), in no event shall the Term Collateral include or the security interests granted under Section 2.03 hereof attach to (i) any of the outstanding capital stock of a CFC in excess of 66% of the voting power of all classes of capital stock of such CFC entitled to vote; (ii) any intent-to-use application for trademark or service mark registration filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing under Section 1(c) or Section 1(d) of the Lanham Act of a “Statement of Use” or an “Amendment to Allege Use” with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein prior to such filing would impair the validity or enforceability of any registration that issues from such intent-to-use trademark or service mark application under applicable federal law; (iii) Equipment owned by any Grantor on the date hereof or hereafter acquired that is subject to a Lien securing a purchase money obligation or Capital Lease Obligation permitted to be incurred pursuant to the provisions of the First Out Credit Agreement if the contract or other agreement in which such Lien is granted (or the documentation providing for such money obligation or Capital Lease Obligation validly prohibits the creation of any other Lien in such Equipment; (iv) any Revolving Collateral; or (v) any other assets excluded under Section 7(h) of the Interim Order (and, when applicable, the comparable section of the Final Order).

(b) Notwithstanding the foregoing, the creation (other than by this Agreement or the Orders) or perfection (other than by the Orders) of pledges of or security interests in, or the obtaining of title insurance with respect to, particular assets shall not be required if, and for so long as, in the reasonable judgment of the First Out Term Agent, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance in respect of such assets shall be excessive in view of the benefits to be obtained by the First Out Term Secured Parties therefrom; *provided* that it is hereby acknowledged that unless and until requested by the First Out Term Agent, no Grantor shall be required to take steps to perfect the security interest granted hereunder by indicating such security interest on the certificate of title for any Vehicle or other asset that is covered by a certificate of title.

ARTICLE 3
SECURITY FOR OBLIGATIONS; PRIORITIES

Section 3.01. *Security for Obligations.*

(a) In addition to the security for payment of the Obligations to the Revolving Secured Parties provided by the Interim Order (and, when applicable, the Final Order), subject in all respects to Article 10, this Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), of, with respect to every Grantor:

- (i) Revolving Obligations;
- (ii) First Out Term Obligations; and
- (iii) Second Out Term Obligations.

(b) Without limiting the generality of the foregoing, this Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Obligations and would be owed by such Grantor or Subsidiary of the Borrower, as applicable, to any Secured Party under the First Out Loan Documents, the First Out Secured Agreements, or the Second Out Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any of the Loan Parties and other Subsidiaries of the Borrower.

Section 3.02. *Continuing Liability Under Collateral.* Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to any Agent or any Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and no Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall any Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment

received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by any Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

Section 3.03. *Lien Priorities.* (a) Each Secured Party hereby acknowledges that the other Secured Parties have been granted Liens in the Collateral to secure their respective Obligations.

(b) Notwithstanding anything to the contrary herein,

(i) the Liens of the Revolving Agent on the Revolving Collateral are first priority Liens and shall be senior in right to the Liens of the Term Agents on the Revolving Collateral, and such Liens of the Term Agents on the Revolving Collateral are second priority Liens and shall be junior to the Liens of the Revolving Agent;

(ii) the Liens of the First Out Term Agent on the Revolving Collateral are second priority liens and shall be *pari passu* in right to the Liens of the Second Out Term Agent on the Revolving Collateral, and such Liens of the Second Out Term Agent on the Revolving Collateral are second priority liens and shall be *pari passu* to the Liens of the First Out Term Agent; and

(iii) the Liens of each Agent on the Term Collateral are first priority liens and shall be *pari passu* in right to the Liens of each other Agent on the Term Collateral, and such Liens of each other Agent on the Term Collateral are and shall be *pari passu* to the Liens of each Agent.

(c) The priorities of the Liens provided in this Section 3.03 shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement, replacement or refinancing of any of the Obligations, nor by any action or inaction which any of the Secured Parties may take or fail to take in respect of the Collateral.

(d) Notwithstanding the lien priority described in Section 3.03(b), all proceeds of Collateral shall be applied to the Obligations as set forth in Section 10.09, subject to the Orders.

Section 3.04. *Contesting Liens.* Each Secured Party agrees that it will not institute or join in any contest of the validity, perfection, priority or enforceability of the Liens of the other Secured Parties in any Collateral or the enforceability of any Obligations; *provided* that nothing in this Agreement shall be construed to prevent or impair the rights of the Agents to enforce this Agreement, including the provisions hereof relating to Lien priority.

ARTICLE 4 CERTAIN PERFECTION REQUIREMENTS

Section 4.01. *Delivery Requirements.*

(a) With respect to any Certificated Securities included in the Collateral, each Grantor shall deliver, without further order from the Bankruptcy Court, to the First Out Term Agent the Security Certificates evidencing such Certificated Securities duly indorsed by an effective indorsement (within the meaning of Section 8-107 of the UCC), or accompanied by share transfer powers or other instruments of transfer duly endorsed by such an effective endorsement, in each case, to the First Out Term Agent or in blank, to the extent such Security Certificates and instruments are not in possession of the First Out Term Agent. In addition, each Grantor shall cause any certificates evidencing any Pledged Equity Interests, including, without limitation, any Pledged Partnership Interests or Pledged LLC Interests, to be similarly delivered to the First Out Term Agent regardless of whether such Pledged Equity Interests constitute Certificated Securities.

(b) With respect to any Instruments or Tangible Chattel Paper included in the Collateral, each Grantor shall deliver to the First Out Term-Agent all such Instruments or Tangible Chattel Paper to the First Out Term Agent duly indorsed in blank.

Section 4.02. *[Reserved]*.

Section 4.03. *Intellectual Property Recording Requirements.*

(a) In the case of any Collateral (whether now owned or hereafter acquired or created by any Grantor) consisting of U.S. patents and patent applications, upon request of any First Out Agent, such Grantor shall, without further order from the Bankruptcy Court, execute and deliver to the First Out Agents a Patent Security Agreement in substantially the form of Exhibit D hereto (or a supplement thereto) covering all such patents and patent applications in appropriate form for recordation with the U.S. Patent and Trademark Office with respect to the security interests of the First Out Agents.

(b) In the case of any Collateral (whether now owned or hereafter acquired or created by any Grantor) consisting of registered U.S. Trademarks and applications therefor, upon request of any First Out Agent, such Grantor shall, without further order from the Bankruptcy Court, execute and deliver to the First Out Agents a Trademark Security Agreement in substantially the form of Exhibit B hereto (or a supplement thereto) covering such registered U.S. Trademarks and applications therefor in appropriate form for recordation with the U.S. Patent and Trademark Office with respect to the security interests of the First Out Agents.

(c) In the case of any Collateral (whether now owned or hereafter acquired or created by any Grantor) consisting of registered U.S. Copyrights and Copyright Licenses in respect of registered U.S. Copyrights for which any Grantor is the exclusive licensee, upon request of any First Out Agent, such Grantor shall, without further order from the Bankruptcy Court, execute and deliver to the First Out Agents a Copyright Security Agreement in substantially the form of Exhibit C hereto (or a supplement thereto) covering such Copyrights and Copyright Licenses in appropriate form for recordation with the U.S. Copyright Office with respect to the security interests of the First Out Agents.

Section 4.04. *Other Actions.* Each Grantor consents to the grant by, each other Grantor of a Lien in all Investment Related Property to each First Out Agent and without limiting the

generality of the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the applicable First Out Agent or its designee following an Event of Default and to the substitution of the applicable First Out Agent or its designee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Each Grantor hereby represents and warrants, on the Closing Date and upon the date of each Credit Extension, that:

Section 5.01. *Grantor Information & Status.*

(a) Schedule 5.1(A) & (B) (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings: (1) the full legal name of such Grantor, (2) all trade names or other names under which such Grantor currently conducts business, (3) the type of organization of such Grantor, (4) the jurisdiction of organization of such Grantor, (5) its organizational identification number, if any, and (6) the jurisdiction where the chief executive office or its sole place of business (or the principal residence if such Grantor is a natural person) is located.

(b) except as provided on Schedule 5.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if such Grantor is a natural person) or its corporate structure in any way (*e.g.*, by merger, consolidation, change in corporate form or otherwise) and has not done business under any other name, in each case, since November 1, 2007;

(c) it has not since November 1, 2007 become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated; and

(d) no Grantor is a “transmitting utility” (as defined in Section 9-102(a)(80) of the UCC).

Section 5.02. *Collateral Identification, Special Collateral.*

(a) Schedule 5.2 (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings all of such Grantor's: (1) Pledged Equity Interests, (2) Pledged Debt, (3) Securities Accounts, (4) Deposit Accounts, (5) Commodity Contracts, (6) United States registrations of Patents, Trademarks, and Copyrights owned by each Grantor, (7) exclusive Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses, (8) Commercial Tort Claims having a value in excess of \$100,000, (9) Letter of Credit Rights, (10) the name and address of any warehouseman, bailee or other third party in possession of any Inventory, Equipment and other tangible personal property having a value in excess of \$500,000; and (11) Material Contracts;

(b) none of the Collateral constitutes, or is the Proceeds of, (1) Farm Products, (2) Manufactured Homes, (3) Health-Care-Insurance Receivables; (4) timber to be cut, or (5) aircraft, aircraft engines, satellites, ships or railroad rolling stock. No material portion of the Collateral consists of Vehicles or other goods subject to a certificate of title statute of any jurisdiction; and

(c) all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

Section 5.03. Ownership of Collateral and Absence of Other Liens.

(a) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral free and clear of any and all Liens, rights or claims of all other Persons, including, without limitation, liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person other than the security interest created under this Agreement or by the Interim Order (or, when applicable, the Final Order), or any Liens permitted by Section 7.01 of the First Out Credit Agreement; and

(b) other than the financing statements filed in favor of the Second Out Term Agent, no effective financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (w) any financing statement filed in favor of any Agent pursuant to this Agreement, (x) financing statements for which duly authorized proper termination statements have been delivered to the applicable Agent for filing and (y) financing statements filed in connection with Liens permitted by Section 7.01 of the First Out Credit Agreement.

Section 5.04. Status of Security Interests.

(a) Upon and subject to the entry of the Interim Order, each security interest created hereunder constitutes a legal, valid and perfected security interest in the Term Collateral or the Revolving Collateral, as applicable, to the extent set forth in the Interim Order (and, when applicable, the Final Order).

(b) Upon entry of the Interim Order (and, when applicable, the Final Order), no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for (i) the grant by such Grantor (except Patriot Ventures LLC) of the security interests granted hereunder or for the execution, delivery or performance of this Agreement by such Grantor (except Patriot Ventures LLC), (ii) the perfection or maintenance of the security interests created hereunder (including the priority of Liens set forth in Section 3.03(b)) or (iii) the exercise by the applicable First Out Agent of its voting or other rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement, except as set forth above and as may be required in connection with the disposition of any portion of the Pledged Equity Interests by laws affecting the offering and sale of securities generally.

Section 5.05. Goods & Receivables.

(a) except as set forth on Schedule 5.5 (as such schedule may be amended or supplemented from time to time), none of the Account Debtors in respect of any Receivable is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign;

(b) *[Reserved]*; and

(c) other than any Inventory or Equipment in transit, all of the Equipment and Inventory having a value in excess of \$500,000 included in the Collateral is located only at the locations specified in Schedule 5.5 (as such schedule may be amended or supplemented from time to time).

Section 5.06. Pledged Equity Interests, Investment Related Property.

(a) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens (except the security interest created by this Agreement, the Interim Order (and the Final Order, when applicable), rights or claims of other Persons and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests; and

(b) the Pledged Partnership Interests and the Pledged LLC Interests (i) are not dealt in or traded on securities exchanges or in securities markets and (ii) are not “investment company securities” (as defined in Section 8-103(b) of the Uniform Commercial Code).

Section 5.07. Intellectual Property.

(a) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 5.2(II) (as such schedule may be amended or supplemented from time to time), and except to the extent that it would not cause a Material Adverse Effect, owns or has the valid right to use and, where Grantor does so, sublicense others to use, all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, except for the security interests created under this Agreement, by the Interim Order (and, when applicable, the Final Order) or, in the case of priority only, Liens permitted by Section 7.01 of the First Out Credit Agreement (as each may be amended or supplemented from time to time);

(b) except to the extent any such occurrence could not reasonably be expected to cause a Material Adverse Effect, all Intellectual Property owned by Grantor is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, nor, in the case of issued Patents, is any of such Intellectual Property the subject of a reexamination proceeding, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every of its registrations and applications of Copyrights, Patents and Trademarks in full force and effect;

(c) to the best of such Grantor’s knowledge, all Intellectual Property owned by such Grantor is valid and enforceable; no holding, decision, ruling, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity,

enforceability or scope of, such Grantor's right to register, or such Grantor's rights to own or use, any Intellectual Property and no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened in writing against Grantor (except, in each case, for routine office actions or similar proceedings in the U.S. Patent and Trademark Office or U.S. Copyright office or similar administrative authorities);

(d) all registrations and applications for Copyrights, Patents and Trademarks owned by each Grantor are standing in the name of each Grantor, and none of the material Trademarks, Patents, Copyrights or Trade Secrets owned by each Grantor has been exclusively licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 5.2 (II) (as each may be amended or supplemented from time to time), and all exclusive Copyright Licenses for registered copyrightable works to which Grantor is the licensee have been properly recorded in the U.S. Copyright Office;

(e) except to the extent that the failure to do so could not reasonably be expected to cause a Material Adverse Effect, each Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights, in each case, consistent with industry standards;

(f) each Grantor has taken commercially reasonable steps to protect the confidentiality of its material Trade Secrets in accordance with industry standards;

(g) each Grantor uses reasonable standards of quality in the manufacture, distribution, and sale of all products sold and in the provision of all services rendered under or in connection with all Trademarks of such Grantor and has taken reasonable action to ensure that all licensees of the Trademarks owned by such Grantor use such reasonable standards of quality;

(h) to the knowledge of each Grantor, the conduct of such Grantor's business does not infringe upon, misappropriate, dilute or otherwise violate any Intellectual Property right of any other Person; no claim has been made, is pending or, to the knowledge of each Grantor, is threatened in writing against Grantor, alleging that the use of any Intellectual Property owned or used by such Grantor infringes upon, dilutes, misappropriates or otherwise violates the Intellectual Property of any other Person, and no demand that such Grantor enter into a license or co-existence agreement or become a defendant in Intellectual Property litigation has been made in writing against such Grantor but not resolved;

(i) the best of each Grantor's knowledge, no other Person is infringing upon, misappropriating, diluting or otherwise violating any rights in any Intellectual Property owned by such Grantor; and

(j) no settlement or consents, covenants not to sue, co-existence agreements, non-assertion assurances, or releases have been entered into by such Grantor in a manner that could materially adversely affect such Grantor's rights to own, license or use any Material Intellectual Property.

ARTICLE 6
COVENANTS AND AGREEMENTS

Each Grantor hereby covenants and agrees that:

Section 6.01. *Grantor Information & Status.*

(a) Without limiting any prohibitions or restrictions on mergers or other transactions as permitted by in the First Out Credit Agreement, it shall not change such Grantor's name, identity, corporate structure (*e.g.* by merger, consolidation, change in corporate form or otherwise), sole place of business (or principal residence if such Grantor is a natural person), chief executive office, type of organization or jurisdiction of organization or establish any trade names unless it shall have (a) notified the Agents in writing at least thirty (30) days prior to any such change or establishment (or such lesser period of time as agreed by the Agents), identifying such new proposed name, identity, corporate structure, sole place of business (or principal residence if such Grantor is a natural person), chief executive office, jurisdiction of organization or trade name and providing such other information in connection therewith as the Term Agents may reasonably request and (b) taken all actions necessary or advisable to maintain the continuous validity, perfection and priority of the Agents' security interests in the applicable Collateral granted or intended to be granted and agreed to hereby.

Section 6.02. *Collateral Identification; Special Collateral.*

(a) in the event that it hereafter acquires any Collateral of a type described in Section 5.02(b) hereof, it shall promptly notify the Term Agents thereof in writing and take such actions and execute such documents and make such filings all at Grantor's expense as the Term Agents may reasonably request in order to ensure that the First Out Term Agent has a valid, perfected, first priority security interest in such Collateral and the Second Out Term Agent has a valid, perfected second priority interest in such Collateral, in each case subject to any Liens permitted by Section 7.01 of the First Out Credit Agreement.

(b) in the event that it hereafter acquires or has any Commercial Tort Claim the value of exceeds \$100,000 it shall deliver to the Term Agents a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

Section 6.03. *Ownership of Collateral and Absence of Other Liens.*

(a) except for the security interests created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, other than Liens permitted by Section 7.01 of the First Out Credit Agreement, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(b) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify the Term Agents in writing of any event that may have a Material Adverse Effect on the value of the Collateral, the ability of any Grantor or any Term Agent to dispose of the Collateral, or the rights and remedies of any Term Agent in relation thereto, including, without limitation, the levy of any legal process against any material portion of the Collateral; and

(c) it shall not sell, transfer or assign (by operation of law or otherwise) or exclusively license to another Person any Collateral except as otherwise permitted by the First Out Credit Agreement.

Section 6.04. *Status of Security Interests.*

(a) Subject to the limitations set forth in subsection (b) of this Section 6.04, each Grantor shall maintain the respective security interests of the Agents hereunder in the applicable Collateral as valid, perfected, Liens (subject only to Liens permitted by Section 7.01 of the First Out Credit Agreement) having the priorities specified in Section 3.03(b).

(b) Notwithstanding the foregoing, no Grantor shall be required to take any action to perfect any Collateral that can only be perfected by (i) Control or (ii) filings with registrars of motor vehicles or similar governmental authorities with respect to goods covered by a certificate of title, in each case except and until requested by any First Out Agent and except as and to the extent specified in Article 4 hereof.

Section 6.05. *Goods & Receivables.*

(a) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the First Out Term Agent;

(b) if any Equipment or Inventory having a value of \$500,000 or more is in possession or control of any warehouseman, bailee or other third party (other than a Consignee under a Consignment for which such Grantor is the Consignor), each Grantor shall join with the Term Agents in notifying the third party of the Term Agents' security interests and using its commercially reasonable efforts to obtain the consent of such third party to permit the Term Agents to have access to Equipment or Inventory for purposes of inspecting such Collateral or, following an Event of Default, to remove same from such premises if the applicable Term Agent so elects; and with respect to any Goods subject to a Consignment for which such Grantor is the Consignor, Grantor shall, at the reasonable request of the First Out Term Agent, file appropriate financing statements against the Consignee and take such other action as may be necessary to ensure that the Grantor has a first priority perfected security interest in such Goods;

(c) *[Reserved]*;

(d) following and during the continuation of an Event of Default and notice to the appropriate Grantor, the Revolving Agent shall have the right at any time to notify, or require any Grantor to notify, any Account Debtor of the Revolving Agent's security interest in the Receivables and any Supporting Obligation and, in addition, the Revolving Agent may: (1) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Revolving Agent; (2) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Revolving Agent; and (3) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or

compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Revolving Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Revolving Agent if required, in the Collateral Account maintained under the sole dominion and control of the Revolving Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Revolving Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon.

Section 6.06. Pledged Equity Interests, Investment Related Property.

(a) Except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Pledged Equity Interest or other Investment Related Property, upon the merger, consolidation, liquidation or dissolution of any issuer of any Pledged Equity Interest or Investment Related Property, then (a) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (b) such Grantor shall immediately take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control of the applicable Term Agent over such Investment Related Property (including, without limitation, delivery thereof to the applicable Term Agent) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the applicable Term Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the applicable Term Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest.

(b) Voting.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the First Out Credit Agreement; provided, no Grantor shall exercise or refrain from exercising any such right if such action could reasonably be expected to have a material adverse effect on the value of the Investment Related Property or any part thereof; and

(ii) Upon the occurrence and during the continuation of an Event of Default and upon two (2) Business Days prior written notice from the applicable Term Agent

(and after the Term Termination Date, the Revolving Agent) to such Grantor of the applicable Term Agent's intention to exercise such rights:

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the applicable Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit the applicable Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the applicable Agent all necessary proxies, dividend payment orders and other instruments as the applicable Agent may from time to time reasonably request and (2) each Grantor acknowledges that the applicable Agent may utilize the power of attorney set forth in Section 8.01.

(c) except as expressly permitted by the First Out Credit Agreement, without the prior written consent of the applicable Term Agent, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any Investment Related Property or adversely affects the validity, perfection or priority of the Term Agents' security interests, (b) permit any issuer of any Pledged Equity Interest to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer, (c) other than as permitted under the First Out Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of their assets, or (d) waive any default under or breach of any terms of organizational document relating to the issuer of any Pledged Equity Interest or the terms of any Pledged Debt;

(d) except as expressly permitted by the First Out Credit Agreement, without the prior written consent of the applicable Term Agent, it shall not permit any issuer of any Pledged Equity Interest to merge or consolidate unless (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under Section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, (ii) all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent Grantor; provided that if the surviving or resulting Grantors upon any such merger or consolidation involving an issuer which is a CFC, then such Grantor shall only be required to pledge equity interests in accordance with Section 2.02 and (iii) Grantor promptly complies with the delivery and control requirements of Article 4 hereof; and

(e) without the prior express written consent of the applicable Term Agent, it will not agree to any election by any partnership or limited liability company to treat the Pledged

Partnership Interests or Pledged LLC Interests, as applicable, as securities governed by the Uniform Commercial Code of any jurisdiction. Such Grantor will take such action as the applicable Term Agent may reasonably request in order to establish the such Term Agent's "control" (within the meaning of Section 8-106 of the Uniform Commercial Code) over such Pledged Partnership Interests or Pledged LLC Interests.

Section 6.07. *Intellectual Property.*

(a) it shall not do any act or omit to do any act whereby any of the Material Intellectual Property may lapse, or become abandoned, dedicated to the public, forfeited, or unenforceable, or which would materially adversely affect the validity, grant, or enforceability of the security interest granted therein;

(b) it shall not, with respect to any Trademarks owned by such Grantor included in the Material Intellectual Property, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall take reasonable steps necessary to insure that licensees of such Trademarks use such consistent standards of quality;

(c) it shall, within thirty (30) days of being granted an exclusive license to any registered Copyrightable work which is material to the business of Grantor, record such license, in the United States Copyright Office;

(d) it shall promptly notify the Term Agents if it knows that any item of Material Intellectual Property that Grantor owns may become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable, (c) subject to any material adverse determination or development regarding such Grantor's ownership, registration or use or the validity or enforceability of such item of Intellectual Property (including the institution of, or any such determination or development in, any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court) or (d) the subject of the imminent exercise of or any written notice of an intent to exercise any reversion or termination rights;

(e) it shall take all reasonable steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright that constitutes Material Intellectual Property owned by any Grantor, including, but not limited to, those items on Schedule 5.2 (II) (as each may be amended or supplemented from time to time);

(f) in the event that any Material Intellectual Property owned by any Grantor is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all reasonable actions to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, if Grantor determines litigation is appropriate in its reasonable business judgment, the initiation of a suit for injunctive relief and to recover damages;

(g) it shall take reasonable steps, consistent with industry standards, to protect the secrecy of all material Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and consultants and labeling and restricting access to secret information and documents;

(h) except to the extent that the failure to do so could not reasonably be expected to cause a Material Adverse Effect, it shall use proper statutory notice in connection with its use of any of the Patents, Trademarks and Copyrights that constitute Material Intellectual Property, in each case, consistent with industry standards; and

(i) it shall continue to collect, at its own expense, all material amounts due or to become due to such Grantor in respect of the Intellectual Property or any portion thereof.

Section 6.08. *[Reserved]*;

Section 6.09. *As-Extracted Collateral.* If a Grantor shall acquire any interest in any Real Property which, to the knowledge of such Grantor, contains oil, gas, Coal or other minerals with more than a *de minimis* amount of value or any As-Extracted Collateral then, in each case, unless such Real Property containing oil, gas, Coal or other minerals or such As-Extracted Collateral is included on Schedule 6.9 hereto, such Grantor shall (i) provide notice thereof to the Term Agents within 5 Business Days of such acquisition (or such later period of time as agreed by the First Out Term Agent), together with a supplement to Schedule 6.9 reflecting such acquisition, (ii) at the reasonable request of the First Out Term Agent, deliver to the First Out Term Agent fully completed financing statement(s) in appropriate form for filing covering such As-Extracted Collateral (which financing statements shall include the name of the record owner of the real property if other than the Grantor and accurate real estate descriptions sufficient to locate such real property on the ground and enable the First Out Term Agent to record the financing statements in the appropriate real property records) and (iii) reimburse the First Out Term Agent for all related filing fees and any recording or stamp taxes due in connection with such filings.

ARTICLE 7

ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS

Section 7.01. *[Reserved]*.

Section 7.02. *Further Assurances.*

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall, without further order from the Bankruptcy Court, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that any First Out Agent may reasonably request, in order to perfect and maintain the validity, effectiveness and priority of any security interest granted hereby or to enable such First Out Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) at any First Out Agent's request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Agents' security interests in all or any part of the Collateral; and

(ii) furnish the Agents with such information regarding the Collateral, including, without limitation, the location thereof, as any Agent may reasonably request from time to time.

(b) Each Grantor hereby authorizes the Agents to file a Record or Records, including, without limitation, financing or continuation statements, intellectual property security agreements and amendments to any of the foregoing, in any jurisdictions and with any filing offices as the First Out Agents may determine, in their sole discretion, are necessary or advisable to perfect or otherwise protect the security interests granted to the Agents herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the applicable First Out Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interests in the Collateral granted to the Agents herein, including, without limitation, describing such property as "all assets, whether now owned or hereafter acquired" or words of similar effect.

(c) Each Grantor hereby authorizes the Agents to modify this Agreement after obtaining such Grantor's signature to such modification by amending Schedule 5.2 (as such schedule may be amended or supplemented as provided in this Agreement) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

(d) Notwithstanding anything to the contrary in this Agreement, no Grantor shall be obligated to update any schedule except (i) concurrently with the delivery of the Borrower's financial statements in accordance with Section 6.01 of the First Out Credit Agreement or (ii) promptly upon the request of any First Out Agent during an Event of Default, and no default shall result from any failure to update a schedule other than in accordance with this Section 7.02(d).

Section 7.03. *Additional Grantors.* From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Pledge Supplement. Upon delivery of any such Pledge Supplement to the Agents, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of any First Out Agent not to cause any Subsidiary of Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

ARTICLE 8
AGENTS APPOINTED ATTORNEYS-IN-FACT

Section 8.01. *Power of Attorney.* Each Grantor hereby irrevocably appoints each Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, such Agent or otherwise, from time to time in such Agent's discretion to take any action and to execute any instrument by and in accordance with the Interim Order (and, when applicable, the Final Order) and without further order from the Bankruptcy Court, that the First Out Agents may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to obtain and adjust insurance required to be maintained by such Grantor or paid to the First Out Term Agent pursuant to the First Out Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to receive, endorse and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to file any claims or take any action or institute any proceedings that the First Out Agents may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of any Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the liens and security interests granted herein in the Intellectual Property in the name of such Grantor as debtor;

(g) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Liens permitted by Section 7.01 of the First Out Credit Agreement) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the First Out Agents in its their discretion, any such payments made by any Agent to become obligations of such Grantor to such Agent, due and payable immediately without demand; and

(h) upon the occurrence and during the continuance of any Event of Default and after notice to the appropriate Grantor generally to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as

though such Agent were the absolute owner thereof for all purposes, and to do, at such Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that such Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and such Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Section 8.02. *No Duty on the Part of Agents or Secured Parties.* The powers conferred on the Agents hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Agent or any Secured Party to exercise any such powers. The Agents and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

ARTICLE 9 REMEDIES

Section 9.01. *Generally.* Subject to Article 10:

(a) subject to the Orders, if any Event of Default (as defined under the First Out Credit Agreement or, after the First Out Termination Date, the Second Out Credit Agreement) shall have occurred and be continuing, the applicable Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein, in the applicable Credit Agreement or otherwise available to it at law or in equity (including under the Bankruptcy Code) and all the rights and remedies of such Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of such Agent forthwith, assemble all or part of the Collateral as directed by such Agent and make it available to such Agent at a place to be designated by such Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent such Agent deems appropriate; and

(iv) Subject to applicable law (including under the Bankruptcy Code or any Order of the Bankruptcy Court), without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of such Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as such Agent may deem commercially reasonable;

(b) any Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the such Agent, as collateral agent for and representative of the applicable Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the applicable Term Obligations as a credit on account of the purchase price for any Collateral payable by such Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, including the Bankruptcy Code or any Order entered in connection with the Cases, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agents shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agents may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for any Agent to dispose of the Collateral or any portion thereof by using internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against any Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if such Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Agents to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Agents, that the Agents have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the applicable Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way limit the rights of the Agents hereunder;

(c) each Agent may sell the Collateral without giving any warranties as to the Collateral. Each Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral; and

(d) each Agent shall have no obligation to marshal any of the Collateral.

Section 9.02. *Application of Proceeds.* Subject to Article 10 and except as expressly provided elsewhere in this Agreement, all proceeds received by any Agent in respect of any sale,

any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by such Agent against, the applicable Obligations in the order specified in Section 9.03 of the First Out Credit Agreement or Section 8.03 of the Second Out Credit Agreement, as applicable.

Section 9.03. *Sales on Credit.* If any Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by such Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, such Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

Section 9.04. *Investment Related Property.* Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the applicable Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the applicable Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the applicable Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to such Agent all such information as such Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by such Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

Section 9.05. *Grant of Intellectual Property License.* Solely for the purpose of enabling the applicable Agent, solely during the continuance of an Event of Default, to exercise rights and remedies under Article 8 and 9 hereof at such time as such Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to such Agent, a non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient quality control provisions and inspection rights in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired or created by such Grantor, and included in the Collateral. Such license shall include, to the extent permissible under all applicable licenses, access to all media in which any above-licensed items

may be recorded or stored and to all computer programs used for the compilation or printout hereof.

Section 9.06. *[Reserved]*.

Section 9.07. *Cash Proceeds; Deposit Accounts.* (a) In the event that the Loans under the First Out Credit Agreement have been accelerated, or prior to an acceleration, upon the request of any First Out Agent if an Event of Default shall have occurred and be continuing, in addition to the rights of the Revolving Agent specified in Section 6.05 with respect to payments of Receivables, (i) all proceeds of any Revolving Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively, “**Revolving Cash Proceeds**”) shall be held by such Grantor in trust for the Revolving Agent and (ii) all proceeds of any Term Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively “**Term Cash Proceeds**”) shall be held by such Grantor in trust for the First Out Term Agent, in each case, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the applicable First Out Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the applicable First Out Agent, if required) and held by the applicable First Out Agent in a Revolving Cash Collateral Account or a Term Cash Collateral Account, as applicable. Any Revolving Cash Proceeds received by the Revolving Agent or any Term Cash Proceeds received by the First Out Term Agent, in each case (whether from a Grantor or otherwise) may, in the sole discretion of such First Out Agent, (A) be held by such First Out Agent for the ratable benefit of the applicable Secured Parties, as collateral security for the applicable Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by such First Out Agent against the applicable First Out Term Obligations then due and owing.

(b) If any Event of Default shall have occurred and be continuing, (i) the Revolving Agent may apply the balance from any Deposit Account (except for the Term Cash Collateral Account) or instruct the bank at which any such Deposit Account is maintained to pay the balance of any such Deposit Account to or for the benefit of the Revolving Agent to be applied against the Revolving Obligations then due and owing and (ii) the First Out Term Agent may apply the balance from the Term Cash Collateral Account or instruct the bank at which any such Term Cash Collateral Account is maintained to pay the balance of such Term Cash Collateral Account to or for the benefit of the First Out Term Agent to be applied Term Obligations then due and owing.

ARTICLE 10 INTERCREDITOR

Section 10.01. *Turnover.* (a) In accordance with the Interim Order (and, when applicable, the Final Order), any Revolving Collateral or proceeds thereof received by any Term Secured Party including, without limitation, any such Revolving Collateral constituting proceeds, or any payment or distribution, that may be received by any Term Secured Party (x) in connection with the exercise of any right or remedy (including any right of setoff) with respect to the Revolving Collateral, (y) from the collection or other disposition of, or realization on, the Revolving Collateral, whether or not pursuant to the Cases or (z) in violation of this Agreement, shall be segregated and held in trust and promptly paid over, in the same form as received, with any

necessary endorsements, to (i) prior to the Revolving Termination Date, the Revolving Agent, for the benefit of the Revolving Secured Parties to be applied to the Revolving Obligations (unless otherwise required by law or court order), (ii) after the Revolving Termination Date but prior to the First Out Termination Date, to the First Out Term Agent, for the benefit of the First Out Term Secured Parties for application to the First Out Term Obligations (unless otherwise required by law or court order) and (iii) after the Revolving Termination Date and the First Out Termination Date, the Second Out Term Agent for application to the Second Out Term Obligations (unless otherwise required by law or court order). Each Agent shall retain and apply such amounts received pursuant to this Article 10 in accordance with this Agreement and the other First Out Loan Documents or Second Out Loan Documents, as applicable, and without any further order of the Bankruptcy Court.

(b) In accordance with the Interim Order (and, when applicable, the Final Order), any Term Collateral or proceeds thereof received by any Revolving Secured Party including, without limitation, any such Term Collateral constituting proceeds, or any payment or distribution, that may be received by any Revolving Secured Party (w) in connection with the exercise of any right or remedy (including any right of setoff) with respect to the Term Collateral, (x) in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), (y) from the collection or other disposition of, or realization on, the Term Collateral, whether or not pursuant to the Cases or (z) in violation of this Agreement, shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the First Out Termination Date, the First Out Term Agent, for the benefit of the First Out Term Secured Parties for application to the First Out Term Obligations (unless otherwise required by law or court order), (ii) after the First Out Termination Date but before the Revolving Termination Date, the Revolving Agent for application to the Revolving Obligations and (iii) after the Revolving Termination Date, the Second Out Term Agent for application to the Second Out Term Obligations (unless otherwise required by law or court order). Each Agent shall retain and apply such amounts received pursuant to this Article 10 in accordance with this Agreement and the other First Out Loan Documents and Second Out Loan Documents, as applicable, and without any further order of the Bankruptcy Court.

(c) In accordance with the Interim Order (and, when applicable, the Final Order), any Term Collateral or proceeds thereof received by any Term Secured Party including, without limitation, any such Term Collateral constituting proceeds, or any payment or distribution, that may be received by any Second Out Term Secured Party (w) in connection with the exercise of any right or remedy (including any right of setoff) with respect to the Term Collateral, (x) in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), (y) from the collection or other disposition of, or realization on, the Term Collateral, whether or not pursuant to the Cases or (z) in violation of this Agreement, shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the First Out Termination Date, the First Out Term Agent, for the benefit of the Term Secured Parties for application to the Term Obligations (unless otherwise required by law or court order), (ii) after the First Out Termination Date but before the Revolving Termination Date, the Revolving Agent for application to the Revolving Obligations (unless otherwise required by law or court order) and (iii) after the Second Out Termination Date, the Second Out Term Agent for application to the Second Out Term Obligations (unless otherwise required by law or court order). Each Agent shall retain and apply such amounts

received pursuant to this Article 10 in accordance with this Agreement and the other First Out Loan Documents and Second Out Loan Documents, as applicable, and without any further order of the Bankruptcy Court.

Section 10.02. *Similar Liens and Agreements; Agreement to Cooperate.* (a) The First Out Term Agent, the Revolving Agent and the Second Out Term Agent agree that it is their intention that the Collateral granted in favor of the First Out Term Secured Parties, the Revolving Secured Parties and the Second Out Term Secured Parties be identical (but not the Liens or the relative priorities). In furtherance of the foregoing, the Term Agents and Revolving Agent agree, subject to the other provisions of the Orders and this Agreement, to:

- (i) perform all acts required under the First Out Loan Documents, Second Out Loan Documents, this Agreement, the Orders and such other agreements as may be required;
- (ii) upon the request of the First Out Term Agent or Revolving Agent, the Second Out Term Agent shall execute and deliver such instruments to enable the First Out Term Agent or Revolving Agent to further perfect, preserve, and enforce the Liens held by or on behalf of any of the First Out Term Secured Parties or Revolving Secured Parties in the Collateral and the First Out Term Secured Obligations or Revolving Secured Obligations of all Grantors; and
- (iii) upon request by the First Out Term Agent or the Second Out Term Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Term Collateral and the identity of the respective parties obligated under the First Out Loan Documents and the Second Out Loan Documents.

(b) The parties hereto agree that, prior to the First Out Termination Date, no additional Liens shall be granted or permitted on any asset of any Grantor to secure any First Out Term Obligation, Second Out Term Obligation or Revolving Obligation unless, subject to the terms of this Agreement, immediately after giving effect to such grant or concurrently therewith, a Lien with the priority set forth herein and in the Orders shall be granted on such asset to secure the First Out Term Obligations, Second Out Term Obligations or Revolving Obligations, as applicable. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the First Out Term Secured Parties, the Second Out Term Agent, on behalf of the Second Out Secured Parties, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 10.02(b) shall be subject to the terms of this Agreement.

Section 10.03. *Bailee for Perfection.* (a) Each Term Agent agrees to hold that part of the Term Collateral that is in its possession or control (or in the possession or control of its agents or bailees), including any Collateral held by the Second Out Term Agent currently securing the obligations under the Existing Credit Agreement, to the extent that possession or control thereof is taken to perfect, or perfects, a Lien thereon under the UCC or other applicable law as agent and bailee for the other Term Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Out Loan

Documents or the Second Out Loan Documents, as applicable, subject to the terms and conditions of this Section 10.03.

(b) The Revolving Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect, or perfects, a Lien thereon under the UCC or other applicable law as agent and bailee for each Term Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Out Loan Documents or the Second Out Loan Documents, as applicable, subject to the terms and conditions of this Section 10.03.

(c) Each Term Agent agrees to hold that part of the Revolving Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect, or perfects, a Lien thereon under the UCC or other applicable law as agent and bailee for the Revolving Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Out Loan Documents, subject to the terms and conditions of this Section 10.03, and in furtherance of the foregoing each Term Agent acknowledges (for purposes of Section 8-106(d) of the UCC) that it has "control" of all "securities entitlements" (each as defined in the UCC) on behalf of the Revolving Agent.

(d) No Agent shall have any obligation whatsoever to any Secured Party to ensure that any Collateral held by it as bailee pursuant to this Section 10.03 is genuine or owned by any Loan Party or to preserve any rights or benefits of any Person except as expressly set forth in this Section 10.03. The duties or responsibilities of the Agents under this Section 10.03 shall be limited solely to holding the Collateral as bailee in accordance with this Section 10.03.

(e) Each Agent acting pursuant to this Section 10.03 or otherwise shall not have by reason of the First Out Loan Documents, the Second Out Loan Documents or any other document a fiduciary relationship in respect of any Secured Party.

Section 10.04. *Exercise of Remedies.* (a) Subject to the terms and conditions of this Agreement and the Orders, in accordance with the Orders:

(i) the First Out Term Agent (on behalf of itself and the other First Out Term Secured Parties) is authorized to exercise any and all of its rights and remedies in accordance with the terms of the First Out Loan Documents and, with respect to the Collateral and to take all actions required or permitted by the First Out Loan Documents without any further Bankruptcy Court action.

(ii) the Second Out Term Agent (on behalf of itself and the other Second Out Term Secured Parties) is authorized to exercise any and all of its rights and remedies in accordance with the terms of the Second Out Loan Documents and, with respect to the Collateral and to take all actions required or permitted by the Second Out Loan Documents without any further Bankruptcy Court action.

(iii) the Revolving Agent (on behalf of itself and the other Revolving Secured Parties) is authorized to exercise any and all of its rights and remedies in accordance with the terms of the First Out Loan Documents and, with respect to the Collateral and to take all actions required or permitted by the Second Out Loan Documents without any further Bankruptcy Court action.

(b) The Second Out Term Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Second Out Loan Document (other than this Security Agreement and the Final Order) or the Existing Credit Agreement shall be deemed to restrict in any way the rights and remedies of the First Out Term Agent, the Revolving Agent, the First Out Term Secured Parties or the Revolving Secured Parties with respect to the Collateral as set forth in this Agreement, the Orders and the First Out Loan Documents.

(c) (i) Subject to the immediately succeeding clause (ii) and the other terms and conditions of this Agreement and the Orders,

(A) Until the First Out Termination Date, the First Out Term Agent shall have the exclusive right to manage, perform and enforce any Default Remedy with respect to the Term Collateral (and, after the Revolving Termination Date, the Revolving Collateral) according to its sole discretion and the exercise of its sole business judgment, including the exclusive right to take or retake control or possession of the Term Collateral (and, after the Revolving Termination Date, the Revolving Collateral) and to hold, prepare for sale, process, dispose of, or liquidate the Term Collateral (and, after the Revolving Termination Date, the Revolving Collateral) and to incur expenses in connection with such disposition and to exercise all the rights and remedies of a secured lender under the UCC of any applicable jurisdiction. In conducting any public or private sale under the UCC pursuant to this clause (A), the First Out Term Agent shall give the Second Out Term Agent and the Revolving Agent such notice of such sale as may be required by the applicable UCC; *provided, however*, that 10 days' notice shall be deemed to be commercially reasonable notice. Notwithstanding any rights or remedies available to a Second Out Term Secured Party under any of the Second Out Loan Documents, applicable law or otherwise, until the First Out Termination Date, no Second Out Term Secured Party shall (except as provided in the immediately succeeding clause (ii)), directly or indirectly, exercise any Default Remedy with respect to any Term Collateral (or, after the Revolving Termination Date, the Revolving Collateral) without the prior written consent of the First Out Term Agent.

(B) Until the Revolving Termination Date, the Revolving Agent shall have the exclusive right to manage, perform and enforce any Default Remedy with respect to the Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) according to its sole discretion and the exercise of its sole business judgment, including the exclusive right to take or retake control or possession of the Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) and to hold, prepare for sale, process, dispose of, or liquidate the Revolving Collateral (and, after the First Out Termination Date, the Term

Collateral) and to incur expenses in connection with such disposition and to exercise all the rights and remedies of a secured lender under the UCC of any applicable jurisdiction. In conducting any public or private sale under the UCC pursuant to this clause (B), the Revolving Agent shall give the First Out Term Agent and Second Out Term Agent such notice of such sale as may be required by the applicable UCC; *provided, however*, that 10 days' notice shall be deemed to be commercially reasonable notice. Notwithstanding any rights or remedies available to a First Out Term Secured Party or Second Out Term Secured Party under any of the First Out Loan Documents or Second Out Loan Documents, applicable law or otherwise, until the Revolving Termination Date, no First Out Term Secured Party or Second Out Term Secured Party shall (except as provided in the immediately succeeding clause (ii)), directly or indirectly, exercise any Default Remedy with respect to any Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) without the prior written consent of the Revolving Agent.

(ii) Notwithstanding the preceding clause (i), until the Second Out Termination Date, the Second Out Term Agent may exercise Default Remedies with respect to the Collateral according to its sole discretion and the exercise of its sole business judgment, including the exclusive right to take or retake control or possession of the Collateral and to hold, prepare for sale, process, dispose of, or liquidate the Collateral and to incur expenses in connection with such disposition and to exercise all the rights and remedies of a secured lender under the UCC of any applicable jurisdiction if:

(A) 120 days have elapsed since Second Out Term Agent notified First Out Term Agent (in the case of the Term Collateral) and the Revolving Agent (in the case of the Revolving Collateral) that the Second Out Term Obligations were due in full as a result of acceleration or otherwise (the "**Standstill Period**");

(B) (1) with respect to the Term Collateral, neither the First Out Term Agent nor, if permitted hereby, the Revolving Agent is then diligently pursuing Default Remedies with respect to all or a material portion of the Term Collateral or diligently attempting to vacate any stay or prohibition against such exercise; or

(2) with respect to the Revolving Collateral, neither the Revolving Agent nor, if permitted hereby, the First Out Term Agent is then diligently pursuing Default Remedies with respect to all or a material portion of the Revolving Collateral or diligently attempting to vacate any stay or prohibition against such exercise; and

(C) any acceleration of the Second Out Term Obligations has not been rescinded.

In conducting any public or private sale under the UCC pursuant to this clause (ii), the Second Out Term Agent shall give the First Out Term Agent and/or Revolving Agent such notice of such sale as may be required by the applicable UCC; *provided, however*, that 10 days' notice shall be deemed to be commercially reasonable notice.

Section 10.05. *Voting; Amendments.* (a) The Second Out Term Secured Parties may at any time and from time to time and without consent of or notice to any First Out Term Secured Party or Revolving Secured Party, without incurring any liability to any First Out Term Secured Party or Revolving Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, substitute, renew or replace any or all of the Second Out Loan Documents; *provided, however,* that without the consent of, until the First Out Termination Date, the First Out Term Agent, and, until the Revolving Termination Date, the Revolving Agent, the Second Out Secured Parties shall not enter into any amendment, restatement, supplement, modification, substitution, renewal or replacement of any or all of the Second Out Loan Documents that:

(i) increases the aggregate principal amount of the Second Out Term Obligations beyond the amount theretofore permitted under the First Out Credit Agreement, other than as a result of the capitalization of accrued interest, fees and expenses;

(ii) increases the interest rates or letter of credit fees under the Second Out Term Obligations;

(iii) modifies covenants, defaults, or events of default except for modifications to match changes made to the First Out Term Obligations;

(iv) accelerates any date upon which a scheduled payment of principal or interest is due, or otherwise decreases the weighted average life to maturity;

(v) changes a prepayment, redemption, or defeasance provision so as to require a new payment or accelerate an existing payment Obligation;

(vi) changes a term that would result in a Default under the First Out Credit Agreement,

(vii) increases the Obligations of a Grantor, or

(viii) confers additional rights on any Second Out Term Secured Party in a manner materially adverse to a First Out Term Secured Party or Revolving Secured Party.

(b) The First Out Term Agent may at any time and from time to time and without consent of or notice to any Second Out Term Secured Party or Revolving Secured Party, without incurring any liability to any Second Out Term Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, (a) waive any Default or Event of Default under the Second Out Loan Documents, (b) amend or modify any or all of the provisions set forth in the First Out Loan Documents and expressly incorporated by reference into the Second Out Loan Documents, with the effect that such amendments or modifications, substitutions shall be deemed incorporated by reference into the Second Out Loan Documents or (c) amend, restate, supplement, modify substitute, renew or replace any or all of the First Out Loan Documents; *provided, however,* that no such amendment, modification or waiver shall be effective without the written consent of the Second Out Term Agent and each such consent shall be effective only

in the specific instance and for the specific purpose for which given, if any such amendment, modification or waiver shall:

(i) extend (beyond any Extension Date (as defined in the First Out Credit Agreement) or increase the Commitment of any Second Out Term Lender (or reinstate any Commitment terminated pursuant to Section 8.03 of the Second Out Credit Agreement);

(ii) postpone any date fixed by this Agreement or any Second Out Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Second Out Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments (as defined in the Second Out Credit Agreement) or waive any Event of Default under Section 8.01(a) of the Second Out Credit Agreement;

(iii) permit the sale or disposition of any Term Collateral (other than Collateral expressly permitted to be sold or disposed of by the First Out Credit Agreement as in effect on the date hereof) other than to the extent a minimum of 75% of the Net Cash Proceeds of such sale or disposition are applied in accordance with Section 2.06(b) of the First Out Credit Agreement;

(iv) forgive, waive, reduce or extend the date of payment for any mandatory prepayment required pursuant to Section 2.06(b) of the First Out Credit Agreement or otherwise modify any mandatory prepayment provision under the First Out Credit Agreement in a manner that allows amounts that would otherwise be required to be used to prepay First Out Term Obligations or Second Out Term Obligations to be retained by the Grantors;

(v) reduce the principal of, the rate of interest specified in, any fee payable, indemnity, expense reimbursement or other right to payment set forth in the Second Out Loan Documents on or with respect to any Second Out Term Obligation;

(vi) change in any manner the provisions providing for pro rata sharing of payments or payment priorities with respect to the Second Out Term Obligations or as between the First Out Term Obligations, the Revolving Obligations and the Second Out Term Obligations;

(vii) change any provision of this Section 10.05, any other provision hereof requiring consent of the Second Out Term Agent to amend, waive or otherwise modify any rights hereunder or any provision giving the Second Out Term Agent the right to make any determination or grant any consent hereunder;

(viii) other than pursuant to the exercise of Default Remedies or as otherwise permitted by Section 10.09(b) of the First Out Credit Agreement (subject to clause (iii) above) or Section 11.08 of the First Out Credit Agreement, release any of the Collateral in any transaction or series of related transactions;

(ix) other than pursuant to the exercise of Default Remedies, release any Subsidiary Guarantor, except to the extent the release of any Guarantor is permitted

pursuant to Section 10.09(e) (subject to clause (iii) above) or Section 11.08 of the First Out Credit Agreement;

(x) amend or modify the Superpriority Claim status of the Lenders under the Orders or under any other Loan Document;

(xi) grant any Lien on the Collateral which is senior to the Liens created hereunder and under the Orders or *pari passu* with such Liens;

(xii) affect the relative priority of Liens or priorities of payment created hereunder and under the Orders;

(xiii) increase the interest rates (other than additional default interest) or fees on the First Out Term Obligations to an amount greater than the maximum rate contemplated by the flex provisions of the Syndication Letter;

(xiv) change the final maturity date of the First Out Term Obligations to a date later than the final maturity date of the Second Out Term Obligations;

(xv) increase the principal amount of the First Out Term Obligations to an amount which, when combined with all Revolving Obligations, would exceed the Maximum First Out Principal Amount, other than as a result of the capitalization of accrued interest and expenses;

(xvi) amend Section 7.13 of the First Out Credit Agreement or the definition of "Liquidity" (or any component definition thereof) in the First Out Credit Agreement; or

(xvii) modify or add any covenant or event of default under the First Out Loan Documents which directly restricts one or more Loan Parties from making payments under the Second Out Loan Documents which would otherwise be permitted under the First Out Loan Documents as in effect on the date hereof; or

(xviii) affect the rights or duties of the Second Out Term Agent in its capacity as agent under the Second Out Credit Agreement;

provided, further, that no such amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer (as defined in the Second Out Credit Agreement) affect the rights or duties of such L/C Issuer solely in its capacity as letter of credit issuer under the Second Out Credit Agreement or any Issuer Document (as defined in the Second Out Credit Agreement) relating to any Letter of Credit (as defined in the Second Out Credit Agreement) issued by it.

(c) The Revolving Secured Parties may at any time and from time to time and without consent of or notice to any Second Out Secured Party, without incurring any liability to any Second Out Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, substitute, renew or replace any or all of the First Out Loan Documents; *provided, however*, that without the consent of the Second Out Term Agent, the Revolving Secured Parties shall not amend, restate, supplement, modify

substitute, renew or replace any or all of the First Out Loan Documents to (a) directly increase the interest rates (other than additional default interest) on the Revolving Obligations to an amount greater than the maximum rate contemplated by the flex provisions of the Syndication Letter, (b) change the final maturity date of the Revolving Obligations to a date later than the maturity date of the Second Out Term Obligations, (c) increase the principal amount of the Revolving Obligations to an amount which, when combined with all First Out Term Obligations, would exceed the Maximum First Out Principal Amount, other than as a result of the capitalization of accrued interest and expenses, (d) amend Section 7.13 of the First Out Credit Agreement or the definition of "Liquidity" (or any component definition thereof) in the First Out Credit Agreement or (e) modify or add any covenant or event of default under the First Out Loan Documents which directly restricts one or more Loan Parties from making payments under the Second Out Loan Documents which would otherwise be permitted under the First Out Loan Documents as in effect on the date hereof

(d) Notwithstanding any other provision of this Agreement to the contrary, to the extent no Event of Default (as defined under the First Out Credit Agreement) has occurred and is continuing, the Second Out Term Agent and the Second Out Term Secured Parties shall not be deemed to have consented to a sale or disposition of all or substantially all of the Term Collateral, and reserve their rights to object in Bankruptcy Court to any such sale on any grounds (other than any objection predicated upon the unenforceability of this Agreement or any other Loan Document in whole or in part).

Section 10.06. *Automatic Release of Liens Securing Junior Obligations.* If, in connection with the enforcement or exercise of any Default Remedies with respect to the Collateral, including any Disposition of Collateral, (a) the First Out Term Agent, for itself and on behalf of the First Out Term Secured Parties, releases any of the Liens on such Collateral securing the First Out Obligations or (b) the Revolving Agent, for itself and on behalf of the Revolving Secured Parties, releases any of the Liens on such Collateral securing the Revolving Obligations, the Liens securing Second Out Obligations on such Collateral (but not in any proceeds thereof), shall be automatically, unconditionally and simultaneously released, and the Second Out Term Agent shall, for itself and on behalf of the other Second Out Secured Parties, promptly execute and deliver to the First Out Term Agent or the Revolving Agent, as applicable (or to another Person upon the instruction of such applicable Agent), such termination statements, releases and other documents as the First Out Term Agent or the Revolving Agent, as applicable, may reasonably request to effectively confirm such release. The Second Out Term Agent, on behalf of each Second Out Term Secured Party, hereby irrevocably constitutes and appoints the First Out Term Agent and any officer of the First Out Term Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Out Term Agent and in the name of the Second Out Term Agent or in the First Out Term Agent's own name, from time to time in the First Out Term Agent's discretion, for the purpose of carrying out the terms of this Section 10.06, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purpose of this Section, such power of attorney being coupled with an interest and irrevocable until the First Out Termination Date.

Section 10.07. *No Additional Rights for the Grantors Hereunder.* If any Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, no Grantor shall

be entitled to use such violation as a defense to any action by any Secured Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against such Secured Party. Except to the extent expressly set forth in this Agreement, each Grantor shall retain all of its rights and remedies under the Loan Documents and any defense otherwise available to it in any action by any Secured Party.

Section 10.08. *Actions Upon Breach.* (a) If any Second Out Secured Party (or any agent or other representative thereof) commences or participates in any action or proceeding with respect to the Collateral in violation of this Agreement, any Revolving Secured Party, with respect to Revolving Collateral, or First Out Term Secured Party, with respect to Term Collateral may intervene and interpose as a defense or dilatory plea, in its name or in the name of one or more of the Grantors, the making of this Agreement.

(b) If any Term Secured Party (or any agent or other representative thereof) commences or participates in any action or proceeding with respect to the Revolving Collateral in violation of this Agreement, any Revolving Secured Party may intervene and interpose as a defense or dilatory plea, in its name or in the name of one or more of the Grantors, the making of this Agreement.

(c) Should any Second Out Secured Party (or any agent or other representative thereof) in any way take, attempt to or threaten to take any action with respect to the Collateral (including any attempt to enforce any remedy on the Collateral) in violation of this Agreement, or fail to take any action required by this Agreement, any Revolving Secured Party, with respect to Revolving Collateral, or First Out Term Secured Party, with respect to Term Collateral, (in its or their own name or in the name of one or more of the Grantors) may obtain relief against such Second Out Secured Party or agent or other representative thereof, by injunction, specific performance and/or other appropriate equitable relief.

(d) Should any Term Secured Party (or any agent or other representative thereof) in any way take, attempt to or threaten to take any action with respect to the Revolving Collateral (including any attempt to enforce any remedy on the Revolving Collateral) in violation of this Agreement, or fail to take any action required by this Agreement, any Revolving Secured Party (in its or their own name or in the name of one or more of the Grantors) may obtain relief against such Term Secured Party or agent or other representative thereof, by injunction, specific performance and/or other appropriate equitable relief.

Section 10.09. *Application of Proceeds of Collateral.* All proceeds received by the Agents in respect of any exercise of Default Remedies with respect to all or any part of the Collateral shall promptly be applied to the Obligations in accordance with the following order of priority:

(a) Prior to the First Out Termination Date, Revolving Termination Date and Second Out Termination Date,

(i) with respect to all proceeds of the Revolving Collateral:

(1) first: to the Revolving Agent, to be applied to the expenses of such sale or other realization of Revolving Collateral, including

reasonable compensation to agents of and counsel for the Revolving Agent, and all expenses, liabilities and advances incurred or made by the Revolving Agent in connection therewith;

(2) second: to the Revolving Agent to be applied to the repayment of Revolving Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit constituting Revolving Obligations under the First Out Credit Agreement and other contingent obligations then outstanding that are Revolving Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the Revolving Obligations are Paid in Full;

(3) third: to the First Out Term Agent to be applied to the repayment of the First Out Term Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize contingent obligations then outstanding that are First Out Term Obligations, in accordance with the terms of the First Out Credit Agreement) until the First Out Term Obligations are Paid in Full;

(4) fourth: any surplus then remaining shall be paid to the Second Out Term Agent and distributed in accordance with clause (c) below; and

(ii) with respect to all proceeds of the Term Collateral:

(1) first: to the First Out Term Agent, to be applied to the expenses of such sale or other realization of Term Collateral, including reasonable compensation to agents of and counsel for the First Out Term Agent, and all expenses, liabilities and advances incurred or made by the First Out Term Agent in connection therewith;

(2) second: to the First Out Term Agent to be applied to the repayment of First Out Term Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize contingent obligations then outstanding that are First Out Term Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the First Out Term Obligations are Paid in Full;

(3) third: to the Revolving Agent to be applied to the repayment of Revolving Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit constituting Revolving Obligations under the First Out Credit Agreement and other contingent obligations then outstanding that are Revolving Obligations, if any, in

accordance with the terms of the First Out Credit Agreement) until the Revolving Obligations are Paid in Full;

(4) fourth: any surplus then remaining shall be paid to the Second Out Term Agent and distributed in accordance with clause (c) below.

(b) After the First Out Termination Date, prior to the Revolving Termination Date and Second Out Termination Date, with respect to all proceeds of the Revolving Collateral or Term Collateral:

(1) first: to the Revolving Agent, to be applied to the expenses of such sale or other realization of Revolving Collateral, including reasonable compensation to agents of and counsel for the Revolving Agent, and all expenses, liabilities and advances incurred or made by the Revolving Agent in connection therewith;

(2) second: to the Revolving Agent to be applied to the repayment of Revolving Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit constituting Revolving Obligations under the First Out Credit Agreement and other contingent obligations then outstanding that are Revolving Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the Revolving Obligations are Paid in Full;

(3) third: any surplus then remaining shall be paid to the Second Out Term Agent and distributed in accordance with clause (c) below.

(c) After the First Out Termination Date and the Revolving Termination Date, prior to the Second Out Termination Date, with respect to all proceeds of the Collateral:

(1) first: to the Second Out Term Agent, to be applied to the expenses of such sale or other realization of Collateral, including reasonable compensation to agents of and counsel for the Second Out Term Agent, and all expenses, liabilities and advances incurred or made by the Second Out Term Agent in connection therewith;

(2) second: to the Second Out Term Agent to be applied to the repayment of Second Out Term Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit under the Second Out Credit Agreement and other contingent obligations then outstanding that are Second Out Term Obligations, if any, in accordance with the terms of the Second Out Credit Agreement) until the Second Out Term Obligations are Paid in Full; and

(3) third: any surplus then remaining shall be paid to the applicable Grantor or its successors or assigns or to whomsoever may be lawfully entitled to receive the same.

Section 10.10. *Payments.* Prior to the First Out Termination Date and Revolving Termination Date, except for Permitted Second Out Obligation Payments, no payment or distribution of any kind shall be made by or on behalf of any Grantor in respect of the Second Out Obligations and no Second Out Secured Party shall receive any such payment or distribution. Any payments or distributions of any kind received by any Second Out Secured Party in violation of the preceding sentence shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the First Out Termination Date, the First Out Term Agent, for the benefit of the First Out Term Secured Parties for application to the First Out Term Obligations (unless otherwise required by law or court order) and (ii) after the First Out Termination Date but prior to the Revolving Termination Date, the Revolving Agent for application to the Revolving Obligations (unless otherwise required by law or court order).

Section 10.11. *Effect of Refinancing.* If the Payment in Full of the First Out Term Obligations or Revolving Obligations is being effected through a Refinancing; *provided* that (i) the applicable First Out Agent gives a notice of such Refinancing to the Second Out Term Agent at least 5 Business Days prior to such Refinancing and (ii) the credit agreement and the other documents evidencing such new First Out Term Obligations or Revolving Credit Obligations (as applicable, the “**New First Out Loan Documents**” or the “**New Revolving Loan Documents**”) do not effect an amendment, supplement or other modification of the terms of the First Out Term Obligations in a manner that is prohibited by Section 10, *then* (A) such Payment in Full of First Out Term Obligations or Revolving Obligations, as applicable, shall be deemed not to have occurred for all purposes of this Agreement, (B) the indebtedness under such Refinancing and all other obligations under the credit documents evidencing such indebtedness (the “**New First Out Term Obligations**” or “**New Revolving Obligations**”, as applicable) shall be treated as First Out Term Obligations or Revolving Obligations, as applicable, for all purposes of this Agreement, (C) the New First Out Loan Documents and/or the New Revolving Loan Documents shall be treated as the First Out Loan Documents under this Agreement and (D) the agent under the New First Out Loan Documents (the “**New First Out Agent**”) or the New Revolving Loan Documents (the “**New Revolving Agent**”) shall be deemed to be the First Out Term Agent or Revolving Agent, as applicable, for all purposes of this Agreement. Upon receipt of a notice of Refinancing under the preceding sentence, which notice shall include the identity of the New First Out Term Agent, the Second Out Term Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the New First Out Agent may reasonably request in order to provide to the New First Out Agent the rights and powers set forth herein.

ARTICLE 11 PURCHASE RIGHT

Section 11.01. *Purchase Right.* (a) If there is:

(i) an acceleration of the First Out Term Obligations or Revolving Obligations in accordance with the First Out Credit Agreement, or

(ii) the Standstill Period has terminated and the Second Out Term Agent is permitted to exercise Default Remedies with respect to the Collateral under Section 10.03(c)(ii)

(each a “**Purchase Event**”), then the Second Out Term Agent, acting on behalf of one or more Second Out Term Secured Parties may purchase all, but not less than all, of the First Out Term Obligations and the Revolving Obligations (the “**Purchase Obligations**”). Such purchase will

(A) include all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, all First Out Term Obligations and Revolving Obligations outstanding at the time of purchase,

(B) be made pursuant to an Assignment and Acceptance, whereby the Purchasing Creditors will assume all funding commitments and Obligations of the First Out Term Secured Parties and Revolving Secured Parties under the First Out Loan Documents, and

(C) otherwise be subject to the terms and conditions of this Article 11.

After the receipt of a Purchase Notice but prior to the Purchase Date, each First Out Term Secured Party and Revolving Secured Party will retain all rights under the First Out Loan Documents, including but not limited to all rights to exercise Default Remedies under Article 9 of this Agreement. Following the Purchase Date, each First Out Term Secured Party and Revolving Secured Party will retain all rights to indemnification provided in the relevant First Out Loan Documents for all claims and other amounts relating to periods prior to the purchase of the First Out Term Obligations and the Revolving Obligations pursuant to this Article 11.

Section 11.02. *Purchase Notice.* (a) Second Out Term Secured Parties desiring to purchase all of the Purchase Obligations (the “**Purchasing Creditors**”) will deliver a Purchase Notice (a “**Purchase Notice**”) to the First Out Term Agent and Revolving Agent no later than 10 Business Days following the Purchase Event that

(i) is signed by the Purchasing Creditors,

(ii) states that it is a Purchase Notice under this Article 11,

(iii) states that each Purchasing Creditor is irrevocably electing to purchase, in accordance with this Article 11, the percentage of all of the Purchase Obligations stated in the Purchase Notice for that Purchasing Creditor, which percentages must aggregate exactly 100% for all Purchasing Creditors,

(iv) represents and warrants that the Purchase Notice is in conformity with the Second Out Loan Documents and any other binding agreement among Second Out Term Secured Parties, and

(v) designates a purchase date (“**Purchase Date**”) on which the purchase will occur, that is (x) at least five (5) but not more than ten (10) Business Days after receipt of the Purchase Notice by the First Out Term Agent and Revolving Agent.

(b) A Purchase Notice will be ineffective if it is received by the First Out Term Agent or Revolving Agent after the occurrence giving rise to the Purchase Event is waived, cured, or otherwise ceases to exist.

(c) Upon First Out Term Agent’s receipt of an effective Purchase Notice conforming to this Section 11.02, the Purchasing Creditors will be irrevocably obligated to purchase, and the First Lien Creditors will be irrevocably obligated to sell, the First Lien Obligations in accordance with and subject to this section 5.

Section 11.03. *Purchase Price*. The purchase price (“**Purchase Price**”) for the Purchase Obligations will equal the sum of

(a) the principal amount of all loans, advances, or similar extensions of credit included in the Purchase Obligations (including unreimbursed amounts drawn on Letters of Credit (as defined in the First Out Credit Agreement), but excluding the undrawn amount of outstanding Letters of Credit (as defined in the First Out Credit Agreement)), and all accrued and unpaid interest thereon through the Purchase Date,

(b) the net aggregate amount then owing to counterparties under Secured Agreements (as defined in the First Out Credit Agreement), including all amounts owing to the counterparties as a result of the termination (or early termination) thereof to the extent not in excess of the Designated Amount (as defined in the First Out Credit Agreement), and

(c) all accrued and unpaid fees, expenses, indemnities and other amounts owed to any First Out Term Secured Party or Revolving Secured Party under the First Out Loan Documents on the Purchase Date (other than any amounts owed under Secured Agreements in excess of the Designated Amount (as defined in the First Out Credit Agreement)).

Section 11.04. *Purchase Closing*. On the Purchase Date,

(a) the Purchasing Creditors, First Out Term Agent and Revolving Agent will execute and deliver the Assignment and Acceptance,

(b) the Purchasing Creditors will pay the Purchase Price to First Out Term Agent and Revolving Agent, as applicable, by wire transfer of immediately available funds,

(c) the Purchasing Creditors will deposit with First Out Term Agent or its designee by wire transfer of immediately available funds, 103% of the aggregate undrawn amount of all then outstanding Letters of Credit (as defined in the First Out Credit Agreement) and the

aggregate facing and similar fees that will accrue thereon through the stated maturity of the Letters of Credit (assuming no drawings thereon before stated maturity), and

(d) Second Out Term Agent will execute and deliver to First Out Term Agent and Revolving Agent a waiver of all claims arising out of this Agreement and the transactions contemplated hereby as a result of exercising the purchase option contemplated by this Article 11.

Section 11.05. *Actions After Purchase Closing.* First Out Term Agent will apply cash collateral to reimburse Letter of Credit issuers for drawings under Letters of Credit, any customary fees charged by the issuer in connection with such draws, and facing or similar fees. After giving effect to each such payment, any remaining cash collateral that exceeds 103% of the sum of the aggregate undrawn amount of all then outstanding Letters of Credit and the aggregate facing and similar fees that will accrue thereon through the stated maturity of such Letters of Credit (assuming no drawings thereon before stated maturity) will be returned to the Purchasing Creditors (as their interests appear). When all Letters of Credit have been cancelled with the consent of the beneficiary thereof, expired, or been fully drawn, and after all payments from the account described above have been made, any remaining cash collateral will be returned to the Purchasing Creditors, as their interests appear.

Section 11.06. *No Recourse or Warranties; Defaulting Creditors.* (a) Each First Out Term Secured Party and Revolving Secured Party will be entitled to rely on the statements, representations, and warranties in the Purchase Notice without investigation, even if such Each First Out Term Secured Party or Revolving Secured Party is notified that any such statement, representation, or warranty is not or may not be true.

(b) The purchase and sale of the Purchased Obligations under this Article 11 will be without recourse and without representation or warranty of any kind by any First Out Term Secured Party or Revolving Secured Party, except that each First Out Term Secured Party and Revolving Secured Party represents and warrants that on the Purchase Date, immediately before giving effect to the purchase,

(i) the principal of and accrued and unpaid interest on the Purchased Obligations, and the fees and expenses thereof, are as stated in the Assignment and Acceptance for such party,

(ii) Such First Out Term Secured Party or Revolving Secured Party owns its Purchased Obligations free and clear of any Liens (other than participation interests not prohibited by the First Out Credit Agreement, in which case the Purchase Price will be appropriately adjusted so that the Purchasing Creditors do not pay amounts represented by participation interests), and

(iii) Such First Out Term Secured Party or Revolving Secured Party has the full right and power to assign its Purchased Obligations and such assignment has been duly authorized by all necessary corporate action by such First Out Term Secured Party or Revolving Secured Party.

(c) The obligations of the First Out Term Secured Parties and Revolving Secured Parties to sell their respective Purchase Obligations under this Article 11 are several and not joint and several. If a First Out Term Secured Party or Revolving Secured Party (a “**Defaulting Creditor**”) breaches its obligation to sell its Purchase Obligations under this Article 11, no other First Out Term Secured Party or Revolving Secured Party will be obligated to purchase the Defaulting Creditor’s Purchase Obligations for resale to the Purchasing Creditors. A First Out Term Secured Party or Revolving Secured Party that complies with this Article 11 will not be in default of this Agreement or otherwise be deemed liable for any action or inaction of any Defaulting Creditor, provided that nothing in this subsection (c) will require the Purchasing Creditors to purchase less than all of the Purchase Obligations.

(d) Borrower and each Grantor irrevocably consent to any assignment effected to one or more Purchasing Creditors pursuant to this Article 11.

ARTICLE 12 AGENCY

Section 12.01. *First Out Term Agents.* The First Out Term Agent has been appointed to act as collateral agent hereunder by the Term Secured Parties and the Revolving Agent has been appointed to act as collateral agent hereunder by the Revolving Lenders and, by their acceptance of the benefits hereof, the other Secured Revolving Parties. Each First Out Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the First Out Credit Agreement and the Orders; *provided*, the First Out Agents shall, after payment in full of all Obligations under the First Out Credit Agreement and the other Loan Documents, exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of the holders (the “**Majority Holders**”) of a majority of the aggregate “settlement amount” as defined in the First Out Secured Hedge Agreements (or, with respect to any First Out Secured Hedge Agreement that has been terminated in accordance with its terms, the amount then due and payable (exclusive of expenses and similar payments but including any early termination payments then due) under such First Out Secured Hedge Agreement) under all First Out Secured Hedge Agreements. For purposes of the foregoing sentence, settlement amount for any hedge that has not been terminated shall be the settlement amount as of the last Business Day of the month preceding any date of determination and shall be calculated by the appropriate swap counterparties and reported to the First Out Agents upon request; *provided* any First Out Secured Hedge Agreement with a settlement amount that is a negative number shall be disregarded for purposes of determining the Majority Holders. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the applicable First Out Agent for the benefit of Secured Parties in accordance with the terms of this Section. The provisions of the First Out Credit Agreement relating to the First Out Agents including, without limitation, the provisions relating to resignation or removal of any First Out Agent and the powers and duties and immunities of each First Out Agent are incorporated herein by this reference and shall survive any termination of the First Out Credit Agreement.

Section 12.02. *Second Out Term Agent.* The Second Out Term Agent has been appointed to act as collateral agent hereunder by the Second Out Term Secured Parties and, by their acceptance of the benefits hereof, the other Second Out Term Secured Parties. The Second Out Term Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the Second Out Credit Agreement and the Orders; *provided*, the Second Out Term Agent shall, after payment in full of all Obligations under the Second Out Credit Agreement and the other Second Out Loan Documents, exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of the holders (the “**Second Out Majority Holders**”) of a majority of the aggregate “settlement amount” as defined in the Second Out Secured Hedge Agreements (or, with respect to any Second Out Secured Hedge Agreement that has been terminated in accordance with its terms, the amount then due and payable (exclusive of expenses and similar payments but including any early termination payments then due) under such Second Out Secured Hedge Agreement) under all Second Out Secured Hedge Agreements. For purposes of the foregoing sentence, settlement amount for any hedge that has not been terminated shall be the settlement amount as of the last Business Day of the month preceding any date of determination and shall be calculated by the appropriate swap counterparties and reported to the Second Out Term Agent upon request; *provided* any Second Out Secured Hedge Agreement with a settlement amount that is a negative number shall be disregarded for purposes of determining the Second Out Majority Holders. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Second Out Secured Party that all rights and remedies hereunder may be exercised solely by the Second Out Term Agent for the benefit of the Second Out Secured Parties in accordance with the terms of this Section. The provisions of the Second Out Credit Agreement relating to the Second Out Term Agent including, without limitation, the provisions relating to resignation or removal of the Second Out Term Agent and the powers and duties and immunities of the Second Out Term Agent are incorporated herein by this reference and shall survive any termination of the Second Out Credit Agreement.

ARTICLE 13

CONTINUING SECURITY INTEREST; TRANSFER OF LOANS

This Agreement shall create continuing security interests in the Collateral and shall remain in full force and effect until the payment in full of all Obligations, the cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the applicable L/C Issuer, be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of each Agent hereunder, to the benefit of such Agent and its successors, transferees and assigns or otherwise as set forth in any order of the Bankruptcy Court. Without limiting the generality of the foregoing, but subject to the terms of the First Out Credit Agreement and the Second Out Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Obligations (other than contingent indemnification obligations not then due), the

cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the applicable L/C Issuer, the security interests granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to Grantors. Upon any such termination the Agents shall, at Grantors' expense, execute and deliver to Grantors or otherwise authorize the filing of such documents as Grantors shall reasonably request, including financing statement amendments to evidence such termination. Upon any disposition of property permitted by the First Out Credit Agreement and the Second Out Credit Agreement, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. The Agents shall, at Grantor's expense, execute and deliver or otherwise authorize the filing of such documents as Grantors shall reasonably request, in form and substance reasonably satisfactory to the First Out Agents, including mortgage releases and financing statement amendments to evidence such release.

ARTICLE 14
STANDARD OF CARE; AGENTS MAY PERFORM

The powers conferred on each Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, each Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Each Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which such Agent accords its own property. None of the Agents nor any of their directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the applicable First Out Agent may itself perform, or cause performance of, such agreement, and the expenses of such First Out Agent incurred in connection therewith shall be payable by each Grantor under Section 12.04 of the First Out Credit Agreement.

ARTICLE 15
MISCELLANEOUS

Section 15.01. *Amendment and Restatement; Preservation of Liens.* It is the intention of each of the parties hereto that the Existing Security Agreement be amended and restated in its entirety pursuant to this Agreement so as to preserve and continue the perfection and priority of all Liens securing Indebtedness and "Obligations" under and as defined in the Existing Credit Agreement and that all Indebtedness and Obligations of the Borrower and the Subsidiary Guarantors under the Second Out Credit Agreement shall be secured by the Liens evidenced under this Agreement and that this Agreement does not constitute a novation of the Existing Security Agreement or termination of the Liens or other obligations created under the Existing Security Agreement, but rather re-evidences such Liens and obligations as amended and restated hereby.

Section 15.02. *Subordination Agreement.* The parties hereto acknowledge that this Agreement is a subordination agreement under Section 510 of the Bankruptcy Code.

Section 15.03. *Reinstatement.* Each Agent agrees that if (a) any payment made by any Person and applied to the Obligations held by such Agent or any other Agent is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or (b) the proceeds of Collateral applied to the Obligations held by such Agent or any other Agent are required to be returned to any Grantor or its estate, trustee or receiver under any requirement of law, then, provisions providing for applications of proceeds of Collateral, priorities of liens and rights to payment hereunder shall be and remain in full force and effect, as fully as if such payment had never been made.

Section 15.04. *Notices; No Waiver; Rights Cumulative; Etc.* Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 12.02 of each of the First Out Credit Agreement and the Second Out Credit Agreement. No failure or delay on the part of the Agents in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 15.05. *Successors and Assigns; Entire Agreement, Etc.* This Agreement shall be binding upon and inure to the benefit of the Agents and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Agents given in accordance with the First Out Credit Agreement and the Second Out Credit Agreement, assign any right, duty or obligation hereunder. This Agreement, the Orders and the other Loan Documents embody the entire agreement and understanding between Grantors and the Agents and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. In the event of any inconsistency or conflict between the provisions of this Agreement and the Interim Order (and, when applicable, the Final Order), the provisions of the Interim Order or Final Order, as applicable, shall govern. There are no unwritten oral agreements between the parties.

Section 15.06. *Consensual Plan Treatment in Respect of the Second Out Term Credit Obligations.* On the maturity date of the Second Out Credit Agreement, all outstanding Second Out Term Obligations shall be repaid in cash (or, in the case of issued and outstanding Roll Up Letters of Credit, cash collateralized in an amount of at least 105% of the L/C Obligations (as

defined in the Second Out Credit Agreement)); provided, that the Second Out Lenders may consent to a different treatment under a plan of reorganization under chapter 11 of the Bankruptcy Code, and such consent shall be deemed to have been given upon the affirmative vote of the Second Out Lenders under the standards set forth in Section 1126(c) of the Bankruptcy Code.

Section 15.07. *Counterparts.* This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.


Section 15.08. *GOVERNING LAW.* **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND ALL CLAIMS AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE, WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF ANY OTHER LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTEREST).**

Section 15.09. *JURISDICTION; VENUE; SERVICE; WAIVER OF JURY TRIAL.* **THE PROVISIONS OF THE CREDIT AGREEMENT UNDER THE HEADINGS “SUBMISSION TO JURISDICTION”, “WAIVER OF VENUE”, “SERVICE OF PROCESS” AND “WAIVER OF JURY TRIAL” ARE INCORPORATED HEREIN BY THIS REFERENCE AND SUCH INCORPORATION SHALL SURVIVE ANY TERMINATION OF THE CREDIT AGREEMENT.**

[Signature pages follow]

IN WITNESS WHEREOF, each Grantor and each Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

PATRIOT COAL CORPORATION,
as Grantor

By: 
Name: Mark N. Schroeder
Title: Senior Vice President &
Chief Financial Officer

Grantors:

AFFINITY MINING COMPANY
APOGEE COAL COMPANY, LLC
APPALACHIA MINE SERVICES, LLC
BEAVER DAM COAL COMPANY, LLC
BIG EAGLE, LLC
BIG EAGLE RAIL, LLC
BLACK STALLION COAL COMPANY, LLC
BLACK WALNUT COAL COMPANY
BLUEGRASS MINE SERVICES, LLC
BROOK TROUT COAL, LLC
CATENARY COAL COMPANY, LLC
CENTRAL STATES COAL RESERVES OF
KENTUCKY, LLC
CHARLES COAL COMPANY, LLC
CLEATON COAL COMPANY
COAL CLEAN LLC
COAL PROPERTIES, LLC
COAL RESERVE HOLDING LIMITED
LIABILITY COMPANY NO. 2
COLONY BAY COAL COMPANY
COOK MOUNTAIN COAL COMPANY, LLC
CORYDON RESOURCES LLC
COVENTRY MINING SERVICES, LLC
COYOTE COAL COMPANY LLC
CUB BRANCH COAL COMPANY LLC
DAKOTA LLC
DAY LLC
DIXON MINING COMPANY, LLC
DODGE HILL HOLDING JV, LLC
DODGE HILL MINING COMPANY, LLC
DODGE HILL OF KENTUCKY, LLC
EASTERN ASSOCIATED COAL, LLC
EASTERN COAL COMPANY, LLC
EASTERN ROYALTY, LLC
EMERALD PROCESSING, L.L.C.
GATEWAY EAGLE COAL COMPANY, LLC
GRAND EAGLE MINING, LLC
HERITAGE COAL COMPANY LLC
HIGHLAND MINING COMPANY, LLC
HILLSIDE MINING COMPANY
HOBET MINING, LLC
INDIAN HILL COMPANY LLC
INFINITY COAL SALES, LLC
INTERIOR HOLDINGS, LLC


IO COAL LLC
JARRELL'S BRANCH COAL COMPANY
JUPITER HOLDINGS LLC
KANAWHA EAGLE COAL, LLC
KANAWHA RIVER VENTURES I, LLC
KANAWHA RIVER VENTURES II, LLC
KANAWHA RIVER VENTURES III, LLC
KE VENTURES, LLC
LITTLE CREEK LLC
LOGAN FORK COAL COMPANY
MAGNUM COAL COMPANY LLC
MAGNUM COAL SALES LLC
MARTINKA COAL COMPANY, LLC
MIDLAND TRAIL ENERGY LLC
MIDWEST COAL RESOURCES II, LLC
MOUNTAIN VIEW COAL COMPANY, LLC
NEW TROUT COAL HOLDINGS II, LLC
NEWTOWN ENERGY, INC.
NORTH PAGE COAL CORP.
OHIO COUNTY COAL COMPANY, LLC
PANTHER LLC
PATRIOT BEAVER DAM HOLDINGS, LLC
PATRIOT COAL COMPANY, L.P.
PATRIOT COAL SALES LLC
PATRIOT COAL SERVICES LLC
PATRIOT LEASING COMPANY LLC
PATRIOT MIDWEST HOLDINGS, LLC
PATRIOT RESERVE HOLDINGS, LLC
PATRIOT TRADING LLC
PATRIOT VENTURES LLC
PCX ENTERPRISES, INC.
PINE RIDGE COAL COMPANY, LLC
POND CREEK LAND RESOURCES, LLC
POND FORK PROCESSING LLC
REMINGTON HOLDINGS LLC
REMINGTON II LLC
REMINGTON LLC
RIVERS EDGE MINING, INC.
ROBIN LAND COMPANY, LLC
SENTRY MINING, LLC
SNOWBERRY LAND COMPANY
SPEED MINING LLC
STERLING SMOKELESS COAL COMPANY, LLC
TC SALES COMPANY, LLC
THE PRESIDENTS ENERGY COMPANY LLC
THUNDERHILL COAL LLC

TROUT COAL HOLDINGS, LLC
UNION COUNTY COAL CO., LLC
VIPER LLC
WEATHERBY PROCESSING LLC
WILDCAT ENERGY LLC
WILDCAT, LLC
WILL SCARLET PROPERTIES LLC
WINCHESTER LLC
WINIFRED DOCK LIMITED LIABILITY
COMPANY
YANKEETOWN DOCK, LLC

as Grantors

Executing this Agreement as an authorized officer of
each of the 98 foregoing entities on behalf of and so as to
bind the entities named above under the caption
“Grantors”

By:



Name: Robert L. Mead

Title: Vice President and Treasurer

CITIBANK, N.A.,
as First Out Term Agent

By: 

Name: Shane V. Azzara

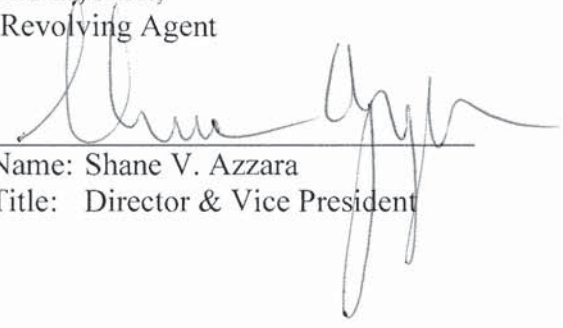
Title: Director & Vice President

CITIBANK, N.A.,
as Revolving Agent

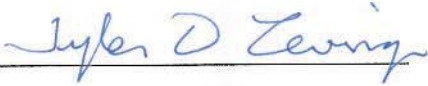
By: _____

Name: Shane V. Azzara

Title: Director & Vice President

A handwritten signature in black ink, appearing to read 'Shane V. Azzara', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

BANK OF AMERICA, N.A.,
as Second Out Term Agent

By: 
Name: Tyler D. Levings
Title: Director

PATRIOT COAL CORPORATION

**DEBTOR-IN-POSSESSION
PLEDGE AND SECURITY
AND INTERCREDITOR AGREEMENT**

dated as of July 11, 2012

between

EACH OF THE GRANTORS PARTY HERETO,

**CITIBANK, N.A.,
as Revolving Agent and as First Out Term Agent**

and

**BANK OF AMERICA, N.A.,
as Second Out Term Agent**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	
Definitions; Grant of Security	
Section 1.01. <i>General Definitions</i>	2
Section 1.02. <i>Definitions; Interpretation</i>	11
ARTICLE 2	
Grant Of Security	
Section 2.01. <i>Grant of Security in Revolving Collateral</i>	12
Section 2.02. <i>Certain Limited Exclusions to Revolving Collateral</i>	12
Section 2.03. <i>Grant of Security in Term Collateral</i>	13
Section 2.04. <i>Certain Limited Exclusions to Term Collateral</i>	14
ARTICLE 3	
Security For Obligations; Priorities	
Section 3.01. <i>Security for Obligations</i>	15
Section 3.02. <i>Continuing Liability Under Collateral</i>	15
Section 3.03. <i>Lien Priorities</i>	16
Section 3.04. <i>Contesting Liens</i>	16
ARTICLE 4	
Certain Perfection Requirements	
Section 4.01. <i>Delivery Requirements</i>	16
Section 4.02. <i>[Reserved]</i>	17
Section 4.03. <i>Intellectual Property Recording Requirements</i>	17
Section 4.04. <i>Other Actions</i>	17
ARTICLE 5	
Representations And Warranties	
Section 5.01. <i>Grantor Information & Status</i>	18
Section 5.02. <i>Collateral Identification, Special Collateral</i>	18
Section 5.03. <i>Ownership of Collateral and Absence of Other Liens</i>	19
Section 5.04. <i>Status of Security Interests</i>	19
Section 5.05. <i>Goods & Receivables</i>	19
Section 5.06. <i>Pledged Equity Interests, Investment Related Property</i>	20
Section 5.07. <i>Intellectual Property</i>	20
ARTICLE 6	
Covenants And Agreements	
Section 6.01. <i>Grantor Information & Status</i>	21
Section 6.02. <i>Collateral Identification; Special Collateral</i>	22
Section 6.03. <i>Ownership of Collateral and Absence of Other Liens</i>	22
Section 6.04. <i>Status of Security Interests</i>	22
Section 6.05. <i>Goods & Receivables</i>	23

Section 6.06. <i>Pledged Equity Interests, Investment Related Property</i>	24
Section 6.07. <i>Intellectual Property</i>	26
Section 6.08. <i>[Reserved];</i>	27
Section 6.09. <i>As-Extracted Collateral</i>	27

ARTICLE 7

Access; Right Of Inspection And Further Assurances; Additional Grantors

Section 7.01. <i>[Reserved]</i>	27
Section 7.02. <i>Further Assurances</i>	27
Section 7.03. <i>Additional Grantors</i>	28

ARTICLE 8

Agents Appointed Attorneys-in-fact

Section 8.01. <i>Power of Attorney</i>	28
Section 8.02. <i>No Duty on the Part of Agents or Secured Parties</i>	29

ARTICLE 9

Remedies

Section 9.01. <i>Generally</i>	30
Section 9.02. <i>Application of Proceeds</i>	31
Section 9.03. <i>Sales on Credit</i>	31
Section 9.04. <i>Investment Related Property</i>	32
Section 9.05. <i>Grant of Intellectual Property License</i>	32
Section 9.06. <i>[Reserved]</i>	32
Section 9.07. <i>Cash Proceeds; Deposit Accounts</i>	32

ARTICLE 10

Intercreditor

Section 10.01. <i>Turnover</i>	33
Section 10.02. <i>Similar Liens and Agreements; Agreement to Cooperate</i>	34
Section 10.03. <i>Bailee for Perfection</i>	35
Section 10.04. <i>Exercise of Remedies</i>	36
Section 10.05. <i>Voting; Amendments</i>	38
Section 10.06. <i>Automatic Release of Liens Securing Junior Obligations</i>	42
Section 10.07. <i>No Additional Rights for the Grantors Hereunder</i>	42
Section 10.08. <i>Actions Upon Breach</i>	42
Section 10.09. <i>Application of Proceeds of Collateral</i>	43
Section 10.10. <i>Payments</i>	45
Section 10.11. <i>Effect of Refinancing</i>	46

ARTICLE 11

Purchase Right

Section 11.01. <i>Purchase Right</i>	46
Section 11.02. <i>Purchase Notice</i>	47
Section 11.03. <i>Purchase Price</i>	48
Section 11.04. <i>Purchase Closing</i>	48
Section 11.05. <i>Actions After Purchase Closing</i>	48

Section 11.06. <i>No Recourse or Warranties; Defaulting Creditors</i>	49
ARTICLE 12	
Agency	
Section 12.01. <i>First Out Agents</i>	50
Section 12.02. <i>Second Out Term Agent</i>	50
ARTICLE 13	
Continuing Security Interest; Transfer Of Loans	50
ARTICLE 14	
Standard Of Care; Agents May Perform	51
ARTICLE 15	
Miscellaneous	51
Section 15.01. <i>Amendment and Restatement; Preservation of Liens</i>	52
Section 15.02. <i>Subordination Agreement</i>	52
Section 15.03. <i>Notices; No Waiver; Rights Cumulative; Etc</i>	52
Section 15.04. <i>Successors and Assigns; Entire Agreement, Etc</i>	53
Section 15.05. <i>Consensual Plan Treatment in Respect of the Second Out Term Credit Obligations</i>	53
Section 15.06. <i>Counterparts</i>	53
Section 15.07. <i>GOVERNING LAW</i>	54
Section 15.08. <i>JURISDICTION; VENUE; SERVICE; WAIVER OF JURY TRIAL</i>	54

SCHEDULE 5.1 — GENERAL INFORMATION
SCHEDULE 5.2 — COLLATERAL IDENTIFICATION
SCHEDULE 5.5 — GOVERNMENT RECEIVABLES; LOCATION OF EQUIPMENT AND
INVENTORY
SCHEDULE 6.9 — AS-EXTRACTED COLLATERAL

EXHIBIT A — PLEDGE SUPPLEMENT
EXHIBIT B — TRADEMARK SECURITY AGREEMENT
EXHIBIT C — COPYRIGHT SECURITY AGREEMENT
EXHIBIT D — PATENT SECURITY AGREEMENT

This **DEBTOR-IN-POSSESSION PLEDGE AND SECURITY AND INTERCREDITOR AGREEMENT**, dated as of July 11, 2012 (this “**Agreement**”), between PATRIOT COAL CORPORATION (the “**Borrower**”), each of the subsidiaries of the Borrower party hereto from time to time, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (together with the Borrower, the “**Grantors**”), CITIBANK, N.A. as administrative collateral agent for the Revolving Secured Parties (as defined in the First Out Credit Agreement referenced below) (in such capacity, together with its successors and permitted assigns, the “**Revolving Agent**”) and as administrative and collateral agent for the Term Secured Parties (as defined in the First Out Credit Agreement referenced below) (in such capacity, together with its successors and permitted assigns, the “**First Out Term Agent**”) and, BANK OF AMERICA, N.A., as administrative and collateral agent for the Second Out Secured Parties (as defined in the Second Out Credit Agreement referenced below) (in such capacity, together with its successors and permitted assigns, the “**Second Out Term Agent**”, and together with the First Out Term Agent, the “**Term Agents**”), ~~and BANK OF AMERICA, N.A., in its capacity as Collateral Sub Agent (as defined below).~~

RECITALS:

WHEREAS, reference is made to that certain Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of the date hereof (as it may be amended, restated, refinanced, replaced, supplemented or otherwise modified from time to time, the “**First Out Credit Agreement**”), by and among the Borrower, certain Subsidiaries of the Borrower, the lenders under the revolving facility party thereto from time to time (the “**Revolving Lenders**”), the lenders under the term loan facility (the “**First Out Term Lenders**) Citibank, N.A., in its capacity as administrative agent, the Revolving Lenders and the First Out Term Lenders.

WHEREAS, reference is made to that certain Amended and Restated Superpriority Secured Debtor-in-Possession Credit Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Second Out Credit Agreement**”), by and among Borrower, the lenders party thereto from time to time (the “**Second Out Term Lenders**”), Bank of America N.A., in its capacity as administrative agent (the “**Second Out Term Agent**”) and a letter of credit issuer thereunder.

WHEREAS, subject to the terms and conditions of the ~~First Out~~ Credit AgreementAgreements, certain Grantors have or may from time to time enter into one or more Secured Hedge Agreements with one or more Hedge Banks and one or more Secured Cash Management Agreements with one or more Cash Management Banks;

WHEREAS, in consideration of (i) the extensions of credit and other accommodations of the Revolving Lenders, the First Out Lenders, Hedge Banks and Cash Management Banks as set forth in the First Out Credit Agreement, the First Out Secured Hedge Agreements and First Out Secured Cash Management Agreements, respectively, and (ii) the extensions of credit and other accommodations of the Second Out Term Lenders, Hedge Banks and Cash Management Banks as set forth in the Second Out Credit Agreement, the Second Out Secured Hedge Agreements and the Second Out Cash Management Agreements, respectively, each

Grantor has agreed to supplement the Orders, without in any way diminishing or limiting the effect of the Orders or the security interests, pledge and Liens granted thereunder, and secure such Grantor's obligations (x) under the ~~First Out Loan Documents, the Secured Hedge Agreements and the Secured Cash Management Agreements~~ and (y) under the Second Out Loan Documents, in each case, as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and each Agent agrees as follows:

ARTICLE 1
DEFINITIONS; GRANT OF SECURITY

Section 1.01. *General Definitions.* In this Agreement, the following terms shall have the following meanings:

"Additional Grantors" shall have the meaning assigned in Section 7.03.

"Agents" shall mean, collectively, the Term Agents and the Revolving Agent.

"Agreement" shall have the meaning set forth in the preamble.

"Borrower" shall have the meaning set forth in the preamble.

"Cash Collateral" shall have the meaning given to such term in the First Out Credit Agreement.

~~**"Cash Management Banks"** shall have the meaning given to such term in the First Out Credit Agreement.~~

"Collateral Records" shall mean books, records, ledger cards, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer software and related documentation, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

"Collateral Support" shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"Collateral" shall mean, collectively, the Revolving Collateral and the Term Collateral.

"Control" shall mean: (1) with respect to any Deposit Accounts, control within the meaning of Section 9-104 of the UCC, (2) with respect to any Securities Accounts, Security Entitlements, Commodity Contract or Commodity Account, control within the meaning of Section 9-106 of the UCC, (3) with respect to any Uncertificated Securities, control within the meaning of Section 8-106(c) of the UCC, (4) with respect to any Certificated Security, control within the meaning of Section 8-106(a) or (b) of the UCC, (5) with respect to any Electronic

Chattel Paper, control within the meaning of Section 9-105 of the UCC, (6) with respect to Letter of Credit Rights, control within the meaning of Section 9-107 of the UCC and (7) with respect to any “transferable record”(as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), control within the meaning of Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in the jurisdiction relevant to such transferable record.

“**Copyright Licenses**” shall mean any and all agreements, licenses and covenants (whether or not in writing) providing for the granting of any right in or to any Copyright or otherwise providing for a covenant not to sue with respect to any Copyright (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Copyright Licenses” (as such schedule may be amended or supplemented from time to time).

“**Copyrights**” shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and all rights in and to databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered and whether or not the underlying works of authorship have been published, moral rights, reversionary interests, termination rights, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications required to be listed in Schedule 5.2(II) under the heading “Copyrights” (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) the rights to sue or otherwise recover for past, present and future infringements thereof, and (iv) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit now or hereafter due and/or payable with respect thereto, and (v) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“**Default Remedies**” means (a) all rights and remedies of any Secured Party in respect of (i) any Collateral, the exercise of which is contingent upon default or Event of Default (however defined) and (ii) any Collateral constituting Real Property, including, for the avoidance of doubt, all rights of the First Out Term Secured Parties under Article 8 of the First Out Credit Agreement and all rights of the Second Out Secured Parties under Article 7 of the Second Out Credit Agreement, in each case, whether arising pursuant to the First Out Credit Agreement, the Second Out Credit Agreement, the First Out Collateral Documents, the Second Out Collateral Documents, the Orders or applicable law and (b) all rights of first refusal and all credit bid rights of any Secured Party with respect to any sales or dispositions of Collateral, whether arising pursuant to the First Out Credit Agreement, the Second Out Credit Agreement, the First Out Collateral Documents, the Second Out Collateral Documents, the Orders or applicable law. “Default Remedies” shall include any agreement by the First Out Term Agent or Revolving Agent with any Grantor pursuant to which such Grantor has agreed to commence the sale of any Collateral under Section 363 of the Bankruptcy Code in lieu of exercising secured creditor remedies.

“**Defaulting Creditor**” shall have the meaning given to such term in Section 11.05(c).

“**Disposition**” shall have the meaning given to such term in the First Out Credit Agreement.

“**Existing Credit Agreement**” means that certain Amended and Restated Credit Agreement dated as of May 5, 2010 among the Borrower, the lenders party thereto and Bank of America, N.A., as administrative agent (as amended by Amendment No. 1 dated as of January 6, 2011 and Amendment No. 2 dated as of January 31, 2012, and as otherwise amended, restated, supplemented or otherwise modified).

“**Existing Credit Security Agreement**” shall mean that certain Pledge and Security Agreement, dated as of October 31, 2007, among the grantors named therein and Bank of America, N.A., as administrative agent (as amended, supplemented or otherwise modified from time to time).

~~“**Existing Security Agreement**” shall have the meaning given to such term in Section 15.05.~~

“**First Out Collateral Documents**” shall mean the “Collateral Documents” as defined in the First Out Credit Agreement.

“**First Out Credit Agreement**” shall have the meaning set forth in the recitals.

~~“**First Out Loan Documents**” shall mean the “Loan Documents” as defined in the First Out Credit Agreement.~~

“**First Out Secured Cash Management Agreements**” shall mean the “Secured Cash Management Agreements” as defined in the First Out Credit Agreement.

“**First Out Secured Hedge Agreements**” shall mean the “Secured Hedge Agreements” as defined in the First Out Credit Agreement.

“**First Out Term Agent**” shall have the meaning set forth in the preamble; *provided*, that after the First Out Term Termination Date, references to the First Out Term Agent shall be deemed to be references to the Revolving Agent, and after the Revolving Termination Date such references shall be deemed to be references to the Second Out Term Agent, in each case, where the context requires.

“**First Out Term Lenders**” shall have the meaning set forth in the recitals.

“**First Out Term Obligations**” shall mean the “Term Facility Obligations” as such term is defined in the First Out Credit Agreement.

“**First Out Term Secured Parties**” shall mean “Term Secured Parties” as such term is defined in the First Out Credit Agreement.

“**First Out Termination Date**” shall mean the date on which all First Out Term Obligations are Paid in Full.

“**Grantors**” shall have the meaning set forth in the preamble.

~~“**Hedge Banks**” shall have the meaning given to such term in the First Out Credit Agreement.~~

“**Insurance**” shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether any Agent is the loss payee thereof) and (ii) any key man life insurance policies.

“**Intellectual Property Licenses**” shall mean, collectively, the Copyright Licenses, Patent Licenses, Trademark Licenses and Trade Secret Licenses.

“**Intellectual Property**” shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under the United States or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses, and the right to sue or otherwise recover for past, present and future infringement, misappropriation, dilution or other impairment or violation thereof, including the right to receive all Proceeds therefrom, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

“**Investment Accounts**” shall mean the Securities Accounts and Commodities Accounts.

“**Investment Related Property**” shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

“**Majority Holder**” shall have the meaning set forth in Article 12.

“**Material Contracts**” means the Related Documents (as defined in the First Out Credit Agreement).

“**Material Intellectual Property**” shall mean any Intellectual Property included in the Collateral which is material to the business of any Grantor.

“**Maximum First Out Principal Amount**” means, as of any date of determination, (a) \$525,000,000 **minus** (b) the sum of all principal payments of Term Loans (including voluntary and mandatory prepayments) and permanent reductions of Revolving Credit Commitments after the date hereof **plus** (c) interest, fees, costs, expenses, indemnities and other amounts payable pursuant to the terms of the First Out Loan Documents or as contemplated by the Syndication Letter, whether or not the same are added to the principal amount of the First Out Term Obligations and including the same as would accrue and

become due but for the commencement of the Cases, whether or not such amounts are allowed or allowable in whole or in part by the Bankruptcy Court.

“**Obligations**” shall mean, collectively, the Revolving Obligations and the Term Obligations.

“**Paid in Full**” or “**Payment in Full**” means, with respect to any Obligations, that: (a) all of such Obligations (other than contingent indemnification obligations for which no underlying claim has been asserted) have been paid, performed or discharged in full (with all such Obligations consisting of monetary or payment obligations having been paid in full in cash), (b) no Person has any further right to obtain any loans, letters of credit, bankers’ acceptances, or other extensions of credit under the documents relating to such Obligations and (c) any and all letters of credit, bankers’ acceptances or similar instruments issued under such documents have been cancelled and returned (or backed by stand-by guarantees or cash collateralized) in accordance with the terms of such documents.

“**Patent Licenses**” shall mean all agreements, licenses and covenants (whether or not in writing) providing for the granting of any right in or to any Patent or otherwise providing for a covenant not to sue with respect to any Patent (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Patent Licenses” (as such schedule may be amended or supplemented from time to time).

“**Patents**” shall mean all United States and foreign patents and certificates of invention, inventions or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application required to be listed in Schedule 5.2(II) under the heading “Patents” (as such schedule may be amended or supplemented from time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all improvements thereto, (iv) all rights to sue or otherwise recover for past, present and future infringements thereof, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“**Permitted Second Out Obligation Payments**” means (a) regularly scheduled payments of accrued interest and fees on the Second Out Term Obligations due and payable on a non-accelerated basis and payments on the Second Out Secured Hedge Agreements, in each case, in accordance with the terms of the Second Out Loan Documents, (b) mandatory prepayments of principal together with all accrued and unpaid interest and fees to the date of such repayment on the amount prepaid on the Second Out Term Obligations in accordance with the terms of the Second Out Credit Agreement and Section 2.06(b)(v) or 2.06(b)(vi) of the First Out Credit Agreement; provided, however, that no mandatory prepayments of principal permitted pursuant to this clause (b) in ~~accordance with the terms of Section 2.06(b)(v) of the First Out Credit Agreement~~ respect of proceeds of Term Collateral shall be applied to the Second Out Term Obligations during the continuance of any Event of Default (as defined in the First Out Credit Agreement) or upon the sale of all or substantially all the

assets of the Grantors and (c) payments of costs, expenses and indemnities of the Second Out Term Agent payable or reimbursable by the Loan Parties under the Second Out Loan Documents.

“Pledge Supplement” shall mean an agreement substantially in the form of Exhibit A hereto.

“Pledge Supplement” shall mean any supplement to this agreement in substantially the form of Exhibit A.

“Pledged Debt” shall mean all indebtedness for borrowed money owed to such Grantor, whether or not evidenced by any Instrument, including, without limitation, all indebtedness described on Schedule 5.2(I) under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments, if any, evidencing such any of the foregoing, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing.

“Pledged Equity Interests” shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and any other participation rights, title or interests in any equity or profits of any business entity, whether or not certificated, including, without limitation, any trust.

“Pledged LLC Interests” shall mean all rights, title and interests in any limited liability company and each series thereof including, without limitation, all limited liability company interests listed on Schedule 5.2(I) under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time), all rights, title and interest under any limited liability company agreement and the certificates, if any, representing such limited liability company interests and any right, title and interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

“Pledged Partnership Interests” shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 5.2(I) under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time), and all right, title and interest in, to and under any partnership agreement and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

“**Pledged Stock**” shall mean all shares of capital stock owned by such Grantor, including, without limitation, all shares of capital stock described on Schedule 5.2(I) under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

“**Purchase Date**” means the date on which a purchase pursuant Article 11 is consummated.

“**Purchase Event**” shall have the meaning given to such term in Section 11.01.

“**Purchase Notice**” shall have the meaning given to such term in Section 11.02.

“**Purchase Obligations**” shall have the meaning given to such term in Section 11.01(a)(ii).

“**Purchase Price**” shall have the meaning given to such term in Section 11.03(a)(ii).

“**Purchasing Creditors**” shall have the meaning given to such term in Section 11.02(a).

“**Real Property Lease**” shall have the meaning given to such term in the First Out Credit Agreement.

“**Real Property**” shall have the meaning given to such term in the First Out Credit Agreement.

“**Receivables Records**” shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors, secured parties or agents thereof, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

“**Receivables**” shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or

evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivable Records.

"Refinance", "Refinancings" and "Refinanced" means, in respect of the First Out Obligations or the Revolving Obligations, to issue other indebtedness in exchange or replacement for such Obligations, in whole or in part.

"Revolving Agent" shall have the meaning set forth in the preamble; provided, that after the Revolving Termination Date, references to the Revolving Agent shall be deemed to be references to the First Out Term Agent, and after the First Out Termination Date such references shall be deemed to be references to the Second Out Term Agent, in each case, where the context requires.

"Revolving Cash Collateral Account" shall mean any account established by the Revolving Agent that is a "Revolving Collateral Account" as such term is defined in the First Out Credit Agreement.

"Revolving Cash Proceeds" shall have the meaning assigned in Section 9.07.

"Revolving Collateral" shall have the meaning given to such term in Section ~~3.01~~2.01.

"Revolving Liens" shall mean, collectively, the fully perfected Liens on the Revolving Collateral to secure securing the Revolving Obligations, subject in priority only to Liens permitted under the First Out Credit Agreement and the Interim Order (and, when applicable, the Final Order).

"Revolving Obligations" shall mean all "Revolving Credit Facility Obligations" and all "Related Obligations" as such terms are defined in the First Out Credit Agreement.

"Revolving Secured Parties" shall have the meaning given to such term in the First Out Credit Agreement.

"Revolving Termination Date" shall mean the date on which all Revolving Obligations have been Paid in Full.

"Second Out Collateral Documents" shall mean the "Collateral Documents" as defined in the Second Out Credit Agreement.

"Second Out Credit Agreement" shall have the meaning set forth in the recitals.

"Second Out Loan Documents" shall mean the "Loan Documents" as defined in the Second Out Credit Agreement.

"Second Out Secured Cash Management Agreements" shall mean the "Secured Cash Management Agreements" as such term is defined in the Second Out Credit Agreement.

“Second Out Secured Hedge Agreements” shall mean the “Secured Hedge Agreements” as such term is defined in the Second Out Credit Agreement.

“Second Out Term Agent” shall have the meaning set forth in the preamble.

“Second Out Term Obligations” shall mean the “Obligations” as such term is defined in the Second Out Credit Agreement.

“Second Out Term Secured Parties” shall mean the “Secured Parties” as defined in the Second Out Credit Agreement.

“Second Out Termination Date” shall mean the date on which all Second Out Term Obligations are Paid in Full.

~~“Secured Cash Management Agreements” shall have the meaning given to such term in the First Out Credit Agreement.~~

~~“Secured Hedge Agreements” shall have the meaning given to such term in the First Out Credit Agreement.~~

“Secured Parties” shall mean, collectively, the Term Secured Parties and the Revolving Secured Parties.

“Securities Act” shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

“Securities” shall mean any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Standstill Period” shall have the meaning given to such term in Section 10.04(c)(ii)(A).

“Syndication Letter” shall mean that certain Syndication Letter dated as of the date hereof by and between Citigroup Global Markets Inc., Barclays Bank PLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and the Borrower.

“Term Agents” shall have the meaning set forth in the preamble.

“Term Cash Collateral” shall mean any cash or Cash Equivalents in any Term Cash Collateral Account.

“**Term Cash Collateral Account**” shall mean any account established by the Revolving Agent that is a “Term ~~Facility~~Cash Collateral Account” as such term is defined in the First Out Credit Agreement.

“**Term Cash Proceeds**” shall have the meaning assigned in Section 9.07.

“**Term Collateral**” shall have the meaning given to such term in Section ~~3.03~~2.03.

“**Term Obligations**” shall mean, collectively, the First Out Term Obligations and the Second Out Term Obligations.

“**Term Secured Parties**” shall mean the First Out Term Secured Parties and the Second Out Term Secured Parties.

“**Term Termination Date**” shall mean the date on which all Term Obligations have been Paid in Full.

“**Trade Secret Licenses**” shall mean any and all agreements (whether or not in writing) providing for the granting of any right in or to Trade Secrets (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Trade Secret Licenses” (as such schedule may be amended or supplemented from time to time).

“**Trade Secrets**” shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue or otherwise recover for past, present and future misappropriation or other violation thereof, (ii) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto; and (iii) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“**Trademark Licenses**” shall mean any and all agreements, licenses and covenants (whether or not in writing) providing for the granting of any right in or to any Trademark or otherwise providing for a covenant not to sue or permitting co-existence with respect to any Trademark (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Trademark Licenses” (as such schedule may be amended or supplemented from time to time).

“**Trademarks**” shall mean all United States, and foreign trademarks, trade names, trade dress, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, whether or not registered, and with respect to any and all of the foregoing: (i) all registrations and applications for any of the foregoing including, but not limited to, the registrations and applications required to be listed in Schedule 5.2(II) under the heading “Trademarks”(as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals

of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill of the foregoing, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

“**Type**” means either (i) Revolving Collateral or (ii) Term Collateral, as the case may be.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“**United States**” shall mean the United States of America.

“**Vehicles**” means all vehicles covered by a certificate of title law of any state.

Section 1.02. *Definitions; Interpretation.*

(a) In this Agreement, the following capitalized terms shall have the meaning given to them in the UCC (and, if defined in more than one Article of the UCC, shall have the meaning given in Article 9 thereof): Account, Account Debtor, As-Extracted Collateral, Bank, Certificated Security, Chattel Paper, Consignee, Consignment, Consignor, Commercial Tort Claims, Commodity Account, Commodity Contract, Deposit Account, Document, Entitlement Order, Equipment, Electronic Chattel Paper, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivable, Instrument, Inventory, Investment Property, Letter of Credit Right, Manufactured Home, Money, Payment Intangible, Proceeds, Record, Securities Account, Securities Intermediary, Security Certificate, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) All other capitalized terms used herein (including the recitals and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the First Out Credit Agreement (or if the context requires, the Second Out Credit Agreement). The incorporation by reference of terms defined in the First Out Credit Agreement and the Second Out Credit Agreement shall survive any termination of such agreements until this agreement is terminated as provided in Article 12 hereof. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or

matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. If any conflict or inconsistency exists between this Agreement and the First Out Credit Agreement, the First Out Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

ARTICLE 2
GRANT OF SECURITY

Section 2.01. *Grant of Security in Revolving Collateral.* In addition to the security interest set forth in the Interim Order (and, when applicable, the Final Order) and subject to Section 2.02(a), each Grantor hereby grants to (i) the Revolving Agent for the benefit of the Revolving Secured Parties, (ii) the First Out Term Agent for the benefit of the First Out Term Secured Parties and (iii) the Second Out Term Agent for the Second Out Term Secured Parties, in each case, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under the following personal property of such Grantor, in each case whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereinafter collectively referred to as the “**Revolving Collateral**”):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Deposit Accounts;
- (d) Securities Accounts, Commodities Accounts and all Commodities Contracts and Investment Property related thereto;
- (e) Money;
- (f) Receivables and Receivable Records; and
- (g) to the extent related evidencing, governing, securing or otherwise relating to the items referred to in the preceding clauses (a) through (f), General Intangibles, Documents, Instruments, and, to the extent not otherwise included above, Collateral Records, Collateral Support and Supporting Obligations; and
- (h) all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Section 2.02. *Certain Limited Exclusions to Revolving Collateral.* (a) Except as set forth in the Interim Order (and, when applicable, the Final Order), in no event shall the Revolving Collateral include or the security interests granted under Section 2.01 attach to (i) any Term Cash Collateral Account, (ii) any Proceeds of property that was Term Collateral when such Proceeds arose to the extent such Proceeds are segregated and distinguishable from

other property of such Loan Party and (ii) any assets currently securing the obligations under the Existing Credit Agreement.

(b) Notwithstanding the foregoing, the creation (other than by this Agreement or the Orders) or perfection (other than by the Orders) of pledges of or security interests in particular assets shall not be required if, and for so long as, in the reasonable judgment of the Revolving Agent, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance in respect of such assets shall be excessive in view of the benefits to be obtained by the Revolving Secured Parties therefrom.

Section 2.03. *Grant of Security in Term Collateral.* In addition to the security interest set forth in the Interim Order (and, when applicable, the Final Order) and subject to Section 2.04(a), each Grantor hereby grants to (i) the Revolving Agent for the benefit of the Revolving Secured Parties, (ii) the First Out Term Agent for the benefit of the First Out Term Secured Parties and (iii) the Second Out Term Agent for the Second Out Term Secured Parties, in each case, a security interest in and continuing lien on all of such Grantor's right, title and interest in, to and under all real and personal property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereinafter collectively referred to as the "**Term Collateral**"):

- (a) As-Extracted Collateral;
- (b) Documents;
- (c) General Intangibles (including, for the avoidance of doubt, each Material Contract);
- (d) Goods (including, without limitation, Equipment and Inventory (which, for the avoidance of doubt, shall include Coal));
- (e) Instruments;
- (f) Insurance;
- (g) Intellectual Property;
- (h) Investment Related Property;
- (i) Letter of Credit Rights;
- (j) Vehicles;
- (k) Commercial Tort Claims now or hereafter described on Schedule 5.2;
- (l) Term Cash Collateral Accounts;

(m) to the extent constituting an investment of Term Cash Collateral, General Intangibles, Documents, and Instruments;

(n) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing;

(o) all Real Property (including, for the avoidance of doubt, all Real Property Leases);

(p) all property of any Grantor held by any Term Agent or any other Term Secured Party, including all property of every description, in the possession or custody of or in transit to such Term Agent or such Term Secured Party for any purpose including safekeeping collection or pledge for the account of such Grantor or as to which Grantor might have any right or voting power; and

(q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Section 2.04. *Certain Limited Exclusions to Term Collateral.* (a) Except as set forth in the Interim Order (and, when applicable, the Final Order), in no event shall the Term Collateral include or the security interests granted under Section 2.03 hereof attach to (i) any of the outstanding capital stock of a CFC in excess of 66% of the voting power of all classes of capital stock of such CFC entitled to vote; (ii) any intent-to-use application for trademark or service mark registration filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing under Section 1(c) or Section 1(d) of the Lanham Act of a “Statement of Use” or an “Amendment to Allege Use” with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein prior to such filing would impair the validity or enforceability of any registration that issues from such intent-to-use trademark or service mark application under applicable federal law; (iii) Equipment owned by any Grantor on the date hereof or hereafter acquired that is subject to a Lien securing a purchase money obligation or Capital Lease Obligation permitted to be incurred pursuant to the provisions of the First Out Credit Agreement if the contract or other agreement in which such Lien is granted (or the documentation providing for such money obligation or Capital Lease Obligation validly prohibits the creation of any other Lien in such Equipment; (iv) any Revolving Collateral; or (v) any other assets excluded under Section 7(h) of the Interim Order (and, when applicable, the comparable section of the Final Order).

(b) Notwithstanding the foregoing, the creation (other than by this Agreement or the Orders) or perfection (other than by the Orders) of pledges of or security interests in, or the obtaining of title insurance with respect to, particular assets shall not be required if, and for so long as, in the reasonable judgment of the First Out Term Agent, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance in respect of such assets shall be excessive in view of the benefits to be obtained by the First Out Term Secured Parties therefrom; *provided* that it is hereby acknowledged that unless and until requested by the First Out Term Agent, no Grantor shall be required to take steps to

perfect the security interest granted hereunder by indicating such security interest on the certificate of title for any Vehicle or other asset that is covered by a certificate of title.

ARTICLE 3
SECURITY FOR OBLIGATIONS; PRIORITIES

Section 3.01. *Security for Obligations.*

(a) In addition to the security for payment of the Obligations to the Revolving Secured Parties provided by the Interim Order (and, when applicable, the Final Order), subject in all respects to Article 10, this Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), of, with respect to every Grantor:

- (i) Revolving Obligations;
- (ii) First Out Term Obligations; and
- (iii) Second Out Term Obligations.

(b) Without limiting the generality of the foregoing, this Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Obligations and would be owed by such Grantor or Subsidiary of the Borrower, as applicable, to any Secured Party under the First Out Loan Documents, the First Out Secured Agreements, or the Second Out Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any of the Loan Parties and other Subsidiaries of the Borrower.

Section 3.02. *Continuing Liability Under Collateral.* Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to any Agent or any Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and no Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall any Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by any Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

Section 3.03. *Lien Priorities.* (a) Each Secured Party hereby acknowledges that the other Secured Parties have been granted Liens in the Collateral to secure their respective Obligations.

(b) Notwithstanding anything to the contrary herein,

(i) the Liens of the Revolving Agent on the Revolving Collateral are first priority Liens and shall be senior in right to the Liens of the Term Agents on the Revolving Collateral, and such Liens of the Term Agents on the Revolving Collateral are second priority Liens and shall be junior to the Liens of the Revolving Agent;

(ii) the Liens of the First Out Term Agent on the Revolving Collateral are second priority liens and shall be *pari passu* in right to the Liens of the Second Out Term Agent on the Revolving Collateral, and such Liens of the Second Out Term Agent on the Revolving Collateral are second priority liens and shall be *pari passu* to the Liens of the First Out Term Agent; and

(iii) the Liens of each Agent on the Term Collateral are first priority liens and shall be *pari passu* in right to the Liens of each other Agent on the Term Collateral, and such Liens of each other Agent on the Term Collateral are and shall be *pari passu* to the Liens of each Agent.

(c) The priorities of the Liens provided in this Section 3.03 shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement, replacement or refinancing of any of the Obligations, nor by any action or inaction which any of the Secured Parties may take or fail to take in respect of the Collateral.

(d) Notwithstanding the lien priority described in Section 3.03(b), all proceeds of Collateral shall be applied to the Obligations as set forth in Section 10.09, subject to the Orders.

Section 3.04. *Contesting Liens.* Each Secured Party agrees that it will not institute or join in any contest of the validity, perfection, priority or enforceability of the Liens of the other Secured Parties in any Collateral or the enforceability of any Obligations; *provided* that nothing in this Agreement shall be construed to prevent or impair the rights of the Agents to enforce this Agreement, including the provisions hereof relating to Lien priority.

ARTICLE 4 CERTAIN PERFECTION REQUIREMENTS

Section 4.01. *Delivery Requirements.*

(a) With respect to any Certificated Securities included in the Collateral, each Grantor shall deliver, without further order from the Bankruptcy Court, to the ~~Collateral Sub-Agent~~First Out Term Agent the Security Certificates evidencing such Certificated Securities duly indorsed by an effective indorsement (within the meaning of Section 8-107 of the UCC), or accompanied by share transfer powers or other instruments of transfer duly endorsed by such an effective endorsement, in each case, to the ~~Collateral Sub-Agent~~First Out Term Agent

or in blank, to the extent such Security Certificates and instruments are not in possession of the ~~Collateral Sub Agent~~First Out Term Agent. In addition, each Grantor shall cause any certificates evidencing any Pledged Equity Interests, including, without limitation, any Pledged Partnership Interests or Pledged LLC Interests, to be similarly delivered to the ~~Collateral Sub Agent~~First Out Term Agent regardless of whether such Pledged Equity Interests constitute Certificated Securities.

(b) With respect to any Instruments or Tangible Chattel Paper included in the Collateral, each Grantor shall deliver to the ~~Collateral Sub Agent~~First Out Term Agent all such Instruments or Tangible Chattel Paper to the ~~Collateral Sub Agent~~First Out Term Agent duly indorsed in blank.

Section 4.02. *[Reserved]*.

Section 4.03. *Intellectual Property Recording Requirements.*

(a) In the case of any Collateral (whether now owned or hereafter acquired or created by any Grantor) consisting of U.S. patents and patent applications, upon request of any First Out Agent, such Grantor shall, without further order from the Bankruptcy Court, execute and deliver to the First Out Agents a Patent Security Agreement in substantially the form of Exhibit D hereto (or a supplement thereto) covering all such patents and patent applications in appropriate form for recordation with the U.S. Patent and Trademark Office with respect to the security interests of the First Out Agents.

(b) In the case of any Collateral (whether now owned or hereafter acquired or created by any Grantor) consisting of registered U.S. Trademarks and applications therefor, upon request of any First Out Agent, such Grantor shall, without further order from the Bankruptcy Court, execute and deliver to the First Out Agents a Trademark Security Agreement in substantially the form of Exhibit B hereto (or a supplement thereto) covering such registered U.S. Trademarks and applications therefor in appropriate form for recordation with the U.S. Patent and Trademark Office with respect to the security interests of the First Out Agents.

(c) In the case of any Collateral (whether now owned or hereafter acquired or created by any Grantor) consisting of registered U.S. Copyrights and Copyright Licenses in respect of registered U.S. Copyrights for which any Grantor is the exclusive licensee, upon request of any First Out Agent, such Grantor shall, without further order from the Bankruptcy Court, execute and deliver to the First Out Agents a Copyright Security Agreement in substantially the form of Exhibit C hereto (or a supplement thereto) covering such Copyrights and Copyright Licenses in appropriate form for recordation with the U.S. Copyright Office with respect to the security interests of the First Out Agents.

Section 4.04. *Other Actions.* Each Grantor consents to the grant by, each other Grantor of a Lien in all Investment Related Property to each First Out Agent and without limiting the generality of the foregoing, consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the applicable First Out Agent or its designee following an Event of Default and to the substitution of the applicable First Out Agent or its

designee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Each Grantor hereby represents and warrants, on the Closing Date and upon the date of each Credit Extension, that:

Section 5.01. *Grantor Information & Status.*

(a) Schedule 5.1(A) & (B) (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings: (1) the full legal name of such Grantor, (2) all trade names or other names under which such Grantor currently conducts business, (3) the type of organization of such Grantor, (4) the jurisdiction of organization of such Grantor, (5) its organizational identification number, if any, and (6) the jurisdiction where the chief executive office or its sole place of business (or the principal residence if such Grantor is a natural person) is located.

(b) except as provided on Schedule 5.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if such Grantor is a natural person) or its corporate structure in any way (*e.g.*, by merger, consolidation, change in corporate form or otherwise) and has not done business under any other name, in each case, since November 1, 2007;

(c) it has not since November 1, 2007 become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated; and

(d) no Grantor is a “transmitting utility” (as defined in Section 9-102(a)(80) of the UCC).

Section 5.02. *Collateral Identification, Special Collateral.*

(a) Schedule 5.2 (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings all of such Grantor’s: (1) Pledged Equity Interests, (2) Pledged Debt, (3) Securities Accounts, (4) Deposit Accounts, (5) Commodity Contracts, (6) United States registrations of Patents, Trademarks, and Copyrights owned by each Grantor, (7) exclusive Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses, (8) Commercial Tort Claims having a value in excess of \$100,000, (9) Letter of Credit Rights, (10) the name and address of any warehouseman, bailee or other third party in possession of any Inventory, Equipment and other tangible personal property having a value in excess of \$500,000; and (11) Material Contracts;

(b) none of the Collateral constitutes, or is the Proceeds of, (1) Farm Products, (2) Manufactured Homes, (3) Health-Care-Insurance Receivables; (4) timber to be cut, or (5) aircraft, aircraft engines, satellites, ships or railroad rolling stock. No material portion of the

Collateral consists of Vehicles or other goods subject to a certificate of title statute of any jurisdiction; and

(c) all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

Section 5.03. *Ownership of Collateral and Absence of Other Liens.*

(a) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral free and clear of any and all Liens, rights or claims of all other Persons, including, without limitation, liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person other than the security interest created under this Agreement or by the Interim Order (or, when applicable, the Final Order), or any Liens permitted by Section 7.01 of the First Out Credit Agreement; and

(b) other than the financing statements filed in favor of the Second Out Term Agent, no effective financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (w) any financing statement filed in favor of any Agent pursuant to this Agreement, (x) financing statements for which duly authorized proper termination statements have been delivered to the applicable Agent for filing and (y) financing statements filed in connection with Liens permitted by Section 7.01 of the First Out Credit Agreement.

Section 5.04. *Status of Security Interests.*

(a) Upon and subject to the entry of the Interim Order, each security interest created hereunder constitutes a legal, valid and perfected security interest in the Term Collateral or the Revolving Collateral, as applicable, to the extent set forth in the Interim Order (and, when applicable, the Final Order).

(b) Upon entry of the Interim Order (and, when applicable, the Final Order), no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for (i) the grant by such Grantor (except Patriot Ventures LLC) of the security interests granted hereunder or for the execution, delivery or performance of this Agreement by such Grantor (except Patriot Ventures LLC), (ii) the perfection or maintenance of the security interests created hereunder (including the priority of Liens set forth in Section 3.03(b)) or (iii) the exercise by the applicable First Out Agent of its voting or other rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement, except as set forth above and as may be required in connection with the disposition of any portion of the Pledged Equity Interests by laws affecting the offering and sale of securities generally.

Section 5.05. *Goods & Receivables.*

(a) except as set forth on Schedule 5.5 (as such schedule may be amended or supplemented from time to time), none of the Account Debtors in respect of any Receivable is

the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign;

(b) *[Reserved]*; and

(c) other than any Inventory or Equipment in transit, all of the Equipment and Inventory having a value in excess of \$500,000 included in the Collateral is located only at the locations specified in Schedule 5.5 (as such schedule may be amended or supplemented from time to time).

Section 5.06. *Pledged Equity Interests, Investment Related Property.*

(a) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens (except the security interest created by this Agreement, the Interim Order (and the Final Order, when applicable), rights or claims of other Persons and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests; and

(b) the Pledged Partnership Interests and the Pledged LLC Interests (i) are not dealt in or traded on securities exchanges or in securities markets and (ii) are not “investment company securities” (as defined in Section 8-103(b) of the Uniform Commercial Code).

Section 5.07. *Intellectual Property.*

(a) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 5.2(II) (as such schedule may be amended or supplemented from time to time), and except to the extent that it would not cause a Material Adverse Effect, owns or has the valid right to use and, where Grantor does so, sublicense others to use, all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, except for the security interests created under this Agreement, by the Interim Order (and, when applicable, the Final Order) or, in the case of priority only, Liens permitted by Section 7.01 of the First Out Credit Agreement (as each may be amended or supplemented from time to time);

(b) except to the extent any such occurrence could not reasonably be expected to cause a Material Adverse Effect, all Intellectual Property owned by Grantor is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, nor, in the case of issued Patents, is any of such Intellectual Property the subject of a reexamination proceeding, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every of its registrations and applications of Copyrights, Patents and Trademarks in full force and effect;

(c) to the best of such Grantor’s knowledge, all Intellectual Property owned by such Grantor is valid and enforceable; no holding, decision, ruling, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity, enforceability or scope of, such Grantor’s right to register, or such Grantor’s rights to own or use, any Intellectual Property and no such action or proceeding is pending or,

to the best of such Grantor's knowledge, threatened in writing against Grantor (except, in each case, for routine office actions or similar proceedings in the U.S. Patent and Trademark Office or U.S. Copyright office or similar administrative authorities);

(d) all registrations and applications for Copyrights, Patents and Trademarks owned by each Grantor are standing in the name of each Grantor, and none of the material Trademarks, Patents, Copyrights or Trade Secrets owned by each Grantor has been exclusively licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 5.2 (II) (as each may be amended or supplemented from time to time), and all exclusive Copyright Licenses for registered copyrightable works to which Grantor is the licensee have been properly recorded in the U.S. Copyright Office;

(e) except to the extent that the failure to do so could not reasonably be expected to cause a Material Adverse Effect, each Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights, in each case, consistent with industry standards;

(f) each Grantor has taken commercially reasonable steps to protect the confidentiality of its material Trade Secrets in accordance with industry standards;

(g) each Grantor uses reasonable standards of quality in the manufacture, distribution, and sale of all products sold and in the provision of all services rendered under or in connection with all Trademarks of such Grantor and has taken reasonable action to ensure that all licensees of the Trademarks owned by such Grantor use such reasonable standards of quality;

(h) to the knowledge of each Grantor, the conduct of such Grantor's business does not infringe upon, misappropriate, dilute or otherwise violate any Intellectual Property right of any other Person; no claim has been made, is pending or, to the knowledge of each Grantor, is threatened in writing against Grantor, alleging that the use of any Intellectual Property owned or used by such Grantor infringes upon, dilutes, misappropriates or otherwise violates the Intellectual Property of any other Person, and no demand that such Grantor enter into a license or co-existence agreement or become a defendant in Intellectual Property litigation has been made in writing against such Grantor but not resolved;

(i) the best of each Grantor's knowledge, no other Person is infringing upon, misappropriating, diluting or otherwise violating any rights in any Intellectual Property owned by such Grantor; and

(j) no settlement or consents, covenants not to sue, co-existence agreements, non-assertion assurances, or releases have been entered into by such Grantor in a manner that could materially adversely affect such Grantor's rights to own, license or use any Material Intellectual Property.

ARTICLE 6 COVENANTS AND AGREEMENTS

Each Grantor hereby covenants and agrees that:

Section 6.01. *Grantor Information & Status.*

(a) Without limiting any prohibitions or restrictions on mergers or other transactions as permitted by in the First Out Credit Agreement, it shall not change such Grantor's name, identity, corporate structure (e.g. by merger, consolidation, change in corporate form or otherwise), sole place of business (or principal residence if such Grantor is a natural person), chief executive office, type of organization or jurisdiction of organization or establish any trade names unless it shall have (a) notified the Agents in writing at least thirty (30) days prior to any such change or establishment (or such lesser period of time as agreed by the Agents), identifying such new proposed name, identity, corporate structure, sole place of business (or principal residence if such Grantor is a natural person), chief executive office, jurisdiction of organization or trade name and providing such other information in connection therewith as the Term Agents may reasonably request and (b) taken all actions necessary or advisable to maintain the continuous validity, perfection and priority of the Agents' security interests in the applicable Collateral granted or intended to be granted and agreed to hereby.

Section 6.02. *Collateral Identification; Special Collateral.*

(a) in the event that it hereafter acquires any Collateral of a type described in Section 5.02(b) hereof, it shall promptly notify the Term Agents thereof in writing and take such actions and execute such documents and make such filings all at Grantor's expense as the Term Agents may reasonably request in order to ensure that the First Out Term Agent has a valid, perfected, first priority security interest in such Collateral and the Second Out Term Agent has a valid, perfected second priority interest in such Collateral, in each case subject to any Liens permitted by Section 7.01 of the First Out Credit Agreement.

(b) in the event that it hereafter acquires or has any Commercial Tort Claim the value of exceeds \$100,000 it shall deliver to the Term Agents a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

Section 6.03. *Ownership of Collateral and Absence of Other Liens.*

(a) except for the security interests created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, other than Liens permitted by Section 7.01 of the First Out Credit Agreement, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(b) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify the Term Agents in writing of any event that may have a Material Adverse Effect on the value of the Collateral, the ability of any Grantor or any Term Agent to dispose of the Collateral, or the rights and remedies of any Term Agent in relation thereto, including, without limitation, the levy of any legal process against any material portion of the Collateral; and

(c) it shall not sell, transfer or assign (by operation of law or otherwise) or exclusively license to another Person any Collateral except as otherwise permitted by the First Out Credit Agreement.

Section 6.04. *Status of Security Interests.*

(a) Subject to the limitations set forth in subsection (b) of this Section 6.04, each Grantor shall maintain the respective security interests of the Agents hereunder in the applicable Collateral as valid, perfected, Liens (subject only to Liens permitted by Section 7.01 of the First Out Credit Agreement) having the priorities specified in Section 3.03(b).

(b) Notwithstanding the foregoing, no Grantor shall be required to take any action to perfect any Collateral that can only be perfected by (i) Control or (ii) filings with registrars of motor vehicles or similar governmental authorities with respect to goods covered by a certificate of title, in each case except and until requested by any First Out Agent and except as and to the extent specified in Article 4 hereof.

Section 6.05. *Goods & Receivables.*

(a) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the First Out Term Agent;

(b) if any Equipment or Inventory having a value of \$500,000 or more is in possession or control of any warehouseman, bailee or other third party (other than a Consignee under a Consignment for which such Grantor is the Consignor), each Grantor shall join with the Term Agents in notifying the third party of the Term Agents' security interests and using its commercially reasonable efforts to obtain the consent of such third party to permit the Term Agents to have access to Equipment or Inventory for purposes of inspecting such Collateral or, following an Event of Default, to remove same from such premises if the applicable Term Agent so elects; and with respect to any Goods subject to a Consignment for which such Grantor is the Consignor, Grantor shall, at the reasonable request of the First Out Term Agent, file appropriate financing statements against the Consignee and take such other action as may be necessary to ensure that the Grantor has a first priority perfected security interest in such Goods;

(c) *[Reserved]*;

(d) following and during the continuation of an Event of Default and notice to the appropriate Grantor, the Revolving Agent shall have the right at any time to notify, or require any Grantor to notify, any Account Debtor of the Revolving Agent's security interest in the Receivables and any Supporting Obligation and, in addition, the Revolving Agent may: (1) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Revolving Agent; (2) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Revolving Agent; and (3)

enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Revolving Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Revolving Agent if required, in the Collateral Account maintained under the sole dominion and control of the Revolving Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Revolving Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon.

Section 6.06. Pledged Equity Interests, Investment Related Property.

(a) Except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Pledged Equity Interest or other Investment Related Property, upon the merger, consolidation, liquidation or dissolution of any issuer of any Pledged Equity Interest or Investment Related Property, then (a) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (b) such Grantor shall immediately take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control of the applicable Term Agent over such Investment Related Property (including, without limitation, delivery thereof to the applicable Term Agent) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the applicable Term Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the applicable Term Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest.

(b) Voting.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the First Out Credit Agreement; provided, no Grantor shall exercise or refrain from exercising any such right if such action could reasonably be expected to have a material adverse effect on the value of the Investment Related Property or any part thereof; and

(ii) Upon the occurrence and during the continuation of an Event of Default and upon two (2) Business Days prior written notice from the applicable Term Agent (and after the Term Termination Date, the Revolving Agent) to such Grantor of the applicable Term Agent's intention to exercise such rights:

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the applicable Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit the applicable Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the applicable Agent all necessary proxies, dividend payment orders and other instruments as the applicable Agent may from time to time reasonably request and (2) each Grantor acknowledges that the applicable Agent may utilize the power of attorney set forth in Section 8.01.

(c) except as expressly permitted by the First Out Credit Agreement, without the prior written consent of the applicable Term Agent, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any Investment Related Property or adversely affects the validity, perfection or priority of the Term Agents' security interests, (b) permit any issuer of any Pledged Equity Interest to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer, (c) other than as permitted under the First Out Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of their assets, or (d) waive any default under or breach of any terms of organizational document relating to the issuer of any Pledged Equity Interest or the terms of any Pledged Debt;

(d) except as expressly permitted by the First Out Credit Agreement, without the prior written consent of the applicable Term Agent, it shall not permit any issuer of any Pledged Equity Interest to merge or consolidate unless (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under Section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, (ii) all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent Grantor; provided that if the surviving or resulting Grantors upon any such merger or consolidation involving an issuer which is a CFC, then such Grantor shall only be required to pledge equity interests in accordance with Section

2.02 and (iii) Grantor promptly complies with the delivery and control requirements of Article 4 hereof; and

(e) without the prior express written consent of the applicable Term Agent, it will not agree to any election by any partnership or limited liability company to treat the Pledged Partnership Interests or Pledged LLC Interests, as applicable, as securities governed by the Uniform Commercial Code of any jurisdiction. Such Grantor will take such action as the applicable Term Agent may reasonably request in order to establish the such Term Agent's "control" (within the meaning of Section 8-106 of the Uniform Commercial Code) over such Pledged Partnership Interests or Pledged LLC Interests.

Section 6.07. *Intellectual Property.*

(a) it shall not do any act or omit to do any act whereby any of the Material Intellectual Property may lapse, or become abandoned, dedicated to the public, forfeited, or unenforceable, or which would materially adversely affect the validity, grant, or enforceability of the security interest granted therein;

(b) it shall not, with respect to any Trademarks owned by such Grantor included in the Material Intellectual Property, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall take reasonable steps necessary to insure that licensees of such Trademarks use such consistent standards of quality;

(c) it shall, within thirty (30) days of being granted an exclusive license to any registered Copyrightable work which is material to the business of Grantor, record such license, in the United States Copyright Office;

(d) it shall promptly notify the Term Agents if it knows that any item of Material Intellectual Property that Grantor owns may become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable, (c) subject to any material adverse determination or development regarding such Grantor's ownership, registration or use or the validity or enforceability of such item of Intellectual Property (including the institution of, or any such determination or development in, any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court) or (d) the subject of the imminent exercise of or any written notice of an intent to exercise any reversion or termination rights;

(e) it shall take all reasonable steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright that constitutes Material Intellectual Property owned by any Grantor, including, but not limited to, those items on Schedule 5.2 (II) (as each may be amended or supplemented from time to time);

(f) in the event that any Material Intellectual Property owned by any Grantor is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all

reasonable actions to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, if Grantor determines litigation is appropriate in its reasonable business judgment, the initiation of a suit for injunctive relief and to recover damages;

(g) it shall take reasonable steps, consistent with industry standards, to protect the secrecy of all material Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and consultants and labeling and restricting access to secret information and documents;

(h) except to the extent that the failure to do so could not reasonably be expected to cause a Material Adverse Effect, it shall use proper statutory notice in connection with its use of any of the Patents, Trademarks and Copyrights that constitute Material Intellectual Property, in each case, consistent with industry standards; and

(i) it shall continue to collect, at its own expense, all material amounts due or to become due to such Grantor in respect of the Intellectual Property or any portion thereof.

Section 6.08. *[Reserved]*;

Section 6.09. *As-Extracted Collateral.* If a Grantor shall acquire any interest in any Real Property which, to the knowledge of such Grantor, contains oil, gas, Coal or other minerals with more than a *de minimis* amount of value or any As-Extracted Collateral then, in each case, unless such Real Property containing oil, gas, Coal or other minerals or such As-Extracted Collateral is included on Schedule 6.9 hereto, such Grantor shall (i) provide notice thereof to the Term Agents within 5 Business Days of such acquisition (or such later period of time as agreed by the First Out Term Agent), together with a supplement to Schedule 6.9 reflecting such acquisition, (ii) at the reasonable request of the First Out Term Agent, deliver to the First Out Term Agent fully completed financing statement(s) in appropriate form for filing covering such As-Extracted Collateral (which financing statements shall include the name of the record owner of the real property if other than the Grantor and accurate real estate descriptions sufficient to locate such real property on the ground and enable the First Out Term Agent to record the financing statements in the appropriate real property records) and (iii) reimburse the First Out Term Agent for all related filing fees and any recording or stamp taxes due in connection with such filings.

ARTICLE 7

ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS

Section 7.01. *[Reserved]*.

Section 7.02. *Further Assurances.*

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall, without further order from the Bankruptcy Court, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that any First Out Agent may reasonably request, in order to perfect and maintain the validity, effectiveness and priority of any security interest granted hereby or to enable such

First Out Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) at any First Out Agent's request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Agents' security interests in all or any part of the Collateral; and

(ii) furnish the Agents with such information regarding the Collateral, including, without limitation, the location thereof, as any Agent may reasonably request from time to time.

(b) Each Grantor hereby authorizes the Agents to file a Record or Records, including, without limitation, financing or continuation statements, intellectual property security agreements and amendments to any of the foregoing, in any jurisdictions and with any filing offices as the First Out Agents may determine, in their sole discretion, are necessary or advisable to perfect or otherwise protect the security interests granted to the Agents herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the applicable First Out Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interests in the Collateral granted to the Agents herein, including, without limitation, describing such property as "all assets, whether now owned or hereafter acquired" or words of similar effect.

(c) Each Grantor hereby authorizes the Agents to modify this Agreement after obtaining such Grantor's signature to such modification by amending Schedule 5.2 (as such schedule may be amended or supplemented as provided in this Agreement) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

(d) Notwithstanding anything to the contrary in this Agreement, no Grantor shall be obligated to update any schedule except (i) concurrently with the delivery of the Borrower's financial statements in accordance with Section 6.01 of the First Out Credit Agreement or (ii) promptly upon the request of any First Out Agent during an Event of Default, and no default shall result from any failure to update a schedule other than in accordance with this Section 7.02(d).

Section 7.03. *Additional Grantors.* From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Pledge Supplement. Upon delivery of any such Pledge Supplement to the Agents, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of any First Out Agent not to cause any Subsidiary of Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is

or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

ARTICLE 8

AGENTS APPOINTED ATTORNEYS-IN-FACT

Section 8.01. *Power of Attorney.* Each Grantor hereby irrevocably appoints each Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, such Agent or otherwise, from time to time in such Agent's discretion to take any action and to execute any instrument by and in accordance with the Interim Order (and, when applicable, the Final Order) and without further order from the Bankruptcy Court, that the First Out Agents may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to obtain and adjust insurance required to be maintained by such Grantor or paid to the First Out Term Agent pursuant to the First Out Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to receive, endorse and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default and, after notice to the appropriate Grantor, to file any claims or take any action or institute any proceedings that the First Out Agents may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of any Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the liens and security interests granted herein in the Intellectual Property in the name of such Grantor as debtor;

(g) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Liens permitted by Section 7.01 of the First Out Credit Agreement) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the First Out Agents in its their discretion, any such payments made by any Agent to

become obligations of such Grantor to such Agent, due and payable immediately without demand; and

(h) upon the occurrence and during the continuance of any Event of Default and after notice to the appropriate Grantor generally to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though such Agent were the absolute owner thereof for all purposes, and to do, at such Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that such Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and such Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Section 8.02. *No Duty on the Part of Agents or Secured Parties.* The powers conferred on the Agents hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Agent or any Secured Party to exercise any such powers. The Agents and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

ARTICLE 9 REMEDIES

Section 9.01. *Generally.* Subject to Article 10:

(a) subject to the Orders, if any Event of Default (as defined under the First Out Credit Agreement or, after the First Out Termination Date, the Second Out Credit Agreement) shall have occurred and be continuing, the applicable Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein, in the applicable Credit Agreement or otherwise available to it at law or in equity (including under the Bankruptcy Code) and all the rights and remedies of such Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of such Agent forthwith, assemble all or part of the Collateral as directed by such Agent and make it available to such Agent at a place to be designated by such Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent such Agent deems appropriate; and

(iv) Subject to applicable law (including under the Bankruptcy Code or any Order of the Bankruptcy Court), without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of such Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as such Agent may deem commercially reasonable;

(b) any Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the such Agent, as collateral agent for and representative of the applicable Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the applicable Term Obligations as a credit on account of the purchase price for any Collateral payable by such Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, including the Bankruptcy Code or any Order entered in connection with the Cases, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agents shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agents may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for any Agent to dispose of the Collateral or any portion thereof by using internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against any Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if such Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Agents to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Agents, that the Agents have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the applicable Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way limit the rights of the Agents hereunder;

(c) each Agent may sell the Collateral without giving any warranties as to the Collateral. Each Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral; and

(d) each Agent shall have no obligation to marshal any of the Collateral.

Section 9.02. *Application of Proceeds.* Subject to Article 10 and except as expressly provided elsewhere in this Agreement, all proceeds received by any Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by such Agent against, the applicable Obligations in the order specified in Section 9.03 of the First Out Credit Agreement or Section 8.03 of the Second Out Credit Agreement, as applicable.

Section 9.03. *Sales on Credit.* If any Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by such Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, such Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

Section 9.04. *Investment Related Property.* Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the applicable Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the applicable Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the applicable Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to such Agent all such information as such Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by such Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

Section 9.05. *Grant of Intellectual Property License.* Solely for the purpose of enabling the applicable Agent, solely during the continuance of an Event of Default, to

exercise rights and remedies under Article 8 and 9 hereof at such time as such Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to such Agent, a non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient quality control provisions and inspection rights in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired or created by such Grantor, and included in the Collateral. Such license shall include, to the extent permissible under all applicable licenses, access to all media in which any above-licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

Section 9.06. *[Reserved]*.

Section 9.07. *Cash Proceeds; Deposit Accounts.* (a) In the event that the Loans under the First Out Credit Agreement have been accelerated, or prior to an acceleration, upon the request of any First Out Agent if an Event of Default shall have occurred and be continuing, in addition to the rights of the Revolving Agent specified in Section 6.05 with respect to payments of Receivables, (i) all proceeds of any Revolving Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively, “**Revolving Cash Proceeds**”) shall be held by such Grantor in trust for the Revolving Agent and (ii) all proceeds of any Term Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively “**Term Cash Proceeds**”) shall be held by such Grantor in trust for the First Out Term Agent, in each case, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the applicable First Out Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the applicable First Out Agent, if required) and held by the applicable First Out Agent in a Revolving Cash Collateral Account or a Term Cash Collateral Account, as applicable. Any Revolving Cash Proceeds received by the Revolving Agent or any Term Cash Proceeds received by the First Out Term Agent, in each case (whether from a Grantor or otherwise) may, in the sole discretion of such First Out Agent, (A) be held by such First Out Agent for the ratable benefit of the applicable Secured Parties, as collateral security for the applicable Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by such First Out Agent against the applicable First Out Term Obligations then due and owing.

(b) If any Event of Default shall have occurred and be continuing, (i) the Revolving Agent may apply the balance from any Deposit Account (except for the Term Cash Collateral Account) or instruct the bank at which any such Deposit Account is maintained to pay the balance of any such Deposit Account to or for the benefit of the Revolving Agent to be applied against the Revolving Obligations then due and owing and (ii) the First Out Term Agent may apply the balance from the Term Cash Collateral Account or instruct the bank at which any such Term Cash Collateral Account is maintained to pay the balance of such Term Cash Collateral Account to or for the benefit of the First Out Term Agent to be applied Term Obligations then due and owing.

ARTICLE 10
INTERCREDITOR

Section 10.01. *Turnover.* (a) In accordance with the Interim Order (and, when applicable, the Final Order), any Revolving Collateral or proceeds thereof received by any Term Secured Party including, without limitation, any such Revolving Collateral constituting proceeds, or any payment or distribution, that may be received by any Term Secured Party (x) in connection with the exercise of any right or remedy (including any right of setoff) with respect to the Revolving Collateral, (y) from the collection or other disposition of, or realization on, the Revolving Collateral, whether or not pursuant to the Cases or (z) in violation of this Agreement, shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the Revolving Termination Date, the Revolving Agent, for the benefit of the Revolving Secured Parties to be applied to the Revolving Obligations (unless otherwise required by law or court order), (ii) after the Revolving Termination Date but prior to the First Out Termination Date, to the First Out Term Agent, for the benefit of the First Out Term Secured Parties for application to the First Out Term Obligations (unless otherwise required by law or court order) and (iii) after the Revolving Termination Date and the First Out Termination Date, the Second Out Term Agent for application to the Second Out Term Obligations (unless otherwise required by law or court order). Each Agent shall retain and apply such amounts received pursuant to this Article 10 in accordance with this Agreement and the other First Out Loan Documents or Second Out Loan Documents, as applicable, and without any further order of the Bankruptcy Court.

(b) In accordance with the Interim Order (and, when applicable, the Final Order), any Term Collateral or proceeds thereof received by any Revolving Secured Party including, without limitation, any such Term Collateral constituting proceeds, or any payment or distribution, that may be received by any Revolving Secured Party (w) in connection with the exercise of any right or remedy (including any right of setoff) with respect to the Term Collateral, (x) in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), (y) from the collection or other disposition of, or realization on, the Term Collateral, whether or not pursuant to the Cases or (z) in violation of this Agreement, shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the First Out Termination Date, the First Out Term Agent, for the benefit of the First Out Term Secured Parties for application to the First Out Term Obligations (unless otherwise required by law or court order), (ii) after the First Out Termination Date but before the Revolving Termination Date, the Revolving Agent for application to the Revolving Obligations and (iii) after the Revolving Termination Date, the Second Out Term Agent for application to the Second Out Term Obligations (unless otherwise required by law or court order). Each Agent shall retain and apply such amounts received pursuant to this Article 10 in accordance with this Agreement and the other First Out Loan Documents and Second Out Loan Documents, as applicable, and without any further order of the Bankruptcy Court.

(c) In accordance with the Interim Order (and, when applicable, the Final Order), any Term Collateral or proceeds thereof received by any Term Secured Party including, without limitation, any such Term Collateral constituting proceeds, or any payment or distribution, that may be received by any Second Out Term Secured Party (w) in connection with the exercise of any right or remedy (including any right of setoff) with respect to the Term Collateral, (x) in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), (y) from the collection or other disposition of, or realization

on, the Term Collateral, whether or not pursuant to the Cases or (z) in violation of this Agreement, shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the First Out Termination Date, the First Out Term Agent, for the benefit of the Term Secured Parties for application to the Term Obligations (unless otherwise required by law or court order), (ii) after the First Out Termination Date but before the Revolving Termination Date, the Revolving Agent for application to the Revolving Obligations (unless otherwise required by law or court order) and (iii) after the Second Out Termination Date, the Second Out Term Agent for application to the Second Out Term Obligations (unless otherwise required by law or court order). Each Agent shall retain and apply such amounts received pursuant to this Article 10 in accordance with this Agreement and the other First Out Loan Documents and Second Out Loan Documents, as applicable, and without any further order of the Bankruptcy Court.

Section 10.02. *Similar Liens and Agreements; Agreement to Cooperate.* (a) The First Out Term Agent, the Revolving Agent and the Second Out Term Agent agree that it is their intention that the Collateral granted in favor of the First Out Term Secured Parties, the Revolving Secured Parties and the Second Out Term Secured Parties be identical (but not the Liens or the relative priorities). In furtherance of the foregoing, the Term Agents and Revolving Agent agree, subject to the other provisions of the Orders and this Agreement, to:

- (i) perform all acts required under the First Out Loan Documents, Second Out Loan Documents, this Agreement, the Orders and such other agreements as may be required;
- (ii) upon the request of the First Out Term Agent or Revolving Agent, the Second Out Term Agent shall execute and deliver such instruments to enable the First Out Term Agent or Revolving Agent to further perfect, preserve, and enforce the Liens held by or on behalf of any of the First Out Term Secured Parties or Revolving Secured Parties in the Collateral and the First Out Term Secured Obligations or Revolving Secured Obligations of all Grantors; and
- (iii) upon request by the First Out Term Agent or the Second Out Term Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Term Collateral and the identity of the respective parties obligated under the First Out Loan Documents and the Second Out Loan Documents.

(b) The parties hereto agree that, prior to the First Out Termination Date, no additional Liens shall be granted or permitted on any asset of any Grantor to secure any First Out Term Obligation, Second Out Term Obligation or Revolving Obligation unless, subject to the terms of this Agreement, immediately after giving effect to such grant or concurrently therewith, a Lien with the priority set forth herein and in the Orders shall be granted on such asset to secure the First Out Term Obligations, Second Out Term Obligations or Revolving Obligations, as applicable. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the First Out Term Secured Parties, the Second Out Term Agent, on behalf of the Second Out Secured Parties, agrees that any amounts received by or distributed to any of them pursuant to or as a result of

Liens granted in contravention of this Section 10.02(b) shall be subject to the terms of this Agreement.

Section 10.03. *Bailee for Perfection.* (a) Each Term Agent agrees to hold that part of the Term Collateral that is in its possession or control (or in the possession or control of its agents or bailees), including any Collateral held by the Second Out Term Agent currently securing the obligations under the Existing Credit Agreement, to the extent that possession or control thereof is taken to perfect, or perfects, a Lien thereon under the UCC or other applicable law as agent and bailee for the other Term Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Out Loan Documents or the Second Out Loan Documents, as applicable, subject to the terms and conditions of this Section 10.03.

(b) The Revolving Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect, or perfects, a Lien thereon under the UCC or other applicable law as agent and bailee for each Term Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Out Loan Documents or the Second Out Loan Documents, as applicable, subject to the terms and conditions of this Section 10.03.

(c) Each Term Agent agrees to hold that part of the Revolving Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect, or perfects, a Lien thereon under the UCC or other applicable law as agent and bailee for the Revolving Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Out Loan Documents, subject to the terms and conditions of this Section 10.03, and in furtherance of the foregoing each Term Agent acknowledges (for purposes of Section 8-106(d) of the UCC) that it has "control" of all "securities entitlements" (each as defined in the UCC) on behalf of the Revolving Agent.

(d) No Agent shall have any obligation whatsoever to any Secured Party to ensure that any Collateral held by it as bailee pursuant to this Section 10.03 is genuine or owned by any Loan Party or to preserve any rights or benefits of any Person except as expressly set forth in this Section 10.03. The duties or responsibilities of the Agents under this Section 10.03 shall be limited solely to holding the Collateral as bailee in accordance with this Section 10.03.

(e) Each Agent acting pursuant to this Section 10.03 or otherwise shall not have by reason of the First Out Loan Documents, the Second Out Loan Documents or any other document a fiduciary relationship in respect of any Secured Party.

Section 10.04. *Exercise of Remedies.* (a) Subject to the terms and conditions of this Agreement and the Orders, in accordance with the Orders:

(i) the First Out Term Agent (on behalf of itself and the other First Out Term Secured Parties) is authorized to exercise any and all of its rights and remedies in accordance with the terms of the First Out Loan Documents and, with respect to the Collateral and to take all actions required or permitted by the First Out Loan Documents without any further Bankruptcy Court action.

(ii) the Second Out Term Agent (on behalf of itself and the other Second Out Term Secured Parties) is authorized to exercise any and all of its rights and remedies in accordance with the terms of the Second Out Loan Documents and, with respect to the Collateral and to take all actions required or permitted by the Second Out Loan Documents without any further Bankruptcy Court action.

(iii) the Revolving Agent (on behalf of itself and the other Revolving Secured Parties) is authorized to exercise any and all of its rights and remedies in accordance with the terms of the First Out Loan Documents and, with respect to the Collateral and to take all actions required or permitted by the Second Out Loan Documents without any further Bankruptcy Court action.

(b) The Second Out Term Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Second Out Loan Document (other than this Security Agreement and the Final Order) or the Existing Credit Agreement shall be deemed to restrict in any way the rights and remedies of the First Out Term Agent, the Revolving Agent, the First Out Term Secured Parties or the Revolving Secured Parties with respect to the Collateral as set forth in this Agreement, the Orders and the First Out Loan Documents.

(c) (i) Subject to the immediately succeeding clause (ii) and the other terms and conditions of this Agreement and the Orders,

(A) Until the First Out Termination Date, the First Out Term Agent shall have the exclusive right to manage, perform and enforce any Default Remedy with respect to the Term Collateral (and, after the Revolving Termination Date, the Revolving Collateral) according to its sole discretion and the exercise of its sole business judgment, including the exclusive right to take or retake control or possession of the Term Collateral (and, after the Revolving Termination Date, the Revolving Collateral) and to hold, prepare for sale, process, dispose of, or liquidate the Term Collateral (and, after the Revolving Termination Date, the Revolving Collateral) and to incur expenses in connection with such disposition and to exercise all the rights and remedies of a secured lender under the UCC of any applicable jurisdiction. In conducting any public or private sale under the UCC pursuant to this clause (A), the First Out Term Agent shall give the Second Out Term Agent and the Revolving Agent such notice of such sale as may be required by the applicable UCC; *provided, however,* that 10 days' notice shall be deemed to be commercially reasonable notice. Notwithstanding any rights or remedies available to a Second Out Term

Secured Party under any of the Second Out Loan Documents, applicable law or otherwise, until the First Out Termination Date, no Second Out Term Secured Party shall (except as provided in the immediately succeeding clause (ii)), directly or indirectly, exercise any Default Remedy with respect to any Term Collateral (or, after the Revolving Termination Date, the Revolving Collateral) without the prior written consent of the First Out Term Agent.

(B) Until the Revolving Termination Date, the Revolving Agent shall have the exclusive right to manage, perform and enforce any Default Remedy with respect to the Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) according to its sole discretion and the exercise of its sole business judgment, including the exclusive right to take or retake control or possession of the Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) and to hold, prepare for sale, process, dispose of, or liquidate the Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) and to incur expenses in connection with such disposition and to exercise all the rights and remedies of a secured lender under the UCC of any applicable jurisdiction. In conducting any public or private sale under the UCC pursuant to this clause (B), the Revolving Agent shall give the First Out Term Agent and Second Out Term Agent such notice of such sale as may be required by the applicable UCC; *provided, however*, that 10 days' notice shall be deemed to be commercially reasonable notice. Notwithstanding any rights or remedies available to a First Out Term Secured Party or Second Out Term Secured Party under any of the First Out Loan Documents or Second Out Loan Documents, applicable law or otherwise, until the Revolving Termination Date, no First Out Term Secured Party or Second Out Term Secured Party shall (except as provided in the immediately succeeding clause (ii)), directly or indirectly, exercise any Default Remedy with respect to any Revolving Collateral (and, after the First Out Termination Date, the Term Collateral) without the prior written consent of the Revolving Agent.

(ii) Notwithstanding the preceding clause (i), until the Second Out Termination Date, the Second Out Term Agent may exercise Default Remedies with respect to the Collateral according to its sole discretion and the exercise of its sole business judgment, including the exclusive right to take or retake control or possession of the Collateral and to hold, prepare for sale, process, dispose of, or liquidate the Collateral and to incur expenses in connection with such disposition and to exercise all the rights and remedies of a secured lender under the UCC of any applicable jurisdiction if:

(A) 120 days have elapsed since Second Out Term Agent notified First Out Term Agent (in the case of the Term Collateral) and the Revolving Agent (in the case of the Revolving Collateral) that the Second Out Term Obligations were due in full as a result of acceleration or otherwise (the "**Standstill Period**");

(B) (1) with respect to the Term Collateral, neither the First Out Term Agent nor, if permitted hereby, the Revolving Agent is then diligently pursuing Default Remedies with respect to all or a material portion of the Term Collateral or diligently attempting to vacate any stay or prohibition against such exercise; or

(2) with respect to the Revolving Collateral, neither the Revolving Agent nor, if permitted hereby, the First Out Term Agent is then diligently pursuing Default Remedies with respect to all or a material portion of the Revolving Collateral or diligently attempting to vacate any stay or prohibition against such exercise; and

(C) any acceleration of the Second Out Term Obligations has not been rescinded.

In conducting any public or private sale under the UCC pursuant to this clause (ii), the Second Out Term Agent shall give the First Out Term Agent and/or Revolving Agent such notice of such sale as may be required by the applicable UCC; *provided, however*, that 10 days' notice shall be deemed to be commercially reasonable notice.

Section 10.05. *Voting; Amendments.* (a) The Second Out Term Secured Parties may at any time and from time to time and without consent of or notice to any First Out Term Secured Party or Revolving Secured Party, without incurring any liability to any First Out Term Secured Party or Revolving Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, substitute, renew or replace any or all of the Second Out Loan Documents; *provided, however*, that without the consent of, until the First Out Termination Date, the First Out Term Agent, and, until the Revolving Termination Date, the Revolving Agent, the Second Out Secured Parties shall not enter into any amendment, restatement, supplement, modification, substitution, renewal or replacement of any or all of the Second Out Loan Documents that:

(i) increases the aggregate principal amount of the Second Out Term Obligations beyond the amount theretofore permitted under the First Out Credit Agreement, other than as a result of the capitalization of accrued interest, fees and expenses;

(ii) increases the interest rates or letter of credit fees under the Second Out Term Obligations;

(iii) modifies covenants, defaults, or events of default except for modifications to match changes made to the First Out Term Obligations;

(iv) accelerates any date upon which a scheduled payment of principal or interest is due, or otherwise decreases the weighted average life to maturity;

(v) changes a prepayment, redemption, or defeasance provision so as to require a new payment or accelerate an existing payment Obligation;

(vi) changes a term that would result in a Default under the First Out Credit Agreement,

(vii) increases the Obligations of a Grantor, or

(viii) confers additional rights on any Second Out Term Secured Party in a manner materially adverse to a First Out Term Secured Party or Revolving Secured Party.

(b) The First Out Term Agent may at any time and from time to time and without consent of or notice to any Second Out Term Secured Party or Revolving Secured Party, without incurring any liability to any Second Out Term Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, (a) waive any Default or Event of Default under the Second Out Loan Documents, (b) amend or modify any or all of the provisions set forth in the First Out Loan Documents and expressly incorporated by reference into the Second Out Loan Documents, with the effect that such amendments or modifications, substitutions shall be deemed incorporated by reference into the Second Out Loan Documents or (c) amend, restate, supplement, modify substitute, renew or replace any or all of the First Out Loan Documents; *provided, however*, that no such amendment, modification or waiver shall be effective without the written consent of the Second Out Term Agent and each such consent shall be effective only in the specific instance and for the specific purpose for which given, if any such amendment, modification or waiver shall:

(i) extend (beyond any Extension Date (as defined in the First Out Credit Agreement) or increase the Commitment of any Second Out Term Lender (or reinstate any Commitment terminated pursuant to Section 8.03 of the Second Out Credit Agreement);

(ii) postpone any date fixed by this Agreement or any Second Out Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Second Out Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments (as defined in the Second Out Credit Agreement) or waive any Event of Default under Section 8.01(a) of the Second Out Credit Agreement;

(iii) permit the sale or disposition of any Term Collateral (other than Collateral expressly permitted to be sold or disposed of by the First Out Credit Agreement as in effect on the date hereof) other than to the extent a minimum of 75% of the Net Cash Proceeds of such sale or disposition are applied in accordance with Section 2.06(b) of the First Out Credit Agreement;

(iv) forgive, waive, reduce or extend the date of payment for any mandatory prepayment required pursuant to Section 2.06(b) of the First Out Credit Agreement or otherwise modify any mandatory prepayment provision under the First Out Credit Agreement in a manner that allows amounts that would otherwise be required to be used to prepay First Out Term Obligations or Second Out Term Obligations to be retained by the Grantors;

(v) reduce the principal of, the rate of interest specified in, any fee payable, indemnity, expense reimbursement or other right to payment set forth in the Second Out Loan Documents on or with respect to any Second Out Term Obligation;

(vi) change in any manner the provisions providing for pro rata sharing of payments or payment priorities with respect to the Second Out Term Obligations or as between the First Out Term Obligations, the Revolving Obligations and the Second Out Term Obligations;

(vii) change any provision of this Section 10.05, any other provision hereof requiring consent of the Second Out Term Agent to amend, waive or otherwise modify any rights hereunder or any provision giving the Second Out Term Agent the right to make any determination or grant any consent hereunder;

(viii) other than pursuant to the exercise of Default Remedies or as otherwise permitted by Section 10.09(b) of the First Out Credit Agreement (subject to clause (iii) above) or Section 11.08 of the First Out Credit Agreement, release any of the Collateral in any transaction or series of related transactions;

(ix) other than pursuant to the exercise of Default Remedies, release any Subsidiary Guarantor, except to the extent the release of any Guarantor is permitted pursuant to Section 10.09(e) (subject to clause (iii) above) or Section 11.08 of the First Out Credit Agreement;

(x) amend or modify the Superpriority Claim status of the Lenders under the Orders or under any other Loan Document;

(xi) grant any Lien on the Collateral which is senior to the Liens created hereunder and under the Orders or *pari passu* with such Liens;

(xii) affect the relative priority of Liens or priorities of payment created hereunder and under the Orders;

(xiii) increase the interest rates (other than additional default interest) or fees on the First Out Term Obligations to an amount greater than the maximum rate contemplated by the flex provisions of the Syndication Letter;

(xiv) change the final maturity date of the First Out Term Obligations to a date later than the final maturity date of the Second Out Term Obligations;

(xv) increase the principal amount of the First Out Term Obligations to an amount which, when combined with all Revolving Obligations, would exceed the Maximum First Out Principal Amount, other than as a result of the capitalization of accrued interest and expenses;

(xvi) amend Section 7.13 of the First Out Credit Agreement or the definition of “Liquidity” (or any component definition thereof) in the First Out Credit Agreement; or

(xvii) modify or add any covenant or event of default under the First Out Loan Documents which directly restricts one or more Loan Parties from making payments under the Second Out Loan Documents which would otherwise be permitted under the First Out Loan Documents as in effect on the date hereof; or

(xviii) affect the rights or duties of the Second Out Term Agent in its capacity as agent under the Second Out Credit Agreement;

provided, further, that no such amendment, waiver or consent shall, unless in writing and signed by each L/C Issuer (as defined in the Second Out Credit Agreement) affect the rights or duties of such L/C Issuer solely in its capacity as letter of credit issuer under the Second Out Credit Agreement or any Issuer Document (as defined in the Second Out Credit Agreement) relating to any Letter of Credit (as defined in the Second Out Credit Agreement) issued by it.

(c) The Revolving Secured Parties may at any time and from time to time and without consent of or notice to any Second Out Secured Party, without incurring any liability to any Second Out Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, substitute, renew or replace any or all of the First Out Loan Documents; *provided, however*, that without the consent of the Second Out Term Agent, the Revolving Secured Parties shall not amend, restate, supplement, modify substitute, renew or replace any or all of the First Out Loan Documents to (a) directly increase the interest rates (other than additional default interest) on the Revolving Obligations to an amount greater than the maximum rate contemplated by the flex provisions of the Syndication Letter, (b) change the final maturity date of the Revolving Obligations to a date later than the maturity date of the Second Out Term Obligations, (c) increase the principal amount of the Revolving Obligations to an amount which, when combined with all First Out Term Obligations, would exceed the Maximum First Out Principal Amount, other than as a result of the capitalization of accrued interest and expenses, (d) amend Section 7.13 of the First Out Credit Agreement or the definition of “Liquidity” (or any component definition thereof) in the Frist Out Credit Agreement or (e) modify or add any covenant or event of default under the First Out Loan Documents which directly restricts one or more Loan Parties from making payments under the Second Out Loan Documents which would otherwise be permitted under the First Out Loan Documents as in effect on the date hereof

(d) Notwithstanding any other provision of this Agreement to the contrary, to the extent no Event of Default (as defined under the First Out Credit Agreement) has occurred and is continuing, the Second Out Term Agent and the Second Out Term Secured Parties shall not be deemed to have consented to a sale or disposition of all or substantially all of the Term Collateral, and reserve their rights to object in Bankruptcy Court to any such sale on any grounds (other than any objection predicated upon the unenforceability of this Agreement or any other Loan Document in whole or in part).

Section 10.06. *Automatic Release of Liens Securing Junior Obligations.* If, in connection with the enforcement or exercise of any Default Remedies with respect to the Collateral, including any Disposition of Collateral, (a) the First Out Term Agent, for itself and on behalf of the First Out Term Secured Parties, releases any of the Liens on such Collateral securing the First Out Obligations or (b) the Revolving Agent, for itself and on behalf of the Revolving Secured Parties, releases any of the Liens on such Collateral securing the Revolving Obligations, the Liens securing Second Out Obligations on such Collateral (but not in any proceeds thereof), shall be automatically, unconditionally and simultaneously released, and the Second Out Term Agent shall, for itself and on behalf of the other Second Out Secured Parties, promptly execute and deliver to the First Out Term Agent or the Revolving Agent, as applicable (or to another Person upon the instruction of such applicable Agent), such termination statements, releases and other documents as the First Out Term Agent or the Revolving Agent, as applicable, may reasonably request to effectively confirm such release. The Second Out Term Agent, on behalf of each Second Out Term Secured Party, hereby irrevocably constitutes and appoints the First Out Term Agent and any officer of the First Out Term Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Out Term Agent and in the name of the Second Out Term Agent or in the First Out Term Agent's own name, from time to time in the First Out Term Agent's discretion, for the purpose of carrying out the terms of this Section 10.06, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purpose of this Section, such power of attorney being coupled with an interest and irrevocable until the First Out Termination Date.

Section 10.07. *No Additional Rights for the Grantors Hereunder.* If any Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, no Grantor shall be entitled to use such violation as a defense to any action by any Secured Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against such Secured Party. Except to the extent expressly set forth in this Agreement, each Grantor shall retain all of its rights and remedies under the Loan Documents and any defense otherwise available to it in any action by any Secured Party.

Section 10.08. *Actions Upon Breach.* (a) If any Second Out Secured Party (or any agent or other representative thereof) commences or participates in any action or proceeding with respect to the Collateral in violation of this Agreement, any Revolving Secured Party, with respect to Revolving Collateral, or First Out Term Secured Party, with respect to Term Collateral may intervene and interpose as a defense or dilatory plea, in its name or in the name of one or more of the Grantors, the making of this Agreement.

(b) If any Term Secured Party (or any agent or other representative thereof) commences or participates in any action or proceeding with respect to the Revolving Collateral in violation of this Agreement, any Revolving Secured Party may intervene and interpose as a defense or dilatory plea, in its name or in the name of one or more of the Grantors, the making of this Agreement.

(c) Should any Second Out Secured Party (or any agent or other representative thereof) in any way take, attempt to or threaten to take any action with respect to the

Collateral (including any attempt to enforce any remedy on the Collateral) in violation of this Agreement, or fail to take any action required by this Agreement, any Revolving Secured Party, with respect to Revolving Collateral, or First Out Term Secured Party, with respect to Term Collateral, (in its or their own name or in the name of one or more of the Grantors) may obtain relief against such Second Out Secured Party or agent or other representative thereof, by injunction, specific performance and/or other appropriate equitable relief.

(d) Should any Term Secured Party (or any agent or other representative thereof) in any way take, attempt to or threaten to take any action with respect to the Revolving Collateral (including any attempt to enforce any remedy on the Revolving Collateral) in violation of this Agreement, or fail to take any action required by this Agreement, any Revolving Secured Party (in its or their own name or in the name of one or more of the Grantors) may obtain relief against such Term Secured Party or agent or other representative thereof, by injunction, specific performance and/or other appropriate equitable relief.

Section 10.09. *Application of Proceeds of Collateral.* All proceeds received by the Agents in respect of any exercise of Default Remedies with respect to all or any part of the Collateral shall promptly be applied to the Obligations in accordance with the following order of priority:

(a) Prior to the First Out Termination Date, Revolving Termination Date and Second Out Termination Date,

(i) with respect to all proceeds of the Revolving Collateral:

(1) first: to the Revolving Agent, to be applied to the expenses of such sale or other realization of Revolving Collateral, including reasonable compensation to agents of and counsel for the Revolving Agent, and all expenses, liabilities and advances incurred or made by the Revolving Agent in connection therewith;

(2) second: to the Revolving Agent to be applied to the repayment of Revolving Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit constituting Revolving Obligations under the First Out Credit Agreement and other contingent obligations then outstanding that are Revolving Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the Revolving Obligations are Paid in Full;

(3) third: to the First Out Term Agent to be applied to the repayment of the First Out Term Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize contingent obligations then outstanding that are First Out Term Obligations, in accordance with the terms of the First Out Credit Agreement) until the First Out Term Obligations are Paid in Full;

(4) fourth: any surplus then remaining shall be paid to the Second Out Term Agent and distributed in accordance with clause (c) below; and

(ii) with respect to all proceeds of the Term Collateral:

(1) first: to the First Out Term Agent, to be applied to the expenses of such sale or other realization of Term Collateral, including reasonable compensation to agents of and counsel for the First Out Term Agent, and all expenses, liabilities and advances incurred or made by the First Out Term Agent in connection therewith;

(2) second: to the First Out Term Agent to be applied to the repayment of First Out Term Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize contingent obligations then outstanding that are First Out Term Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the First Out Term Obligations are Paid in Full;

(3) third: to the Revolving Agent to be applied to the repayment of Revolving Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit constituting Revolving Obligations under the First Out Credit Agreement and other contingent obligations then outstanding that are Revolving Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the Revolving Obligations are Paid in Full;

(4) fourth: any surplus then remaining shall be paid to the Second Out Term Agent and distributed in accordance with clause (c) below.

(b) After the First Out Termination Date ~~(and prior to the First Out Termination Date to the extent provided in Section 2.06(b)(v) of the First Out Credit Agreement with respect to proceeds of Term Collateral)~~, prior to the Revolving Termination Date and Second Out Termination Date, with respect to all proceeds of the Revolving Collateral or Term Collateral:

(1) first: to the Revolving Agent, to be applied to the expenses of such sale or other realization of Revolving Collateral, including reasonable compensation to agents of and counsel for the Revolving Agent, and all expenses, liabilities and advances incurred or made by the Revolving Agent in connection therewith;

(2) second: to the Revolving Agent to be applied to the repayment of Revolving Obligations then outstanding whether or not then due and payable (including without limitation amounts required to

Cash Collateralize undrawn Letters of Credit constituting Revolving Obligations under the First Out Credit Agreement and other contingent obligations then outstanding that are Revolving Obligations, if any, in accordance with the terms of the First Out Credit Agreement) until the Revolving Obligations are Paid in Full;

(3) third: any surplus then remaining shall be paid to the Second Out Term Agent and distributed in accordance with clause (c) below.

(c) After the First Out Termination Date and the Revolving Termination Date, prior to the Second Out Termination Date, with respect to all proceeds of the Collateral:

(1) first: to the Second Out Term Agent, to be applied to the expenses of such sale or other realization of Collateral, including reasonable compensation to agents of and counsel for the Second Out Term Agent, and all expenses, liabilities and advances incurred or made by the Second Out Term Agent in connection therewith;

(2) second: to the Second Out Term Agent to be applied to the repayment of Second Out Term Obligations then outstanding whether or not then due and payable (including without limitation amounts required to Cash Collateralize undrawn Letters of Credit under the Second Out Credit Agreement and other contingent obligations then outstanding that are Second Out Term Obligations, if any, in accordance with the terms of the Second Out Credit Agreement) until the Second Out Term Obligations are Paid in Full; and

(3) third: any surplus then remaining shall be paid to the applicable Grantor or its successors or assigns or to whomsoever may be lawfully entitled to receive the same.

Section 10.10. *Payments*. Prior to the First Out Termination Date and Revolving Termination Date, except for Permitted Second Out Obligation Payments, no payment or distribution of any kind shall be made by or on behalf of any Grantor in respect of the Second Out Obligations and no Second Out Secured Party shall receive any such payment or distribution. Any payments or distributions of any kind received by any Second Out Secured Party in violation of the preceding sentence shall be segregated and held in trust and promptly paid over, in the same form as received, with any necessary endorsements, to (i) prior to the First Out Termination Date, the First Out Term Agent, for the benefit of the First Out Term Secured Parties for application to the First Out Term Obligations (unless otherwise required by law or court order) and (ii) after the First Out Termination Date but prior to the Revolving Termination Date, the Revolving Agent for application to the Revolving Obligations (unless otherwise required by law or court order).

Section 10.11. *Effect of Refinancing*. If the Payment in Full of the First Out Term Obligations or Revolving Obligations is being effected through a Refinancing; *provided* that

(i) the applicable First Out Agent gives a notice of such Refinancing to the Second Out Term Agent at least 5 Business Days prior to such Refinancing and (ii) the credit agreement and the other documents evidencing such new First Out Term Obligations or Revolving Credit Obligations (as applicable, the “**New First Out Loan Documents**” or the “**New Revolving Loan Documents**”) do not effect an amendment, supplement or other modification of the terms of the First Out Term Obligations in a manner that is prohibited by Section 10, *then* (A) such Payment in Full of First Out Term Obligations or Revolving Obligations, as applicable, shall be deemed not to have occurred for all purposes of this Agreement, (B) the indebtedness under such Refinancing and all other obligations under the credit documents evidencing such indebtedness (the “**New First Out Term Obligations**” or “**New Revolving Obligations**”, as applicable) shall be treated as First Out Term Obligations or Revolving Obligations, as applicable, for all purposes of this Agreement, (C) the New First Out Loan Documents and/or the New Revolving Loan Documents shall be treated as the First Out Loan Documents under this Agreement and (D) the agent under the New First Out Loan Documents (the “**New First Out Agent**”) or the New Revolving Loan Documents (the “**New Revolving Agent**”) shall be deemed to be the First Out Term Agent or Revolving Agent, as applicable, for all purposes of this Agreement. Upon receipt of a notice of Refinancing under the preceding sentence, which notice shall include the identity of the New First Out Term Agent, the Second Out Term Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the New First Out Agent may reasonably request in order to provide to the New First Out Agent the rights and powers set forth herein.

ARTICLE 11
PURCHASE RIGHT

Section 11.01. *Purchase Right.* (a) If there is:

- (i) an acceleration of the First Out Term Obligations or Revolving Obligations in accordance with the First Out Credit Agreement, or
- (ii) the Standstill Period has terminated and the Second Out Term Agent is permitted to exercise Default Remedies with respect to the Collateral under Section 10.03(c)(ii)

(each a “**Purchase Event**”), then the Second Out Term Agent, acting on behalf of one or more Second Out Term Secured Parties may purchase all, but not less than all, of the First Out Term Obligations and the Revolving Obligations (the “**Purchase Obligations**”). Such purchase will

- (A) include all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, all First Out Term Obligations and Revolving Obligations outstanding at the time of purchase,
- (B) be made pursuant to an Assignment and Acceptance, whereby the Purchasing Creditors will assume all funding commitments and Obligations of

the First Out Term Secured Parties and Revolving Secured Parties under the First Out Loan Documents, and

(C) otherwise be subject to the terms and conditions of this Article 11.

After the receipt of a Purchase Notice but prior to the Purchase Date, each First Out Term Secured Party and Revolving Secured Party will retain all rights under the First Out Loan Documents, including but not limited to all rights to exercise Default Remedies under Article 9 of this Agreement. Following the Purchase Date, each First Out Term Secured Party and Revolving Secured Party will retain all rights to indemnification provided in the relevant First Out Loan Documents for all claims and other amounts relating to periods prior to the purchase of the First Out Term Obligations and the Revolving Obligations pursuant to this Article 11.

Section 11.02. *Purchase Notice.* (a) Second Out Term Secured Parties desiring to purchase all of the Purchase Obligations (the “**Purchasing Creditors**”) will deliver a Purchase Notice (a “**Purchase Notice**”) to the First Out Term Agent and Revolving Agent no later than 10 Business Days following the Purchase Event that

(i) is signed by the Purchasing Creditors,

(ii) states that it is a Purchase Notice under this Article 11,

(iii) states that each Purchasing Creditor is irrevocably electing to purchase, in accordance with this Article 11, the percentage of all of the Purchase Obligations stated in the Purchase Notice for that Purchasing Creditor, which percentages must aggregate exactly 100% for all Purchasing Creditors,

(iv) represents and warrants that the Purchase Notice is in conformity with the Second Out Loan Documents and any other binding agreement among Second Out Term Secured Parties, and

(v) designates a purchase date (“**Purchase Date**”) on which the purchase will occur, that is (x) at least five (5) but not more than ten (10) Business Days after receipt of the Purchase Notice by the First Out Term Agent and Revolving Agent.

(b) A Purchase Notice will be ineffective if it is received by the First Out Term Agent or Revolving Agent after the occurrence giving rise to the Purchase Event is waived, cured, or otherwise ceases to exist.

(c) Upon First Out Term Agent’s receipt of an effective Purchase Notice conforming to this ~~section 5.2~~Section 11.02, the Purchasing Creditors will be irrevocably obligated to purchase, and the First Lien Creditors will be irrevocably obligated to sell, the First Lien Obligations in accordance with and subject to this section 5.

Section 11.03. *Purchase Price.* The purchase price (“**Purchase Price**”) for the Purchase Obligations will equal the sum of

(a) the principal amount of all loans, advances, or similar extensions of credit included in the Purchase Obligations (including unreimbursed amounts drawn on Letters of Credit (as defined in the First Out Credit Agreement), but excluding the undrawn amount of outstanding Letters of Credit (as defined in the First Out Credit Agreement)), and all accrued and unpaid interest thereon through the Purchase Date,

(b) the net aggregate amount then owing to counterparties under Secured Agreements (as defined in the First Out Credit Agreement), including all amounts owing to the counterparties as a result of the termination (or early termination) thereof to the extent not in excess of the Designated Amount (as defined in the First Out Credit Agreement), and

(c) all accrued and unpaid fees, expenses, indemnities and other amounts owed to any First Out Term Secured Party or Revolving Secured Party under the First Out Loan Documents on the Purchase Date (other than any amounts owed under Secured Agreements in excess of the Designated Amount (as defined in the First Out Credit Agreement)).

Section 11.04. *Purchase Closing.* On the Purchase Date,

(a) the Purchasing Creditors, First Out Term Agent and Revolving Agent will execute and deliver the Assignment and Acceptance,

(b) the Purchasing Creditors will pay the Purchase Price to First Out Term Agent and Revolving Agent, as applicable, by wire transfer of immediately available funds,

(c) the Purchasing Creditors will deposit with First Out Term Agent or its designee by wire transfer of immediately available funds, 103% of the aggregate undrawn amount of all then outstanding Letters of Credit (as defined in the First Out Credit Agreement) and the aggregate facing and similar fees that will accrue thereon through the stated maturity of the Letters of Credit (assuming no drawings thereon before stated maturity), and

(d) Second Out Term Agent will execute and deliver to First Out Term Agent and Revolving Agent a waiver of all claims arising out of this Agreement and the transactions contemplated hereby as a result of exercising the purchase option contemplated by this Article 11.

Section 11.05. *Actions After Purchase Closing.* First Out Term Agent will apply cash collateral to reimburse Letter of Credit issuers for drawings under Letters of Credit, any customary fees charged by the issuer in connection with such draws, and facing or similar fees. After giving effect to each such payment, any remaining cash collateral that exceeds 103% of the sum of the aggregate undrawn amount of all then outstanding Letters of Credit and the aggregate facing and similar fees that will accrue thereon through the stated maturity of such Letters of Credit (assuming no drawings thereon before stated maturity) will be returned to the Purchasing Creditors (as their interests appear). When all Letters of Credit have been cancelled with the consent of the beneficiary thereof, expired, or been fully drawn, and

after all payments from the account described above have been made, any remaining cash collateral will be returned to the Purchasing Creditors, as their interests appear.

Section 11.06. *No Recourse or Warranties; Defaulting Creditors.* (a) Each First Out Term Secured Party and Revolving Secured Party will be entitled to rely on the statements, representations, and warranties in the Purchase Notice without investigation, even if such Each First Out Term Secured Party or Revolving Secured Party is notified that any such statement, representation, or warranty is not or may not be true.

(b) The purchase and sale of the Purchased Obligations under this Article 11 will be without recourse and without representation or warranty of any kind by any First Out Term Secured Party or Revolving Secured Party, except that each First Out Term Secured Party and Revolving Secured Party represents and warrants that on the Purchase Date, immediately before giving effect to the purchase,

(i) the principal of and accrued and unpaid interest on the Purchased Obligations, and the fees and expenses thereof, are as stated in the Assignment and Acceptance for such party,

(ii) Such First Out Term Secured Party or Revolving Secured Party owns its Purchased Obligations free and clear of any Liens (other than participation interests not prohibited by the First Out Credit Agreement, in which case the Purchase Price will be appropriately adjusted so that the Purchasing Creditors do not pay amounts represented by participation interests), and

(iii) Such First Out Term Secured Party or Revolving Secured Party has the full right and power to assign its Purchased Obligations and such assignment has been duly authorized by all necessary corporate action by such First Out Term Secured Party or Revolving Secured Party.

(c) The obligations of the First Out Term Secured Parties and Revolving Secured Parties to sell their respective Purchase Obligations under this Article 11 are several and not joint and several. If a First Out Term Secured Party or Revolving Secured Party (a “**Defaulting Creditor**”) breaches its obligation to sell its Purchase Obligations under this Article 11, no other First Out Term Secured Party or Revolving Secured Party will be obligated to purchase the Defaulting Creditor’s Purchase Obligations for resale to the Purchasing Creditors. A First Out Term Secured Party or Revolving Secured Party that complies with this Article 11 will not be in default of this Agreement or otherwise be deemed liable for any action or inaction of any Defaulting Creditor, provided that nothing in this subsection (c) will require the Purchasing Creditors to purchase less than all of the Purchase Obligations.

(d) Borrower and each Grantor irrevocably consent to any assignment effected to one or more Purchasing Creditors pursuant to this Article 11.

ARTICLE 12
AGENCY

Section 12.01. *First Out Term Agents.* The First Out Term Agent has been appointed to act as collateral agent hereunder by the Term Secured Parties and the Revolving Agent has been appointed to act as collateral agent hereunder by the Revolving Lenders and, by their acceptance of the benefits hereof, the other Secured Revolving Parties. Each First Out Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the First Out Credit Agreement and the Orders; *provided*, the First Out Agents shall, after payment in full of all Obligations under the First Out Credit Agreement and the other Loan Documents, exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of the holders (the “**Majority Holders**”) of a majority of the aggregate “settlement amount” as defined in the [First Out](#) Secured Hedge Agreements (or, with respect to any [First Out](#) Secured Hedge Agreement that has been terminated in accordance with its terms, the amount then due and payable (exclusive of expenses and similar payments but including any early termination payments then due) under such [First Out](#) Secured Hedge Agreement) under all [First Out](#) Secured Hedge Agreements. For purposes of the foregoing sentence, settlement amount for any hedge that has not been terminated shall be the settlement amount as of the last Business Day of the month preceding any date of determination and shall be calculated by the appropriate swap counterparties and reported to the First Out Agents upon request; *provided* any [First Out](#) Secured Hedge Agreement with a settlement amount that is a negative number shall be disregarded for purposes of determining the Majority Holders. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the applicable First Out Agent for the benefit of Secured Parties in accordance with the terms of this Section. The provisions of the First Out Credit Agreement relating to the First Out Agents including, without limitation, the provisions relating to resignation or removal of any First Out Agent and the powers and duties and immunities of each First Out Agent are incorporated herein by this reference and shall survive any termination of the First Out Credit Agreement.

Section 12.02. *Second Out Term Agent.* The Second Out Term Agent has been appointed to act as collateral agent hereunder by the Second Out Term Secured Parties and, by their acceptance of the benefits hereof, the other Second Out Term Secured Parties. The Second Out Term Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement, the Second Out Credit Agreement and the Orders; *provided*, the Second Out Term Agent shall, after payment in full of all Obligations under the Second Out Credit Agreement and the other Second Out Loan Documents, exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of the holders (the “**Second Out Majority Holders**”) of a majority of the aggregate “settlement amount” as defined in the [Second Out](#) Secured Hedge Agreements (~~as defined in the Second Out Credit Agreement~~) (or, with respect to any [Second Out](#) Secured Hedge Agreement that has been terminated in accordance with its terms, the amount then due and payable (exclusive of expenses and similar payments but including any

early termination payments then due) under such Second Out Secured Hedge Agreement) under all Second Out Secured Hedge Agreements. For purposes of the foregoing sentence, settlement amount for any hedge that has not been terminated shall be the settlement amount as of the last Business Day of the month preceding any date of determination and shall be calculated by the appropriate swap counterparties and reported to the Second Out Term Agent upon request; provided any Second Out Secured Hedge Agreement with a settlement amount that is a negative number shall be disregarded for purposes of determining the Second Out Majority Holders. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Second Out Secured Party that all rights and remedies hereunder may be exercised solely by the Second Out Term Agent for the benefit of the Second Out Secured Parties in accordance with the terms of this Section. The provisions of the Second Out Credit Agreement relating to the Second Out Term Agent including, without limitation, the provisions relating to resignation or removal of the Second Out Term Agent and the powers and duties and immunities of the Second Out Term Agent are incorporated herein by this reference and shall survive any termination of the Second Out Credit Agreement.

ARTICLE 13

CONTINUING SECURITY INTEREST; TRANSFER OF LOANS

This Agreement shall create continuing security interests in the Collateral and shall remain in full force and effect until the payment in full of all Obligations, the cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the applicable L/C Issuer, be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of each Agent hereunder, to the benefit of such Agent and its successors, transferees and assigns or otherwise as set forth in any order of the Bankruptcy Court. Without limiting the generality of the foregoing, but subject to the terms of the First Out Credit Agreement and the Second Out Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Obligations (other than contingent indemnification obligations not then due), the cancellation or termination of the Commitments and the cancellation, expiration, posting of backstop letters of credit or cash collateralization of all outstanding Letters of Credit satisfactory to the applicable L/C Issuer, the security interests granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to Grantors. Upon any such termination the Agents shall, at Grantors' expense, execute and deliver to Grantors or otherwise authorize the filing of such documents as Grantors shall reasonably request, including financing statement amendments to evidence such termination. Upon any disposition of property permitted by the First Out Credit Agreement and the Second Out Credit Agreement, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. The Agents shall, at Grantor's expense, execute and deliver or otherwise authorize the filing of such documents as Grantors

shall reasonably request, in form and substance reasonably satisfactory to the First Out Agents, including mortgage releases and financing statement amendments to evidence such release.

ARTICLE 14
STANDARD OF CARE; AGENTS MAY PERFORM

The powers conferred on each Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, each Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Each Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which such Agent accords its own property. None of the Agents nor any of their directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the applicable First Out Agent may itself perform, or cause performance of, such agreement, and the expenses of such First Out Agent incurred in connection therewith shall be payable by each Grantor under Section 12.04 of the First Out Credit Agreement.

ARTICLE 15
MISCELLANEOUS

Section 15.01. *Amendment and Restatement; Preservation of Liens.* It is the intention of each of the parties hereto that the Existing Security Agreement be amended and restated in its entirety pursuant to this Agreement so as to preserve and continue the perfection and priority of all Liens securing Indebtedness and "Obligations" under and as defined in the Existing Credit Agreement and that all Indebtedness and Obligations of the Borrower and the Subsidiary Guarantors under the Second Out Credit Agreement shall be secured by the Liens evidenced under this Agreement and that this Agreement does not constitute a novation of the Existing Security Agreement or termination of the Liens or other obligations created under the Existing Security Agreement, but rather re-evidences such Liens and obligations as amended and restated hereby.

Section 15.02. *Subordination Agreement.* The parties hereto acknowledge that this Agreement is a subordination agreement under Section 510 of the Bankruptcy Code.

Section 15.03. *Reinstatement.* Each Agent agrees that if (a) any payment made by any Person and applied to the Obligations held by such Agent or any other Agent is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or (b) the proceeds of Collateral applied to the Obligations held by such Agent or any other Agent are required to be returned to any Grantor or its estate, trustee or receiver under any requirement of law, then, provisions providing for

applications of proceeds of Collateral, priorities of liens and rights to payment hereunder shall be and remain in full force and effect, as fully as if such payment had never been made.

Section 15.04. *Notices; No Waiver; Rights Cumulative; Etc.* Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 12.02 of each of the First Out Credit Agreement and the Second Out Credit Agreement. No failure or delay on the part of the Agents in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 15.05. *Successors and Assigns; Entire Agreement, Etc.* This Agreement shall be binding upon and inure to the benefit of the Agents and Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Agents given in accordance with the First Out Credit Agreement and the Second Out Credit Agreement, assign any right, duty or obligation hereunder. This Agreement, the Orders and the other Loan Documents embody the entire agreement and understanding between Grantors and the Agents and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. In the event of any inconsistency or conflict between the provisions of this Agreement and the Interim Order (and, when applicable, the Final Order), the provisions of the Interim Order or Final Order, as applicable, shall govern. There are no unwritten oral agreements between the parties.

Section 15.06. *Consensual Plan Treatment in Respect of the Second Out Term Credit Obligations.* On the maturity date of the Second Out Credit Agreement, all outstanding Second Out Term Obligations shall be repaid in cash (or, in the case of issued and outstanding Roll Up Letters of Credit, cash collateralized in an amount of at least 105% of the L/C Obligations (as defined in the Second Out Credit Agreement)); provided, that the Second Out Lenders may consent to a different treatment under a plan of reorganization under chapter 11 of the Bankruptcy Code, and such consent shall be deemed to have been given upon the affirmative vote of the Second Out Lenders under the standards set forth in Section 1126(c) of the Bankruptcy Code.

Section 15.07. *Counterparts.* This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so

executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Section 15.08. *GOVERNING LAW.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND ALL CLAIMS AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE, WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF ANY OTHER LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTEREST).

Section 15.09. *JURISDICTION; VENUE; SERVICE; WAIVER OF JURY TRIAL.* THE PROVISIONS OF THE CREDIT AGREEMENT UNDER THE HEADINGS “SUBMISSION TO JURISDICTION”, “WAIVER OF VENUE”, “SERVICE OF PROCESS” AND “WAIVER OF JURY TRIAL” ARE INCORPORATED HEREIN BY THIS REFERENCE AND SUCH INCORPORATION SHALL SURVIVE ANY TERMINATION OF THE CREDIT AGREEMENT.

[Signature pages follow]

IN WITNESS WHEREOF, each Grantor and each Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

PATRIOT COAL CORPORATION,
as Grantor

By: _____
Name:
Title:

Grantors:

[_____] ,
as Grantors

Executing this Agreement as an authorized officer of each of the [__] foregoing persons on behalf of and so as to bind the persons named above under the caption "Grantors"

By: _____
Name:
Title:

Citibank, N.A.,
as First Out Term Agent

By: _____
Name:
Title:

Citibank, N.A.,
as Revolving Agent

By: _____
Name:
Title:

BANK OF AMERICA, N.A.
as Second Out Term Agent

By: _____
Name:
Title:

AMENDED AND RESTATED GUARANTEE

made by

PATRIOT COAL CORPORATION,

and certain of its Subsidiaries

in favor of

BANK OF AMERICA, N.A.,
as Administrative Agent

Dated as of July 11, 2012

TABLE OF CONTENTS

SECTION I . DEFINED TERMS.....2

 1.01 Definitions.....2

 Other Definitional Provisions3

SECTION II . GUARANTEE.....3

 2.01 Guarantee3

 2.02 Right of Contribution.....4

 2.03 No Subrogation.....4

 2.04 Amendments, etc. with Respect to the Borrower Obligations.....5

 2.05 Guarantee Absolute and Unconditional.....5

 2.06 Reinstatement.....7

 2.07 [Reserved].....7

 2.08 Waiver by Guarantors.....7

 2.09 [Reserved].....8

 2.10 Subordination of Other Obligations.....8

 2.11 Authority of Guarantors or Borrower.....8

 2.12 Financial Condition of Borrower.....8

 2.13 Taxes and Payments.....8

 2.14 Assignments.....8

SECTION III . REPRESENTATIONS AND WARRANTIES.....8

 3.01 Representations in DIP Credit Agreement.....8

SECTION IV . COVENANTS.....9

SECTION V . REMEDIAL PROVISIONS.....9

 5.01 Application of Proceeds.....9

 5.02 Code and Other Remedies.....9

SECTION VI . MISCELLANEOUS.....9

 6.01 Amendments in Writing.....9

 6.02 Notices.....9

 6.03 No Waiver by Course of Conduct; Cumulative Remedies.....10

 6.04 Enforcement Expenses; Indemnification.....10

 6.05 Successors and Assigns.....10

 6.06 Set-Off.....10

 6.07 Counterparts.....11

 6.08 Severability.....11

 6.09 Section Headings.....11

 6.10 Integration.....11

 6.11 **GOVERNING LAW**.....11

8054142.4

6.12	<u>Submission To Jurisdiction; Waivers</u>	11
6.13	<u>Acknowledgements</u>	12
6.14	<u>WAIVER OF JURY TRIAL</u>	13
6.15	<u>Releases</u>	13
6.16	<u>Additional Guarantors</u>	13
6.17	<u>Conflict</u>	13

Annex 1 Form of Assumption Agreement

AMENDED AND RESTATED GUARANTEE

AMENDED AND RESTATED GUARANTEE (“Guarantee”), dated as of July 11, 2012 (the , made by each of the signatories hereto and each entity that may become a Guarantor (as defined below) as provided in Section 7.16, in favor of Bank of America, N.A., as administrative agent (in such capacity, the “Administrative Agent”) for the banks and other financial institutions (the “Lenders”) from time to time parties to the Amended and Restated Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the “DIP Credit Agreement”), among Patriot Coal Corporation, a Delaware corporation (the “Borrower”), the Lenders and the Administrative Agent.

WITNESSETH:

WHEREAS, on the Petition Date, the Debtors filed voluntary petitions with the Bankruptcy Court initiating cases pending under Chapter 11 of the Bankruptcy Code and have continued in the possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower, the lenders party thereto, Bank of America, N.A., as Administrative Agent, and the other parties party thereto entered into the Existing Credit Agreement;

WHEREAS, pursuant to the terms of the Existing Credit Agreement, the L/C Issuers agreed to issue letters of credit, in each case, on the terms and subject to the conditions set forth in the Existing Credit Agreement;

WHEREAS, the Borrower has requested an amendment and restatement of the Existing Credit Agreement as set forth in the DIP Credit Agreement, and the Lenders have agreed to such request and to restate their irrevocable obligations to reimburse the L/C Issuers for any drawing under each “Letter of Credit” outstanding on the Closing Date under the Existing Credit Agreement on the terms and subject to the conditions set forth in the DIP Credit Agreement to (a) induce the L/C Issuers not to deliver notices of non-extension to the beneficiaries of such existing “Letters of Credit” and (b) provide for the continuing effectiveness and automatic renewal of such existing “Letters of Credit”, in each case for the purpose of reducing the likelihood of drawings on such “Letters of Credit” during the pendency of the Cases;

WHEREAS, the Loan Parties are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the issuance of the letters of credit under the DIP Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to restate their irrevocable reimbursement obligations to the L/C Issuers under the DIP Credit Agreement that the Guarantors shall have executed and delivered this Agreement to the Administrative Agent for the ratable benefit of the Lenders.

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent and the Lenders to enter into the DIP Credit Agreement and to induce the Lenders to restate their irrevocable reimbursement obligations to the L/C Issuers thereunder, each Guarantor hereby agrees with the Administrative Agent, for the ratable benefit of the holders of Obligations, as follows:

SECTION I. DEFINED TERMS

1.01 Definitions. Unless otherwise defined herein, terms defined in the DIP Credit Agreement and used herein shall have the meanings given to them in the DIP Credit Agreement.

The following terms shall have the following meanings:

“Agreement”: this Guarantee, as the same may be amended, supplemented, restated or otherwise modified from time to time.

“Beneficiary”: the Administrative Agent, the Arranger and each Lender and L/C Issuer.

“Borrower Obligations”: the collective reference to the unpaid principal of and interest on the L/C Obligations and all other obligations and liabilities of the Borrower (including, without limitation, interest accruing at the then applicable rate provided in the DIP Credit Agreement after the maturity of the L/C Obligations and interest accruing at the then applicable rate provided in the DIP Credit Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) to the Administrative Agent or any Lender, including any Secured Hedge Agreement or Cash Management Agreement, in each case, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, the DIP Credit Agreement, this Agreement, the other Loan Documents, or any Letter of Credit entered into by the Borrower or any Subsidiary of the Borrower with any Lender or any other document made, delivered or given in connection therewith, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or the Lenders that are required to be paid by the Borrower pursuant to the terms of any of the foregoing agreements).

“Collateral”: as defined in the Security Agreement.

“Grantor”: each entity defined as a Grantor under the Security Agreement.

“Guarantor”: each of the signatories hereto (other than the Administrative Agent) and each other entity that becomes a Guarantor hereunder pursuant to Section 7.16.

“Guarantor Obligations”: with respect to any Guarantor, the collective reference to (i) the Borrower Obligations and (ii) all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement or any other Loan Document to

which such Guarantor is a party, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent and counsel to the Lenders that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Loan Document).

“Obligations”: all advances to, and debts, liabilities and obligations of, any Loan Party arising under any Loan Document or otherwise with respect to any Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, including without limitation the Borrower Obligations and the Guarantor Obligations.

“Obligee Guarantor”: as defined in Section 2.10.

Other Definitional Provisions. (a) The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION II. GUARANTEE

2.01 Guarantee. (a) Subject to the provisions of Section 2.01(b), each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower and each other Loan Party when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under the Bankruptcy Code, or any other applicable federal and state laws relating to fraudulent conveyances, fraudulent transfers, or the insolvency of debtors (after giving effect to the right of contribution established in Section 2.02).

(c) Each Guarantor agrees that the Obligations may at any time and from time to time exceed the maximum amount of the liability of such Guarantor under Section 2.01(b) without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Secured Parties hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until all the Obligations (other than any contingent indemnification obligations not then due) shall have been satisfied by payment in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments shall be terminated, notwithstanding that from time to time during the term of the DIP Credit Agreement the Borrower may be free from any Borrower Obligations.

(e) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to reduce, release, modify or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Obligations or any payment received or collected from such Guarantor in respect of the Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Obligations (other than any contingent indemnification obligations not then due) are paid in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments are terminated.

2.02 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder (including by way of set-off rights being exercised against it), such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor’s right of contribution shall be subject to the terms and conditions of Section 2.03. The provisions of this Section 2.02 shall in no respect limit the obligations and liabilities of any Guarantor to the Secured Parties, and each Guarantor shall remain jointly and severally liable to the Secured Parties for the full amount guaranteed by such Guarantor hereunder.

2.03 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by any Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of any Secured Party against the Borrower or any Guarantor or any collateral security or guarantee or right of offset held by any Secured Party for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Secured Parties by the Borrower on account of the Obligations (other than any contingent indemnification obligations not then due) are paid in full, no Letter of Credit shall be outstanding (except to the extent that the Letters of Credit have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments are terminated. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations (other than any contingent indemnification obligations not then due) shall not have been paid in full,

such amount shall be held by such Guarantor in trust for the Secured Parties, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

2.04 Amendments, etc. with Respect to the Borrower Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Obligations made by any Secured Party may be rescinded by such Secured Party and any of the Borrower Obligations continued, and the Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, increased, amended, modified, accelerated, compromised, waived, surrendered or released by any Secured Party, and the DIP Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Obligations or for the guarantee contained herein or any property subject thereto.

2.05 Guarantee Absolute and Unconditional. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or a surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) The guarantee under this Section 2 is a guaranty of payment when due and not of collectability, and is a primary obligation of each Guarantor and not merely a contract of surety.

(b) The Administrative Agent may enforce the guarantee under this Agreement upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default.

(c) Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2.

(d) The Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between the Borrower and any of the

Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2.

(e) To the fullest extent permitted by applicable law, each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Obligations.

(f) Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment and performance without regard to

(i) the validity or enforceability of the DIP Credit Agreement or any other Loan Document, any of the Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party,

(ii) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against any Secured Party,

(iii) any acts of any legislative body or governmental authority affecting the Borrower, including but not limited to, any restrictions on the conversion of currency or repatriation or control of funds or any total or partial expropriation of the Borrower's property, or by economic, political, regulatory or other events in the countries where the Borrower is located, or

(iv) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance.

(g) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security or guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Secured Parties against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

2.06 Reinstatement. Each Guarantor agrees that if (a) any payment made by the Borrower or any other Person and applied to the Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or (b) the proceeds of Collateral are required to be returned by any Beneficiary to the Borrower or its estate, trustee, receiver or any other Party including any Guarantor or its estate, trustee, or receiver under any requirement of law, then, to the extent of such payment or repayment, any such Guarantors liability hereunder shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, the guarantee under this Section 2 shall have been cancelled or surrendered (and, if any Lien or other Collateral securing such Guarantor's liability hereunder shall have been released or terminated by virtue of such cancellation or surrender), the guarantee under this Section 2 (and such Lien or other Collateral) shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Guarantor in respect of the amount of such payment (or any lien or other Collateral securing such obligation).

2.07 [Reserved].

2.08 Waiver by Guarantors. Each Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Secured Party in favor of Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party's errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute or limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights of set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including the acceptance hereof, notices of default hereunder, the Secured Hedge Agreements or any agreement or instrument related thereto, the Secured Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of extension of credit to Borrower; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

2.09 [Reserved].

2.10 Subordination of Other Obligations. Any Indebtedness of the Borrower or any Guarantor held as of the Closing Date or thereafter by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf the Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of the Beneficiaries to be credited and applied against the Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

2.11 Authority of Guarantors or Borrower. It shall not be necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or agents acting or purporting to act on behalf of any of them.

2.12 Financial Condition of Borrower. Any Letter of Credit may be extended from time to time, without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Loan Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and all circumstances bearing upon the risk of nonpayment of the Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower known as of the Closing Date or thereafter known by any Beneficiary.

2.13 Taxes and Payments. The provisions of Section 3.01(a)-(d) of the DIP Credit Agreement shall apply *mutatis mutandis* to the Guarantors and payments thereby.

2.14 Assignments. Each Guarantor acknowledges that the Administrative Agent or any Lender may assign or otherwise transfer all or any portion of its rights and obligations under the DIP Credit Agreement (including, without limitation, all or any portion of its Commitments) and such assignee, transferee or participant shall thereupon become vested with all the benefits in respect thereof granted to such party herein or otherwise, in each case as and to the extent provided in Section 10.06 of the DIP Credit Agreement. No Guarantor shall have the right to assign its rights hereunder or any interest herein except in accordance with Section 10.06 of the DIP Credit Agreement.

SECTION III. REPRESENTATIONS AND WARRANTIES

3.01 Representations in DIP Credit Agreement. To induce the Administrative Agent and the Lenders to enter into the DIP Credit Agreement and to induce the Lenders to restate their irrevocable reimbursement obligations to the L/C Issuers thereunder, each Guarantor hereby represents and warrants to each Secured Party that the representations and warranties set

forth in Section V of the DIP Credit Agreement as they relate to such Guarantor or to the other Loan Documents to which such Guarantor is a party, each of which is hereby incorporated herein by reference, are true and correct in all material respects as of the Closing Date of the DIP Credit Agreement and as of each date on which the Borrower is deemed to repeat such representations and warranties under Section 4.02 of the DIP Credit Agreement (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date), and the Secured Parties shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this Section 3.01, be deemed to be a reference to such Guarantor's knowledge.

SECTION IV. COVENANTS

Each Guarantor covenants and agrees with the Secured Parties that, from and after the date of this Agreement until the Obligations shall have been paid in full (other than any contingent indemnification obligations not then due), no Letter of Credit shall be outstanding (or any outstanding Letters of Credit shall have been cash collateralized, otherwise collateralized with "back to back" letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), and the Commitments shall have terminated, such Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor.

SECTION V. REMEDIAL PROVISIONS

5.01 Application of Proceeds. The Administrative Agent may apply all or any part of any proceeds of the guarantee set forth in Section II, to payment of the Borrower Obligations in such order as set forth in Section 8.03 of the DIP Credit Agreement.

5.02 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Borrower Obligations, all rights and remedies available to it under any applicable Loan Document or under any applicable law or in equity.

SECTION VI. MISCELLANEOUS

6.01 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.01 of the DIP Credit Agreement.

6.02 Notices. All notices, requests and demands to or upon the Administrative Agent or any Guarantor hereunder shall be effected in the manner provided for in Section 10.02 of the DIP Credit Agreement; provided, that any such notice, request or demand to or upon any Guarantor shall be given to it in care of the Borrower at the Borrower's address set forth in Section 10.02 of the DIP Credit Agreement.

6.03 No Waiver by Course of Conduct; Cumulative Remedies. None of the Secured Parties shall by any act (except by a written instrument pursuant to Section 6.01), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

6.04 Enforcement Expenses; Indemnification. (a) Each Guarantor agrees to pay or reimburse each Secured Party for all its reasonable and documented out-of-pocket expenses incurred in collecting against such Guarantor under the guarantee contained in Section II or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including, without limitation, the fees and disbursements of counsel to each Secured Party and of counsel to the Administrative Agent.

(b) Each Guarantor agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement but only to the extent the Borrower would be required to do so pursuant to Section 10.04 of the DIP Credit Agreement.

(c) The agreements in this Section 6.04 shall survive repayment of the Obligations and all other amounts payable under the DIP Credit Agreement and the other Loan Documents.

6.05 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the Secured Parties and their successors and assigns; provided that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

6.06 Set-Off. Each Guarantor hereby irrevocably authorizes each Secured Party at any time and from time to time following the occurrence of and during the continuance of an Event of Default, and upon any amount becoming due and payable under the DIP Credit Agreement, whether at stated maturity, by acceleration or otherwise, and pursuant to Section 10.08 of the DIP Credit Agreement, without notice to such Guarantor or any other Guarantor, any such notice being expressly waived by each Guarantor, to set-off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Secured Party to or for the credit or the account of such Guarantor, or any part thereof in such amounts as such Secured Party may elect, against and on account of the Obligations and liabilities of such Guarantor to such Secured Party hereunder then due and owing and claims of

every nature and description of such Secured Party against such Guarantor then due and owing, in any currency, whether arising hereunder, under the DIP Credit Agreement, any other Loan Document or otherwise, as such Secured Party may elect, whether or not such Secured Party has made any demand for payment and although such Obligations, liabilities and claims may be contingent or unmaturing. Each Secured Party shall notify such Guarantor promptly of any such set-off and the application made by such Secured Party of the proceeds thereof, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the each Secured Party under this Section 6.06 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which such Secured Party may have.

6.07 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

6.08 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction with respect to any of the Guarantors shall, as to such jurisdiction and such Guarantor, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof with respect to such Guarantor or any of the other Guarantors, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction or with respect to any of the other Guarantors in any jurisdiction.

6.09 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

6.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Guarantors and the Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

6.11 **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.**

6.12 Submission To Jurisdiction; Waivers. EACH GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(a) SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR

PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(c) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH GUARANTOR AT ITS ADDRESS REFERRED TO IN SECTION 6.02 OR AT SUCH OTHER ADDRESS OF WHICH THE ADMINISTRATIVE AGENT SHALL HAVE BEEN NOTIFIED PURSUANT THERETO;

(d) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION; AND

(e) WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

6.13 Acknowledgements. Each Guarantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) None of the Secured Parties has any fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Guarantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Guarantors and the Secured Parties.

6.14 WAIVER OF JURY TRIAL. EACH GUARANTOR AND, BY ACCEPTANCE OF THE BENEFITS HEREOF, EACH OF THE SECURED PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

6.15 Releases. (a) At such time as the Obligations shall have been paid in full (other than any contingent indemnification obligations not then due), the Commitments have been terminated and no Letters of Credit shall be outstanding (except to the extent that the Letters of Credit that have been cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported, in each case, on terms satisfactory to the Administrative Agent), this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the request and sole expense of any Guarantor following any such termination, the Administrative Agent shall execute and deliver to such Guarantor such documents as such Guarantor shall reasonably request to evidence such termination.

(b) A Guarantor shall automatically be released from its obligations hereunder and the Guarantee (as defined in the DIP Credit Agreement) of such Guarantor shall automatically be released under the circumstances described in Section 9.09(b) of the DIP Credit Agreement.

6.16 Additional Guarantors. Each Subsidiary of the Borrower that elects to become a party to this Agreement or is required to become a party to this Agreement pursuant to Article VI of the DIP Credit Agreement shall become a Guarantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

6.17 Conflict. In the event there is a conflict between the terms of this Agreement and the DIP Credit Agreement, the DIP Credit Agreement shall control.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee to be duly executed and delivered as of the date first above written.

Guarantors:

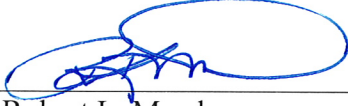
AFFINITY MINING COMPANY
APOGEE COAL COMPANY, LLC
APPALACHIA MINE SERVICES, LLC
BEAVER DAM COAL COMPANY,
LLC
BIG EAGLE, LLC
BIG EAGLE RAIL, LLC
BLACK STALLION COAL COMPANY,
LLC
BLACK WALNUT COAL COMPANY
BLUEGRASS MINE SERVICES, LLC
BROOK TROUT COAL, LLC
CATENARY COAL COMPANY, LLC
CENTRAL STATES COAL RESERVES
OF KENTUCKY, LLC
CHARLES COAL COMPANY, LLC
CLEATON COAL COMPANY
COAL CLEAN LLC
COAL PROPERTIES, LLC
COAL RESERVE HOLDING LIMITED
LIABILITY COMPANY NO. 2
COLONY BAY COAL COMPANY
COOK MOUNTAIN COAL COMPANY,
LLC
CORYDON RESOURCES LLC
COVENTRY MINING SERVICES, LLC
COYOTE COAL COMPANY LLC
CUB BRANCH COAL COMPANY LLC
DAKOTA LLC
DAY LLC
DIXON MINING COMPANY, LLC
DODGE HILL HOLDING JV, LLC
DODGE HILL MINING COMPANY,
LLC
DODGE HILL OF KENTUCKY, LLC
EASTERN ASSOCIATED COAL, LLC
EASTERN COAL COMPANY, LLC
EASTERN ROYALTY, LLC
EMERALD PROCESSING, L.L.C

GATEWAY EAGLE COAL
COMPANY, LLC
GRAND EAGLE MINING, LLC
HERITAGE COAL COMPANY LLC
HIGHLAND MINING COMPANY, LLC
HILLSIDE MINING COMPANY
HOBET MINING, LLC
INDIAN HILL COMPANY LLC
INFINITY COAL SALES, LLC
INTERIOR HOLDINGS, LLC
IO COAL LLC
JARRELL'S BRANCH COAL
COMPANY
JUPITER HOLDINGS LLC
KANAWHA EAGLE COAL, LLC
KANAWHA RIVER VENTURES I, LLC
KANAWHA RIVER VENTURES II,
LLC
KANAWHA RIVER VENTURES III,
LLC
KE VENTURES, LLC
LITTLE CREEK LLC
LOGAN FORK COAL COMPANY
MAGNUM COAL COMPANY LLC
MAGNUM COAL SALES LLC
MARTINKA COAL COMPANY, LLC
MIDLAND TRAIL ENERGY LLC
MIDWEST COAL RESOURCES II, LLC
MOUNTAIN VIEW COAL COMPANY,
LLC
NEWTOWN ENERGY, INC.
NEW TROUT COAL HOLDINGS II,
LLC
NORTH PAGE COAL CORP.
OHIO COUNTY COAL COMPANY,
LLC
PANTHER LLC
PATRIOT BEAVER DAM HOLDINGS,
LLC
PATRIOT COAL COMPANY, L.P.
PATRIOT COAL SALES LLC
PATRIOT COAL SERVICES LLC
PATRIOT LEASING COMPANY LLC
PATRIOT MIDWEST HOLDINGS, LLC
PATRIOT RESERVE HOLDINGS, LLC
PATRIOT TRADING LLC

PATRIOT VENTURES LLC
PCX ENTERPRISES, INC.
PINE RIDGE COAL COMPANY, LLC
POND CREEK LAND RESOURCES,
LLC
POND FORK PROCESSING LLC
REMINGTON HOLDINGS LLC
REMINGTON II LLC
REMINGTON LLC
RIVERS EDGE MINING, INC.
ROBIN LAND COMPANY, LLC
SENTRY MINING, LLC
SNOWBERRY LAND COMPANY
SPEED MINING LLC
STERLING SMOKELESS COAL
COMPANY, LLC
TC SALES COMPANY, LLC
THE PRESIDENTS ENERGY
COMPANY LLC
THUNDERHILL COAL LLC
TROUT COAL HOLDINGS, LLC
UNION COUNTY COAL CO., LLC
VIPER LLC
WEATHERBY PROCESSING LLC
WILDCAT, LLC
WILDCAT ENERGY LLC
WILL SCARLET PROPERTIES LLC
WINCHESTER LLC
WINIFREDE DOCK LIMITED
LIABILITY COMPANY
YANKEETOWN DOCK, LLC

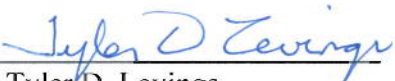
Executing this Guarantee as Vice-President and
Treasurer of each of the 98 foregoing persons on
behalf of and so as to bind the persons named above
under the caption "Guarantors"

By: _____


Robert L. Mead
Vice President and Treasurer

Accepted on behalf of the
Secured Parties as of the date first
above written


BANK OF AMERICA, N.A., as
Administrative Agent

By: 
Name: Tyler D. Levings
Title: Director

[Signature Page to Guaranty Agreement]

Acknowledged and agreed:

PATRIOT COAL CORPORATION,
a Delaware corporation

By: 
Name: Mark N. Schroeder
Title: Senior Vice President &
Chief Financial Officer