

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

**FORM 8-K**

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

Date of report (Date of earliest event reported): **November 15, 2012 (November 14, 2012)**

**Arch Coal, Inc.**

(Exact name of registrant as specified in its charter)

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

**1-13105**  
(Commission File Number)

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

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

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

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

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

**Item 1.01 Entry into a Material Definitive Agreement.**

On November 14, 2012, Arch Coal, Inc. (the "Company") and the subsidiary guarantors named therein (the "Subsidiary Guarantors") entered into a purchase agreement (the "Purchase Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several initial purchasers named therein (the "Initial Purchasers"), relating to the issuance and sale by the Company of \$350.0 million aggregate principal amount of 9.875% Senior Notes due 2019 (the "Notes"). The Notes will be issued by the Company pursuant to an Indenture to be entered into among the Company, the Subsidiary Guarantors and UMB Bank National Association, as trustee. Subject to customary market and other conditions set forth in the Purchase Agreement, the Notes will be sold within the United States only to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and outside the United States only to non-U.S. persons in reliance on Regulation S under the Securities Act.

The Purchase Agreement includes customary representations, warranties and covenants by the Company and the Subsidiary Guarantors. Under the terms of the Purchase Agreement, the Company and the Subsidiary Guarantors have agreed to indemnify the Initial Purchasers against certain liabilities. The Purchase Agreement is filed as Exhibit 1.1 to this Form 8-K, and this description of the material terms of the Purchase Agreement is qualified in its entirety by reference to such exhibit, which is incorporated herein by reference.

**Item 7.01 Regulation FD Disclosure.**

On November 14, 2012, Arch Coal, Inc. issued a press release announcing the pricing of its offering of the Notes. A copy of the press release is attached hereto as Exhibit 99.1.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

The following exhibit is attached hereto and furnished herewith.

**Exhibit  
No.**

**Description**

- 1.1 Purchase Agreement, dated as of November 14, 2012, among Arch Coal, Inc., the subsidiary guarantors named therein and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the initial purchasers named therein.
- 99.1 Press release dated November 14, 2012.

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### Signatures

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

Dated: November 15, 2012

Arch Coal, Inc.

By: /s/ Robert G. Jones

Robert G. Jones

Senior Vice President–Law, General Counsel and Secretary

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### Exhibit Index

<b>Exhibit No.</b>	<b>Description</b>
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99.1	Press release dated November 14, 2012.

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ARCH COAL, INC.

\$375,000,000

9.875% Senior Notes due 2019

## PURCHASE AGREEMENT

November 14, 2012

Merrill Lynch, Pierce, Fenner &amp; Smith Incorporated

## Purchase Agreement

November 14, 2012

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATEDOne Bryant Park  
New York, NY 10036

As Representative of the several Initial Purchasers

Ladies and Gentlemen:

*Introductory.* Arch Coal, Inc., a Delaware corporation (the “**Company**”), proposes to issue and sell to the several Initial Purchasers named in Schedule A (the “**Initial Purchasers**”), acting severally and not jointly, the respective amounts set forth in such Schedule A of \$375,000,000 aggregate principal amount of the Company’s 9.875% Senior Notes due 2019 (the “**Notes**”). Merrill Lynch, Pierce, Fenner & Smith Incorporated has agreed to act as the representative of the several Initial Purchasers (in such capacity, the “**Representative**”) in connection with the offering and sale of the Securities.

The Securities are to be issued under an indenture to be dated as of the Closing Date, between the Company and UMB Bank National Association, as trustee (the “**Trustee**”), as supplemented by a first supplemental indenture (collectively, the “**Indenture**”) to be dated as of the Closing Date, among the Company, the Guarantors and the Trustee. The Notes will be issued in book-entry form in the name of Cede & Co., as nominee of The Depository Trust Company (the “**Depository**”), pursuant to a Letter of Representations, previously executed (the “**DTC Agreement**”), among the Company and the Depository.

The holders of the Securities will be entitled to the benefits of a registration rights agreement, to be dated as of November 21, 2012 (the “**Registration Rights Agreement**”), among the Company, the Guarantors and the Initial Purchasers, pursuant to which the Company and the Guarantors may be required to file with the Commission (as defined below), under the circumstances set forth therein, (i) a registration statement under the Securities Act (as defined below)

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relating to another series of debt securities of the Company with terms substantially identical to the Notes (the “**Exchange Notes**”) to be offered in exchange for the Notes (the “**Exchange Offer**”) and (ii) a shelf registration statement pursuant to Rule 415 of the Securities Act relating to the resale by certain holders of the Notes, and in each case, to use its reasonable best efforts to cause such registration statements to be declared effective. All references herein to the Exchange Notes and the Exchange Offer are only applicable if the Company and the Guarantors are in fact required to consummate the Exchange Offer pursuant to the terms of the Registration Rights Agreement.

The payment of principal of, premium, if any, and interest on the Notes will be fully and unconditionally guaranteed on a senior unsecured basis, jointly and severally by (i) each of the Company’s subsidiaries listed in Schedule B hereto, and (ii) any subsidiary of the Company formed or acquired after the Closing Date that executes an additional guarantee in accordance with the terms of the Indenture, and their respective successors and assigns (collectively, the “**Guarantors**”), pursuant to their guarantees (the “**Guarantees**”). The Notes and the Guarantees attached thereto are herein collectively referred to as the “**Securities**”; and the Exchange Notes and the Guarantees to be attached thereto are herein collectively referred to as the “**Exchange Securities**.”

The Company understands that the Initial Purchasers propose to make an offering of the Securities on the terms and in the manner set forth herein and in the Pricing Disclosure Package (as defined below) and agrees that the Initial Purchasers may resell, subject to the conditions set forth herein, all or a portion of the Securities to purchasers (the “**Subsequent Purchasers**”) on the terms set forth in the Pricing Disclosure Package (the first time when sales of the Securities are made is referred to as the “**Time of Sale**”). The Securities are to be offered and sold to or through the Initial Purchasers without being registered with the Securities and Exchange Commission (the “**Commission**”) under the Securities Act of 1933 (as amended, the “**Securities Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder), in reliance upon exemptions therefrom. Pursuant to the terms of the Securities and the Indenture, investors who acquire Securities shall be deemed to have agreed that Securities may only be resold or otherwise transferred, after the date hereof, if such Securities are registered for sale under the Securities Act or if an exemption from the registration requirements of the Securities Act is available (including the exemptions afforded by Rule 144A under the Securities Act (“**Rule 144A**”) or Regulation S under the Securities Act (“**Regulation S**”).

The Company has prepared and delivered to each Initial Purchaser copies of a Preliminary Offering Memorandum, dated November 13, 2012 (the “**Preliminary Offering Memorandum**”), and has prepared and delivered to each Initial Purchaser copies of a Pricing Supplement, attached as Schedule C hereto (the “**Pricing Supplement**”), dated November 14, 2012, describing the terms of the Securities, each for use by such Initial Purchaser in connection with its solicitation of offers to purchase the Securities. The Preliminary Offering Memorandum and the Pricing Supplement are herein referred to as the “**Pricing Disclosure Package**.” Promptly after this Agreement is executed and delivered, the Company will prepare and deliver to each Initial Purchaser a final offering memorandum dated the date hereof (the “**Final Offering Memorandum**”).

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All references herein to the terms “**Pricing Disclosure Package**” and “**Final Offering Memorandum**” shall be deemed to mean and include all information filed under the Securities Exchange Act of 1934 (as amended, the “**Exchange Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder) prior to the Time of Sale and incorporated by reference in the Pricing Disclosure Package (including the Preliminary Offering Memorandum) or the Final Offering Memorandum (as the case may be), and all references herein to the terms “**amend**,” “**amendment**” or “**supplement**” with respect to the Final Offering Memorandum shall be deemed to mean and include all information filed under the Exchange Act after the Time of Sale and incorporated by reference in the Final Offering Memorandum.

The Company hereby confirms its agreements with the Initial Purchasers as follows:

SECTION 1. *Representations and Warranties.* The Company and each Guarantor, jointly and severally, represent and warrant to, and agree with, each of the Initial Purchasers as of the date hereof and as of the Closing Date (in each case, a “**Representation Date**”) (references in this Section 1 to the “**Offering Memorandum**” are to (x) the Pricing Disclosure Package in the case of representations and warranties made as of the date hereof and (y) the Final Offering Memorandum in the case of representations and warranties made as of the Closing Date), as follows:

a) *No Registration Required.* Subject to compliance by the Initial Purchasers with the representations and warranties set forth in Section 2 hereof and with the procedures set forth in Section 7 hereof, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchasers and to each Subsequent Purchaser in the manner contemplated by this Agreement and the Offering Memorandum to register the Securities under the Securities Act or, until such time as the Exchange Securities are issued pursuant to an effective registration statement, to qualify the Indenture under the Trust Indenture Act of 1939 (the “**Trust Indenture Act**,” which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder).

b) *No Integration of Offerings or General Solicitation.* None of the Company, its affiliates (as such term is defined in Rule 501 under the Securities Act) (each, an “**Affiliate**”), or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has, directly or indirectly, solicited any offer to buy or offered to sell, or will, directly or indirectly, solicit any offer to buy or offer to sell, in the United States or to any United States citizen or resident, any security which is or would be integrated with the sale of the Securities in a manner that would require the Securities to be registered under the Securities Act. None of the Company, its Affiliates, or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has engaged or will engage, in connection with the offering of the Securities, in any form of general solicitation or general advertising within the meaning of Rule 502 under the Securities Act. With respect to those Securities sold in reliance upon Regulation S, (i) none of the Company, its Affiliates or any person acting on its or their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has engaged or will engage in any directed selling efforts within the meaning of Regulation S and (ii) each of the Company

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and its Affiliates and any person acting on its or their behalf (other than the Initial Purchasers, as to whom the Company makes no representation or warranty) has complied and will comply with the offering restrictions set forth in Regulation S.

c) *Eligibility for Resale under Rule 144A.* The Securities are eligible for resale pursuant to Rule 144A and will not be, at the Closing Date, of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated interdealer quotation system.

d) *The Pricing Disclosure Package and Final Offering Memorandum.* Neither the Pricing Disclosure Package, as of the Time of Sale, nor the Final Offering Memorandum, as of its date or (as amended or supplemented in accordance with Section 3(a), as applicable) as of the Closing Date, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that this representation, warranty and agreement shall not apply to statements in or omissions from the Pricing Disclosure Package, the Final Offering Memorandum or any amendment or supplement thereto made in reliance upon and in conformity with information furnished to the Company in writing by any Initial Purchaser through the Representatives expressly for use in the Pricing Disclosure Package, the Final Offering Memorandum or amendment or supplement thereto, as the case may be. The Pricing Disclosure Package contains, and the Final Offering Memorandum will contain as of its date, all the information specified in, and meeting the requirements of, Rule 144A. The Company has not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Initial Purchasers’ distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than the Pricing Disclosure Package and the Final Offering Memorandum.

e) *Incorporated Documents.* The documents incorporated or deemed to be incorporated by reference in the Preliminary Offering Memorandum and the Final Offering Memorandum (i) at the time they were or hereafter are filed with the Commission, complied or will comply in all material respects with the requirements of the Exchange Act and (ii) when read together with the other information in the Pricing Disclosure Package, at the Time of Sale, and when read together with the other information in the Final Offering Memorandum, at the date of the Final Offering Memorandum and at the Closing Date, did not or will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

f) *Company Additional Written Communications.* The Company has not prepared, made, used, authorized, approved or distributed and will not prepare, make, use, authorize, approve or distribute any written communication that constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clauses (i) and (ii) below) a “**Company Additional Written Communication**”) other than (i) the Pricing Disclosure Package, (ii) the Final Offering Memorandum, and (iii) any

untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Company Additional Written Communication based upon and in conformity with written information furnished to the Company by any Initial Purchaser through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by any Initial Purchaser through the Representative consists of the information described as such in Section 9 hereof.

g) *The Purchase Agreement.* This Agreement has been duly authorized, executed and delivered by, and constitutes a valid and binding agreement of, the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

h) *The Registration Rights Agreement.* The Registration Rights Agreement has been duly authorized and, on the Closing Date, will have been duly executed and delivered by, and will constitute a valid and binding agreement of, the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity) and except as rights to indemnification may be limited by applicable law.

i) *The DTC Agreement.* The DTC Agreement has been duly authorized, executed and delivered by, and constitutes a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

j) *Authorization of the Securities and the Exchange Securities.* The Notes to be purchased by the Initial Purchasers from the Company are in the form contemplated by the Indenture, have been duly authorized for issuance and sale pursuant to this Agreement and the Indenture and, at the Closing Date, will have been duly executed by the Company and, when authenticated in the manner provided for in the Indenture and delivered against payment of the purchase price therefor, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity) and will be entitled to the benefits of the Indenture. The Exchange Notes have been duly and validly authorized for issuance by the Company, and when issued and authenticated in accordance with the terms of the Indenture, the Registration Rights Agreement and the Exchange Offer, will constitute valid and binding obligations

of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting enforcement of the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity) and will be entitled to the benefits of the Indenture. The Guarantees of the Notes and the Exchange Notes are in the respective forms contemplated by the Indenture, have been duly authorized by the Guarantors for issuance and sale pursuant to this Agreement and the Indenture and, at the Closing Date, will have been duly executed by each of the Guarantors and, when the Notes and the Exchange Notes have been authenticated in the manner provided for in the Indenture and delivered against payment of the purchase price therefor, will constitute valid and binding obligations of the Guarantors, enforceable in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity) and will be entitled to the benefits of the Indenture.

k) *Authorization of the Indenture.* The Indenture has been duly authorized by the Company and the Guarantors and, at the Closing Date, will have been duly executed and delivered by the Company and the Guarantors and will constitute a valid and binding agreement of the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity).

l) *Description of the Securities and the Indenture.* The Securities, the Exchange Securities, when issued, and the Indenture will conform in all material respects to the respective statements relating thereto contained in the Offering Memorandum.

m) *No Material Adverse Effect.* Since the dates as of which information is given in the Pricing Disclosure Package and the Final Offering Memorandum, except as otherwise stated therein, (i) there has been no change having a material adverse effect in the condition, financial or otherwise, or in the earnings, properties, business or prospects of the Company and its subsidiaries, taken as a whole (a "**Material Adverse Effect**"), (ii) there have been no transactions entered into by the Company and its subsidiaries, other than those arising in the ordinary course of business, which are material with respect to the Company and its subsidiaries, taken as a whole, and (iii) except for regular quarterly dividends on the Company's common stock, in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

n) *Independent Accountants.* Ernst & Young LLP, which expressed its opinion with respect to the audited financial statements of the Company and its consolidated subsidiaries and delivered its reports with respect to the audited consolidated financial statements and schedules of the Company for the fiscal years ended 2009, 2010 and 2011 included or incorporated by reference in the Pricing Disclosure Package and the Final Offering Memorandum, are independent public accountants with respect to the Company within the meaning of the Securities Act and the

Exchange Act and are a registered public accounting firm with the Public Company Accounting Oversight Board.

o) *Preparation of the Financial Statements.* (i) The consolidated historical financial statements, together with the related schedules and notes, of the Company and its consolidated subsidiaries included in the Pricing Disclosure Package and the Final Offering Memorandum present fairly in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its consolidated subsidiaries as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the Securities Act and have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis throughout the periods involved (except as otherwise noted therein), and (ii) the selected financial data set forth under the caption “Summary Historical Financial Data” in the Pricing Disclosure Package and the Final Offering Memorandum fairly present, on the basis stated in the Pricing Disclosure Package and the Final Offering Memorandum, the information included therein. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Pricing Disclosure Package and the Final Offering Memorandum fairly present the information called for in all material respects and have been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

p) *Incorporation and Good Standing of the Company.* The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has power and authority to own, lease and operate its properties and to conduct its business as described in the Pricing Disclosure Package and the Final Offering Memorandum and to enter into and perform its obligations under, or as contemplated under, this Agreement. The Company is duly qualified as a foreign corporation to transact business and is in good standing or equivalent status in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a Material Adverse Effect.

q) *Capitalization and Other Capital Stock Matters.* The authorized and outstanding capitalization of the Company on an actual basis as of September 30, 2012 is as set forth in the column entitled “Actual” under the caption “Capitalization” in the Pricing Disclosure Package and the Final Offering Memorandum (except for subsequent issuances, if any, pursuant to reservations, agreements or employee benefit plans referred to or incorporated by reference in the Pricing Disclosure Package and the Final Offering Memorandum or pursuant to the exercise of convertible securities or options referred to or included in the Pricing Disclosure Package and the Final Offering Memorandum).

r) *Coal Reserve Information.* All information related to the coal reserves of the Company and its subsidiaries (including, without limitation, each of the Company’s (x) estimated assigned and unassigned recoverable coal reserves and (y) proven, probable and total recoverable coal reserves, in the aggregate and by region and mining complex location) included in the Pricing Disclosure Package and the Final Offering Memorandum (the “Coal Reserve Information”), (i) was and is accurate in all material respects, (ii) would, if the offer and sale of the Securities were registered under the Securities Act, comply in all material respects with the requirements of the Securities Act and the requirements of the Exchange Act, as applicable, and (iii) when read together with the other information in the Pricing Disclosure Package and the Final

Offering Memorandum, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Coal Reserve Information has been calculated in accordance with standard mining engineering procedures used in the coal industry and applicable government reporting requirements and applicable law. All assumptions used in the calculation of the Coal Reserve Information were and are reasonable.

s) *Subsidiaries.* Each subsidiary of the Company that is not a Guarantor has been duly organized and is validly existing as a corporation, limited liability company or partnership, as applicable, in good standing under the laws of the jurisdiction of its formation, has power and authority to own, lease and operate its properties and to conduct its business as described in the Pricing Disclosure Package and the Final Offering Memorandum and is duly qualified to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a Material Adverse Effect. Except as otherwise stated in the Pricing Disclosure Package and the Final Offering Memorandum, all of the issued and outstanding capital stock or other ownership interests of each subsidiary of the Company that is not a Guarantor has been duly authorized and validly issued, fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. Except as otherwise stated in the Pricing Disclosure Package and the Final Offering Memorandum, none of the outstanding shares of capital stock of any subsidiary of the Company that is not a Guarantor was issued in violation of preemptive or other similar rights of any securityholder of such subsidiary of the Company.

t) *Guarantors.* Each Guarantor has been duly organized and is validly existing as a corporation, limited liability company or partnership, as applicable, in good standing under the laws of the jurisdiction of its formation, has power and authority to own, lease and operate its properties and to conduct its business as described in the Pricing Disclosure Package and the Final Offering Memorandum and is duly qualified to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a Material Adverse Effect. Except as otherwise stated in the Pricing Disclosure Package and the Final Offering Memorandum, all of the issued and outstanding capital stock or other ownership interests of each Guarantor has been duly authorized and validly issued, fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock or other ownership interests, as applicable, of any Guarantor was issued in violation of preemptive or other similar rights of any securityholder of such Guarantor.

u) *Compliance with Reporting Requirements.* The Company is subject to and in full compliance with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act.

v) *Statements in Pricing Disclosure Package and the Final Offering Memorandum.* The statements in the Pricing Disclosure Package and the Final Offering Memorandum under the headings “Description of Notes”, “Exchange Offer; Registration Rights”, “Certain United States

Federal Income Tax Consequences” and “Notice to Investors”, fairly summarize the matters therein described.

w) *Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.* Neither the Company nor any of its subsidiaries is in violation of its charter, by-laws or other organizational documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the assets, properties or operations of the Company or any of its subsidiaries is subject (collectively, “**Agreements and Instruments**”), except for such defaults that would not result in a Material Adverse Effect. The execution, delivery and performance of this Agreement, the Indenture, the Registration Rights Agreement and any other agreement or instrument entered into or issued or to be entered into or issued by each of the Company and the Guarantors in connection with the transactions contemplated hereby or thereby or in the Pricing Disclosure Package and the Final Offering Memorandum and the consummation of the transactions contemplated herein and in the Pricing Disclosure Package and the Final Offering Memorandum (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described under the caption “Use of Proceeds” in the Pricing Disclosure Package and the Final Offering Memorandum) and compliance by each of the Company and the Guarantors with its obligations hereunder and thereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries (each, a “**Repayment Event**”) under, or result in the creation or imposition of any lien, charge or encumbrance upon any assets, properties or operations of the Company or any of its subsidiaries pursuant to, any Agreements and Instruments (except for such conflicts, breaches or defaults or liens, charges or encumbrances that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or other organizational documents of the Company or any of its subsidiaries or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their assets, properties or operations.

x) *Absence of Labor Disputes.* No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any subsidiary’s principal suppliers, manufacturers, customers or contractors, which, in either case, may reasonably be expected to result in a Material Adverse Effect.

y) *No Material Actions or Proceedings.* Except as otherwise disclosed in the Pricing Disclosure Package and the Final Offering Memorandum, there is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of each the Company and the Guarantors, threatened, against or affecting the Company or any of its subsidiaries which might reasonably

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be expected to result in a Material Adverse Effect, or which might reasonably be expected to materially and adversely affect the assets, properties or operations thereof or the consummation of the transactions contemplated under the Pricing Disclosure Package and the Final Offering Memorandum, this Agreement, the Indenture, the Registration Rights Agreement or the performance by each of the Company and the Guarantors of its obligations hereunder and thereunder. The aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective assets, properties or operations is subject which are not described in the Pricing Disclosure Package and the Final Offering Memorandum, including ordinary routine litigation incidental to the business, could not reasonably be expected to result in a Material Adverse Effect.

z) *No Consents or Approvals, etc.* Except as otherwise disclosed in the Pricing Disclosure Package and the Final Offering Memorandum, no filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the due authorization, execution and delivery by each of the Company and the Guarantors of this Agreement in connection with the issuance of the Securities or for the performance by each of the Company and the Guarantors of the transactions contemplated under the Pricing Disclosure Package and the Final Offering Memorandum, this Agreement, the Indenture or the Registration Rights Agreement except such as have been already made, obtained or rendered, and such as will be obtained under the Securities Act and such as may be required by the Financial Industry Regulatory Authority (“**FINRA**”) and under blue sky laws of any jurisdiction in connection with the purchase and sale by the Initial Purchasers in the manner contemplated herein and in the Pricing Disclosure Package and the Final Offering Memorandum, as applicable, as of the Closing Date.

aa) *Intellectual Property Rights.* The Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, “**Intellectual Property**”) necessary to carry on the business now operated by them, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a Material Adverse Effect.

bb) *All Necessary Permits, etc.* The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, “**Governmental Licenses**”) issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them. The Company and its subsidiaries are in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except where the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not result in a Material Adverse Effect. Except as otherwise disclosed

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in the Pricing Disclosure Package and the Final Offering Memorandum, neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable

decision, ruling or finding, would result in a Material Adverse Effect.

cc) *Title to Properties.* The Company and its subsidiaries have good and marketable title to all real property owned by the Company and its subsidiaries and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind, except (i) as otherwise stated in the Pricing Disclosure Package and the Final Offering Memorandum or (ii) those which do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries. All of the leases and subleases material to the business of the Company and its subsidiaries, taken as a whole, and under which the Company or any of its subsidiaries holds properties described in the Pricing Disclosure Package and the Final Offering Memorandum, are in full force and effect, and neither the Company nor any of its subsidiaries has received any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any of its subsidiaries under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary of the continued possession of the leased or subleased premises under any such lease or sublease.

dd) *Tax Law Compliance.* Each of the Company and its subsidiaries has filed all foreign, federal, state and local tax returns that are required to be filed or has requested extensions thereof except in any case in which the failure so to file would not have a Material Adverse Effect and except as set forth in or contemplated in the Pricing Disclosure Package and the Final Offering Memorandum (exclusive of any amendment or supplement thereto) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith or as would not have a Material Adverse Effect and except as set forth in or contemplated in the Pricing Disclosure Package and the Final Offering Memorandum (exclusive of any amendment or supplement thereto).

ee) *Company Not an "Investment Company".* The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "**Investment Company Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder). The Company is not, and after receipt of payment for the Securities and the application of the net proceeds in the manner described under the caption "Use of Proceeds" in the Pricing Disclosure Package and the Final Offering Memorandum will not be, an "investment company" within the meaning of the Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

ff) *Insurance.* The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; all policies of insurance and fidelity or surety bonds insuring the Company, or any of its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and its subsidiaries are in compliance with the terms of such policies and instruments in all material respects;

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and there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any such subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except as set forth in or contemplated in the Pricing Disclosure Package and the Final Offering Memorandum (exclusive of any amendment or supplement thereto).

gg) *No Price Stabilization or Manipulation.* None of the Company or any of the Guarantors has taken or will take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

hh) *Solvency.* Each of the Company and the Guarantors is, and immediately after the Closing Date will be, Solvent. As used herein, the term "Solvent" means, with respect to any person on a particular date, that on such date (i) the fair market value of the assets of such person is greater than the total amount of liabilities (including contingent liabilities) of such person, (ii) the present fair salable value of the assets of such person is greater than the amount that will be required to pay the probable liabilities of such person on its debts as they become absolute and matured, (iii) such person is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (iv) such person does not have unreasonably small capital.

ii) *Compliance with Sarbanes-Oxley.* The Company and its subsidiaries and their respective officers and directors are in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder).

jj) *Company's Accounting System.* The Company and its subsidiaries maintain a system of accounting controls that is in compliance in all material respects with the Sarbanes-Oxley Act and is sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Pricing Disclosure Package and the Final Offering Memorandum fairly present the information called for in all material respects and are prepared in accordance with the Commission's rules and guidelines applicable thereto.

kk) *Disclosure Controls and Procedures.* The Company has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-14 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material

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information relating to the Company and its subsidiaries is made known to the chief executive officer and chief financial officer of the Company by others within the Company or any of its subsidiaries, and such disclosure controls and procedures are reasonably effective to perform the functions for which they were established subject to the limitations of any such control system; the Company's auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) any significant deficiencies or material weaknesses in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or



other employees who have a role in the Company's internal controls; and since the date of the most recent evaluation of such disclosure controls and procedures, there have been no significant changes in internal controls or in other factors that could significantly and adversely affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

ll) *Regulations T, U, X.* Neither the Company nor any Guarantor nor any of their respective subsidiaries nor any agent thereof acting on their behalf has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Securities to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

mm) *Compliance with Environmental Laws.* Except as otherwise stated in the Pricing Disclosure Package and the Final Offering Memorandum and except as would not, singly or in the aggregate, result in a Material Adverse Effect, (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"), (ii) neither the Company nor any of its subsidiaries fails to possess any permit, authorization or approval required under any applicable Environmental Laws or to be in compliance with their requirements, (iii) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

nn) *Stamp Taxes.* There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale by the Company and the Guarantors of the Securities.

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oo) *ERISA Compliance.* Each of the Company and its subsidiaries has fulfilled its obligations, if any, under the minimum funding standards of Section 302 of the United States Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and the regulations and published interpretations thereunder with respect to each "plan" (as defined in Section 3(3) of ERISA and such regulations and published interpretations) in which employees of the Company and its subsidiaries are eligible to participate and each such plan is in compliance in all material respects with the presently applicable provisions of ERISA and such regulations and published interpretations; the Company and its subsidiaries have not incurred any unpaid liability to the Pension Benefit Guaranty Corporation (other than for the payment of premiums in the ordinary course) or to any such plan under Title IV of ERISA.

pp) *Related Party Transactions.* No relationship, direct or indirect, exists between or among any of the Company or any affiliate of the Company, on the one hand, and any director, officer, member, stockholder, customer or supplier of the Company or any affiliate of the Company, on the other hand, which is required by the Securities Act to be disclosed in a registration statement on Form S-1 which is not so disclosed in the Pricing Disclosure Package and the Final Offering Memorandum. There are no outstanding loans, advances (except advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company or any affiliate of the Company to or for the benefit of any of the officers or directors of the Company or any affiliate of the Company or any of their respective family members.

qq) *No Restrictions on Dividends.* No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company, any loans or advances to such subsidiary from the Company, or from transferring any of such subsidiary's property or assets to the Company, or any other subsidiary of the Company, except as described in or contemplated by the Pricing Disclosure Package and the Final Offering Memorandum.

rr) *No Unlawful Contributions or Other Payments.* Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company and the Guarantors, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, and the Company, its subsidiaries and, to the knowledge of the Company and the Guarantors, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith. "**FCPA**" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

ss) *No Conflict with Money Laundering Laws.* The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules

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and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company and the Guarantors, threatened.

tt) *No Conflict with OFAC Laws.* None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or representative of the Company or any of its subsidiaries is currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), the United Nations Security Council ("**UNSC**"), the European Union, Her Majesty's Treasury ("**HMT**"), or other relevant sanctions authority (collectively,

“Sanctions”), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not, directly or indirectly, use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person, (i) to fund any activities of or business with any person that, at the time of such funding, is the subject of Sanctions, or is in Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan or in any other country or territory, that, at the time of such funding, is the subject of Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as Initial Purchaser, advisor, investor or otherwise) of Sanctions.

uu) *Regulation S.* The Company, the Guarantors and their respective affiliates and all persons acting on their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation) have complied with and will comply with the offering restrictions requirements of Regulation S in connection with the offering of the Securities outside the United States and, in connection therewith, the Pricing Disclosure Package and the Final Offering Memorandum will contain the disclosure required by Rule 902. The Company is a “reporting issuer”, as defined in Rule 902 under the Securities Act.

Any certificate signed by an officer of the Company or any Guarantor and delivered to the Representative or to counsel for the Initial Purchasers shall be deemed to be a representation and warranty by the Company or such Guarantor to each Initial Purchaser as to the matters set forth therein.

## SECTION 2. *Purchase, Sale and Delivery of the Securities.*

a) *The Securities.* Each of the Company and the Guarantors agrees to issue and sell to the several Initial Purchasers, severally and not jointly, all of the Securities upon the terms herein set forth. On the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Initial Purchasers agree, severally and not jointly, to purchase from the Company and the Guarantors the aggregate principal amount of Securities set forth opposite their names on Schedule A at a purchase price of 93.949% of the principal amount of the Securities, payable on the Closing Date.

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b) *The Closing Date.* Delivery of certificates for the Securities in global form to be purchased by the Initial Purchasers and payment therefor shall be made at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022-6069 (or such other place as may be agreed to by the Company and the Representative) at 9:00 a.m., New York City time, on November 21, 2012, or such other time and date as the Initial Purchasers and the Company shall mutually agree (the time and date of such closing are called the “Closing Date”).

c) *Payment for the Securities.* Payment for the Securities shall be made at the Closing Date by wire transfer of immediately available funds to the order of the Company.

It is understood that the Representative has been authorized, for its own account and for the accounts of the several Initial Purchasers, to accept delivery of and receipt for, and make payment of the purchase price for, the Securities that the Initial Purchasers have agreed to purchase. The Representative may (but shall not be obligated to) make payment for any Securities to be purchased by any Initial Purchaser whose funds shall not have been received by the Representative by the Closing Date for the account of such Initial Purchaser, but any such payment shall not relieve such Initial Purchaser from any of its obligations under this Agreement.

d) *Delivery of the Securities.* The Company shall deliver, or cause to be delivered, to the Representative for the accounts of the several Initial Purchasers certificates for the Notes at the Closing Date, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor to an account or accounts specified by the Company. The certificates for the Notes shall be in such denominations and registered in such names and denominations as the Representative shall have requested at least two full business days prior to the Closing Date and shall be made available for inspection on the business day preceding the Closing Date at a location in New York City, as the Representative may designate. Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Initial Purchasers.

e) *Initial Purchasers as Qualified Institutional Buyers.* Each Initial Purchaser severally and not jointly represents and warrants to, and agrees with, the Company that it is a “qualified institutional buyer” within the meaning of Rule 144A (a “**Qualified Institutional Buyer**”).

## SECTION 3. *Covenants of the Company and Guarantors.*

Each of the Company and the Guarantors covenants and agrees with each Initial Purchaser as follows:

a) *Preparation of Final Offering Memorandum; Initial Purchasers’ Review of Proposed Amendments and Supplements and Company Additional Written Communications.* As promptly as practicable following the Time of Sale and in any event not later than the second business day following the date hereof, the Company will prepare and deliver to the Initial Purchasers the Final Offering Memorandum, which shall consist of the Preliminary Offering Memorandum as modified only by the information contained in the Pricing Supplement. The Company will not amend or supplement the Preliminary Offering Memorandum or the Pricing Supplement. The Company will not amend or supplement the Final Offering Memorandum prior to the Closing

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Date unless the Representative shall previously have been furnished a copy of the proposed amendment or supplement a reasonable time prior to the proposed use or filing, and shall not have objected to such amendment or supplement. Before making, using, authorizing, approving or distributing any Company Additional Written Communication, the Company will furnish to the Representative a copy of such written communication for review and will not make, use, authorize, approve or distribute any such written communication to which the Representative reasonably objects.

b) *Amendments and Supplements to the Final Offering Memorandum and Other Securities Act Matters.* If, prior to the later of (x) the Closing Date and (y) the completion of the placement of the Securities by the Initial Purchasers with the Subsequent Purchasers, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Offering Memorandum, as then amended or supplemented, in order to make the statements therein, in the light of the circumstances when the Final Offering Memorandum is delivered to a Subsequent Purchaser, not misleading, or if in the

judgment of the Representative or counsel for the Initial Purchasers it is otherwise necessary to amend or supplement the Final Offering Memorandum to comply with law, the Company agrees to promptly prepare (subject to Section 3 hereof), file with the Commission and furnish at its own expense to the Initial Purchasers, amendments or supplements to the Final Offering Memorandum so that the statements in the Final Offering Memorandum as so amended or supplemented will not, in the light of the circumstances at the Closing Date and at the time of sale of Securities to a Subsequent Purchaser, be misleading or so that the Final Offering Memorandum, as amended or supplemented, will comply with all applicable law.

Following the consummation of the Exchange Offer or the effectiveness of an applicable shelf registration statement and for so long as the Securities are outstanding if, in the judgment of the Representative, it or any of its affiliates (as such term is defined in the Securities Act) is required to deliver a prospectus in connection with sales of, or market-making activities with respect to, the Securities, each of the Company and the Guarantors agree to periodically amend the applicable registration statement so that the information contained therein complies with the requirements of Section 10 of the Securities Act, to amend the applicable registration statement or supplement the related prospectus or the documents incorporated therein when necessary to reflect any material changes in the information provided therein so that the registration statement and the prospectus will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing as of the date the prospectus is so delivered, not misleading and to provide the Initial Purchasers with copies of each amendment or supplement filed and such other documents as the Initial Purchasers may reasonably request.

The Company hereby expressly acknowledges that the indemnification and contribution provisions of Sections 9 and 10 hereof are specifically applicable and relate to each offering memorandum, registration statement, prospectus, amendment or supplement referred to in this Section 3.

c) *Copies of the Pricing Disclosure Package and the Final Offering Memorandum.* The Company agrees to furnish the Initial Purchasers, without charge, as many copies of the

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Pricing Disclosure Package and the Final Offering Memorandum and any amendments and supplements thereto as they shall reasonably request.

d) *Blue Sky Compliance.* Each of the Company and the Guarantors shall cooperate with the Representative and counsel for the Initial Purchasers to qualify or register (or to obtain exemptions from qualifying or registering) all or any part of the Securities for offer and sale under the securities laws of the several states of the United States, the provinces of Canada or any other jurisdictions designated by the Representative, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Securities. None of the Company or any of the Guarantors shall be required to qualify as a foreign corporation or limited liability company, as the case may be, or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation or limited liability company, as the case may be. The Company will advise the Representative promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Securities for offering, sale or trading in any jurisdiction or any initiation or known threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, each of the Company and the Guarantors shall use its commercially reasonable efforts to obtain the withdrawal thereof at the earliest possible moment.

e) *Use of Proceeds.* The Company shall apply the net proceeds from the sale of the Securities sold by it in the manner described under the caption "Use of Proceeds" in the Pricing Disclosure Package and the Final Offering Memorandum.

f) *Depository.* The Company will cooperate with the Initial Purchasers and use its best efforts to permit the Securities to be eligible for clearance and settlement through the facilities of the Depository.

g) *Periodic Reporting Obligations.* Prior to the completion of the placement of the Securities by the Initial Purchasers with the Subsequent Purchasers, the Company shall file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13 or 15 of the Exchange Act. Additionally, at any time when the Company is not subject to Section 13 or 15 of the Exchange Act, for the benefit of holders and beneficial owners from time to time of the Securities, the Company shall furnish, at its expense, upon request, to holders and beneficial owners of Securities and prospective purchasers of Securities information ("**Additional Issuer Information**") satisfying the requirements of Rule 144A(d).

h) *Agreement Not to Offer or Sell Additional Securities.* For a period of 60 days following the date hereof, the Company will not, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated (which consent may be withheld at the sole discretion of Merrill Lynch, Pierce, Fenner & Smith Incorporated), directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or establish an open "put equivalent position" within the meaning of Rule 16a-1 under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act in respect of, any debt securities of the Company or securities exchangeable for or convertible into debt securities of the Company (other than as contemplated by this Agreement).

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i) *Future Reports to the Initial Purchasers.* At any time when the Company is not subject to Section 13 or 15 of the Exchange Act and any Securities or Exchange Securities remain outstanding, the Company will furnish to the Representatives: (i) as soon as reasonably practicable after the end of each fiscal year, copies of the Annual Report of the Company containing the balance sheet of the Company as of the close of such fiscal year and statements of income, stockholders' equity and cash flows for the year then ended and the opinion thereon of the Company's independent public or certified public accountants; (ii) as soon as reasonably practicable after the filing thereof, copies of each proxy statement, Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other report filed by the Company with the Commission, FINRA or any securities exchange; and (iii) as soon as available, copies of any report or communication of the Company mailed generally to holders of its capital stock or debt securities (including the holders of the Securities), if, in each case, such documents are not filed with the Commission within the time periods specified by the Commission's rules and regulations under Section 13 or 15 of the Exchange Act.

j) *No Integration.* The Company agrees that it will not and will cause its Affiliates not to make any offer or sale of securities of the Company of any class if, as a result of the doctrine of "integration" referred to in Rule 502 under the Securities Act, such offer or sale would render invalid (for the purpose of (i) the sale of the Securities by the Company to the Initial Purchasers, (ii) the resale of the Securities by the Initial Purchasers to Subsequent

Purchasers or (iii) the resale of the Securities by such Subsequent Purchasers to others) the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof or by Rule 144A or by Regulation S thereunder or otherwise.

k) *Compliance with Sarbanes-Oxley Act.* The Company will comply with all applicable securities and other laws, rules and regulations, including, without limitation, the Sarbanes-Oxley Act, and use its best efforts to cause the Company's directors and officers, in their capacities as such, to comply with such laws, rules and regulations, including, without limitation, the provisions of the Sarbanes-Oxley Act.

l) *No Restricted Resales.* During the period of one year after the Closing Date, the Company will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to resell any of the Notes which constitute "restricted securities" under Rule 144 that have been reacquired by any of them.

m) *Legended Securities.* Each certificate for a Note will bear the legend contained in "Notice to Investors" in the Preliminary Offering Memorandum for the time period and upon the other terms stated in the Preliminary Offering Memorandum.

n) *No Manipulation of Price.* The Company will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any securities of the Company to facilitate the sale or resale of the Securities.

The Representative, on behalf of the several Initial Purchasers, may, in their sole discretion, waive in writing the performance by the Company or any Guarantor of any one or more of the foregoing covenants or extend the time for their performance.

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SECTION 4. *Payment of Expenses.* Each of the Company and the Guarantors agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Securities (including all printing and engraving costs), (ii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Securities to the Initial Purchasers, (iii) all fees and expenses of the Company's and the Guarantors' counsel, independent registered public accounting firm and other advisors, (iv) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Pricing Disclosure Package and the Final Offering Memorandum (including financial statements, exhibits, schedules, consents and certificates of experts), and all amendments and supplements thereto, and this Agreement, the Registration Rights Agreement, the Indenture, the DTC Agreement and the Notes and Guarantees, (v) all filing fees, reasonable attorneys' fees and expenses incurred by the Company, the Guarantors or the Initial Purchasers in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Securities for offer and sale under the securities laws of the several states of the United States, the provinces of Canada or other jurisdictions designated by the Initial Purchasers (including, without limitation, the cost of preparing, printing and mailing preliminary and final blue sky or legal investment memoranda and any related supplements to the Pricing Disclosure Package or the Final Offering Memorandum), (vi) the fees and expenses of the Trustee, including the reasonable fees and disbursements of counsel for the Trustee in connection with the Indenture, the Securities and the Exchange Securities, (vii) any fees payable in connection with the rating of the Securities or the Exchange Securities with the ratings agencies, (viii) any filing fees incident to, and any reasonable fees and disbursements of counsel to the Initial Purchasers in connection with, the review by FINRA, if any, of the terms of the sale of the Securities or the Exchange Securities, (ix) all fees and expenses (including reasonable fees and expenses of counsel) of the Company and the Guarantors in connection with approval of the Securities by the Depository for "book-entry" transfer, and the performance by the Company and the Guarantors of their respective other obligations under this Agreement, (x) the transportation and other expenses incurred by or on behalf of the Company's representatives incident to the "road show" for the offering of the Securities, including the cost of any chartered airplane or other transportation and (xii) all other fees, costs and expenses incurred in connection with the performance of its obligations hereunder for which provision is not otherwise made in this Section. Except as provided in this Section 4 and Sections 6, 9 and 10 hereof, the Initial Purchasers shall pay their own expenses, including the fees and disbursements of their counsel.

SECTION 5. *Conditions of the Obligations of the Initial Purchasers.* The obligations of the several Initial Purchasers to purchase and pay for the Securities as provided herein on the Closing Date shall be subject to the accuracy of the representations and warranties on the part of the Company and the Guarantors set forth in Section 1 hereof as of the date hereof, as of the Time of Sale, and as of the Closing Date as though then made and to the timely performance by the Company of its covenants and other obligations hereunder, and to each of the following additional conditions:

a) *Accountants' Comfort Letter.* On the date hereof, the Representative shall have received from Ernst & Young LLP, independent public or certified public accountants for the Company, a letter dated the date hereof addressed to the Initial Purchasers, in form and substance

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satisfactory to the Representative with respect to the audited and unaudited financial statements and certain financial information contained in the Preliminary Offering Memorandum and other customary matters.

b) *Bring-down Comfort Letter.* On the Closing Date, the Representative shall have received from Ernst & Young LLP, independent registered public accountants for the Company, a letter dated such date, in form and substance satisfactory to the Representative, to the effect that they reaffirm the statements made in the letter furnished by them pursuant to subsection (a) of this Section 5, except that the specified date referred to therein for the carrying out of procedures shall be no more than five days prior to the Closing Date.

c) *No Material Adverse Effect or Ratings Agency Change.* For the period from and after the date of this Agreement and prior to the Closing Date:

(i) in the judgment of the Representative there shall not have occurred any change having a Material Adverse Effect; and

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any securities of the Company or any of its subsidiaries or any of their securities or indebtedness by any "nationally recognized statistical rating organization" as such term is defined under Section 3 of the Exchange Act.

d) *Opinion of Counsel for the Company.* On the Closing Date, the Representative shall have received the favorable opinions of (i) Robert G. Jones, Senior Vice President — Law, General Counsel and Secretary of the Company, the form of which is attached as Exhibit A-1, and (ii) K&L Gates LLP, counsel for the Company, dated as of such Closing Date, the form of which is attached as Exhibit A-2.

e) *Opinion of Counsel for the Initial Purchasers.* On the Closing Date, the Representative shall have received the favorable opinion of Shearman & Sterling LLP, counsel for the Initial Purchasers, dated as of such Closing Date, with respect to such matters as may be reasonably requested by the Initial Purchasers.

f) *Officers' Certificate.* On the Closing Date, the Representative shall have received a written certificate executed by the President and Chief Executive Officer or the Executive Vice-President and Chief Operating Officer or the Senior Vice President and Chief Financial Officer of the Company and the president or any vice president of each Guarantor, dated as of the Closing Date, to the effect set forth in Section 5(c)(ii) hereof, and further to the effect that:

(i) for the period from and after the date of this Agreement and prior to the Closing Date there has not occurred any change having a Material Adverse Effect;

(ii) the representations, warranties and covenants of the Company and the Guarantors, as the case may be, set forth in Section 1 of this Agreement are true and correct with the same force and effect as though expressly made on and as of such Closing Date; and

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(iii) each of the Company and the Guarantors, as the case may be, has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date.

g) *Registration Rights Agreement.* The Company shall have entered into the Registration Rights Agreement and the Initial Purchasers shall have received executed counterparts thereof.

h) *Additional Documents.* On or before the Closing Date, the Representative and counsel for the Initial Purchasers shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representative by notice to the Company at any time on or prior to the Closing Date, which termination shall be without liability on the part of any party to any other party, except that Sections 4, 6, 9, 10, 12 and 16 shall at all times be effective and shall survive such termination.

SECTION 6. *Reimbursement of Initial Purchasers' Expenses.* If this Agreement is terminated by the Representative pursuant to Section 5 or Section 11, or if the sale to the Initial Purchasers of the Securities on the Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Representative and the other Initial Purchasers, severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Representative and the Initial Purchasers in connection with the proposed purchase and the offering and sale of the Securities, including, without limitation, reasonable fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

SECTION 7. *Offer, Sale and Resale Procedures.* Each of the Initial Purchasers, on the one hand, and the Company and each of the Guarantors, on the other hand, hereby agree to observe the following procedures in connection with the offer and sale of the Securities:

a) Offers and sales of the Securities will be made only by the Initial Purchasers or Affiliates thereof qualified to do so in the jurisdictions in which such offers or sales are made. Each such offer or sale shall only be made to persons whom the offeror or seller reasonably believes to be Qualified Institutional Buyers or non-U.S. persons outside the United States to whom the offeror or seller reasonably believes offers and sales of the Securities may be made in reliance upon Regulation S upon the terms and conditions set forth in Annex I hereto, which Annex I is hereby expressly made a part hereof.

b) The Securities will be offered by approaching prospective Subsequent Purchasers on an individual basis. No general solicitation or general advertising (within the meaning of

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Rule 502 under the Securities Act) will be used in the United States in connection with the offering of the Securities.

c) Upon original issuance by the Company, and until such time as the same is no longer required under the applicable requirements of the Securities Act, the Notes (and all securities issued in exchange therefor or in substitution thereof, other than the Exchange Notes) shall bear the following legend:

“THE NOTES AND THE RELATED GUARANTEES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS NOTE NOR THE RELATED GUARANTEE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”)), OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION, (2) AGREES TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH NOTE PRIOR TO THE DATE WHICH IS ONE YEAR AFTER THE DATE OF ORIGINAL ISSUE HEREOF ONLY (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH

HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) OUTSIDE THE UNITED STATES PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION PURSUANT TO REGULATION S UNDER THE SECURITIES ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM."

Following the sale of the Securities by the Initial Purchasers to Subsequent Purchasers pursuant to the terms hereof, the Initial Purchasers shall not be liable or responsible to the Company for any losses, damages or liabilities suffered or incurred by the Company, including any losses, damages or liabilities under the Securities Act, arising from or relating to any resale or transfer of any Security.

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SECTION 8. *Effectiveness of this Agreement.* This Agreement shall not become effective until the execution of this Agreement by the parties hereto.

SECTION 9. *Indemnification.*

(a) *Indemnification of the Initial Purchasers.* Each of the Company and the Guarantors, jointly and severally, agrees to indemnify and hold harmless each Initial Purchaser, its directors, officers, employees, agents and affiliates, and each person, if any, who controls any Initial Purchaser within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Initial Purchaser, director, officer, employee, affiliate or controlling person may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company or without the written consent of the Company in accordance with Section 9(d)), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based: (i) upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Information or the Final Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) in whole or in part upon any inaccuracy in the representations and warranties of the Company contained herein; or (iii) in whole or in part upon any failure of the Company to perform its obligations hereunder or under law; or (iv) upon any act or failure to act or any alleged act or failure to act by any Initial Purchaser in connection with, or relating in any manner to, the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i) above, provided that the Company and the Guarantors shall not be liable under this clause (iv) to the extent that a court of competent jurisdiction shall have determined by a final judgment that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Initial Purchaser through its gross negligence or willful misconduct; and to reimburse each Initial Purchaser and each such director, officer, employee, affiliate or controlling person for any and all expenses (including the fees and disbursements of counsel chosen by Merrill Lynch, Pierce, Fenner & Smith Incorporated) as such expenses are reasonably incurred by such Initial Purchaser or such director, officer, employee, affiliate or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information furnished to the Company in writing by any Initial Purchaser through the Representative expressly for use in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Information or the Final Offering Memorandum (or any amendment or supplement thereto). The indemnity agreement set forth in this Section 9(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) *Indemnification of the Company and the Guarantors.* Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, each Guarantor,

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each of their respective directors (or managers, as the case may be), each of their respective employees and each person, if any, who controls the Company or any Guarantor within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, any Guarantor or any such director (or manager, as the case may be), officer or employee or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Initial Purchaser or without the written consent of such Initial Purchaser in accordance with Section 9(d)), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Information or the Final Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Information or the Final Offering Memorandum (or any amendment or supplement thereto), in reliance upon and in conformity with information in writing furnished to the Company by any Initial Purchaser through the Representative expressly for use therein; and to reimburse the Company, any Guarantor and each such director (or manager, as the case may be), officer or employee or controlling person for any and all expenses (including the fees and disbursements of counsel chosen by the Company) as such expenses are reasonably incurred by the Company, any Guarantor or such director (or manager, as the case may be), officer or employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. Each of the Company and the Guarantors hereby acknowledges that the only information that the Initial Purchasers have furnished to the Company through the Representative expressly for use in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Information or the Final Offering Memorandum (or any amendment or supplement thereto) are the statements set forth in the first two paragraphs under the caption "Plan of Distribution — Short Positions" in the Preliminary Offering Memorandum and the Final Offering Memorandum. The indemnity agreement set forth in this Section 9(b) shall be in addition to any liabilities that each Initial Purchaser may otherwise have.

(c) *Notifications and Other Indemnification Procedures.* Promptly after receipt by an indemnified party under this Section 9 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 9, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise under the indemnity agreement contained in this Section 9 other than to the extent it is prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with

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counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 9 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel), approved by the indemnifying party (Merrill Lynch, Pierce, Fenner & Smith Incorporated in the case of Sections 9(b) and 10 hereof), representing the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) *Settlements.* The indemnifying party under this Section 9 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 9, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party's entitlement to such reimbursement prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include any statements as to or any findings of fault, culpability or failure to act by or on behalf of any indemnified party.

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SECTION 10. *Contribution.* If the indemnification provided for in Section 9 hereof is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, in connection with the statements or omissions or inaccuracies in the representations and warranties herein which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the Guarantors, and the total discount received by the Initial Purchasers bear to the aggregate initial offering price of the Securities. The relative fault of the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company and the Guarantors, on the one hand, or the Initial Purchasers, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or inaccuracy.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 9(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 9(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 10; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Section 9 hereof for purposes of indemnification.

The Company, the Guarantors and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 10 were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 10.

Notwithstanding the provisions of this Section 10, no Initial Purchaser shall be required to contribute any amount in excess of the discount received by such Initial Purchaser in connection with the Securities distributed by it. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations

to contribute pursuant to this Section 10 are several, and not joint, in proportion to their respective commitments as set forth opposite their names in Schedule A. For purposes of this Section 10, each director, officer and employee of an Initial Purchaser and each person, if any, who controls an Initial Purchaser within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Initial Purchaser, and each director (or manager, as the case may be), officer or employee of the Company or any Guarantor, and each person, if any, who controls the Company or any Guarantor within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company and the Guarantors.

**SECTION 11. *Termination of this Agreement.*** Prior to the Closing Date, this Agreement may be terminated by the Representative by notice given to the Company if at any time (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the NYSE, or trading in securities generally on either the Nasdaq Stock Market or the NYSE shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such quotation system or stock exchanges by the Commission or FINRA; (ii) a general banking moratorium shall have been declared by any of federal or New York or Delaware authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Representative is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities in the manner and on the terms described in the Pricing Disclosure Package or the Final Offering Memorandum or to enforce contracts for the sale of securities; (iv) in the judgment of the Representative there shall have occurred any Material Adverse Effect; (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representative may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured; or (vi) there shall have occurred a material disruption in commercial banking or securities settlement or clearance services. Any termination pursuant to this Section 11 shall be without liability of any party to any other party except as provided in Sections 4 and 6 hereof, and provided further that Sections 4, 6, 9, 10, 12, 16, 18 and 19 shall survive such termination and remain in full force and effect.

This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Guarantors and the several Initial Purchasers, or any of them, with respect to the subject matter hereof. The Company and each Guarantor hereby waive and release, to the fullest extent permitted by law, any claims that the Company or such Guarantor may have against the several Initial Purchasers with respect to any breach or alleged breach of agency or fiduciary duty.

**SECTION 12. *Representations and Indemnities to Survive Delivery.*** The respective indemnities, agreements, representations, warranties and other statements of the Company, the Guarantors, their respective officers and the several Initial Purchasers set forth in or made pursuant to this Agreement (i) will remain operative and in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Initial Purchaser, the officers or employees of any Initial Purchaser, or any person controlling any Initial Purchaser, the Company, any Guarantor or any of the officers or employees of the Company or the Guarantors,

or any person controlling the Company or the Guarantors, as the case may be, and (ii) will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement.

**SECTION 13. *Notices.*** All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Representative:

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
One Bryant Park  
New York, New York 10036  
Facsimile: (212) 901-7897  
Attention: Legal Department

with a copy to:

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, New York 10022-6069  
Facsimile: (646) 848-7974  
Attention: Jason Lehner

If to the Company or the Guarantors:

Arch Coal, Inc.  
One CityPlace Drive  
Suite 300  
St. Louis, Missouri 63141  
Facsimile: (314) 994-2734  
Attention: General Counsel

with a copy to:

K&L Gates LLP



Any party hereto may change the address for receipt of communications by giving written notice to the others.

SECTION 14. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto, including any substitute Initial Purchasers pursuant to Section 17 hereof, and to the benefit of the directors (or managers, as the case may be), officers, employees, agents and

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controlling persons referred to in Sections 9 and 10, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term “successors” shall not include any purchaser of the Securities as such from any of the Initial Purchasers merely by reason of such purchase.

SECTION 15. *Partial Unenforceability.* The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

SECTION 16. *Governing Law Provisions.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THAT STATE.

(a) *Consent to Jurisdiction.* Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“**Related Proceedings**”) may be instituted in the federal courts of the United States of America located in the City and County of New York or the courts of the State of New York in each case located in the City and County of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the exclusive jurisdiction (except for suits, actions, or proceedings instituted in regard to the enforcement of a judgment of any Specified Court in a Related Proceeding, as to which such jurisdiction is non-exclusive) of the Specified Courts in any Related Proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any Related Proceeding brought in any Specified Court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any Specified Proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any Specified Court that any Related Proceeding brought in any Specified Court has been brought in an inconvenient forum.

SECTION 17. *Default of One or More of the Several Initial Purchasers.* If, on the Closing Date, any one or more of the several Initial Purchasers shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Securities, which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, the other Initial Purchasers shall be obligated, severally, in the proportion to the aggregate principal amounts of Securities set forth opposite their respective names on Schedule A bears to the aggregate principal amount of such Securities set forth opposite the names of all such non-defaulting Initial Purchasers, or in such other proportions as may be specified by the Representative with the consent of the non-defaulting Initial Purchasers, to purchase such Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on such date. If, on the Closing Date, any one or more of the Initial Purchasers shall fail or refuse to purchase such Securities and the aggregate principal amount of Securities with respect to which such default occurs exceeds 10% of the aggregate principal amount of Securities to be purchased on such date, and arrangements satisfactory to the Representative

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and the Company for the purchase of such Securities are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Sections 4, 6, 9, 10, 12 and 16 shall at all times be effective and shall survive such termination. In any such case, either the Representative or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days in order that the required changes, if any, to the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Information or the Final Offering Memorandum or any other documents or arrangements may be effected.

As used in this Agreement, the term “Initial Purchaser” shall be deemed to include any person substituted for a defaulting Initial Purchaser under this Section 17. Any action taken under this Section 17 shall not relieve any defaulting Initial Purchaser from liability in respect of any default of such Initial Purchaser under this Agreement.

SECTION 18. *No Fiduciary Duty.* The Company and each Guarantor acknowledge and agree that: (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm’s-length commercial transaction between the Company and such Guarantor, on the one hand, and the several Initial Purchasers, on the other hand, and the Company and such Guarantor are capable of evaluating and understanding and accept the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Initial Purchaser is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary of the Company, the Guarantors or any of their respective affiliates, stockholders, creditors or employees or any other party; (iii) no Initial Purchaser has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Company or such Guarantor with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Initial Purchaser has advised or is currently advising the Company or such Guarantor on other matters) and no Initial Purchaser has any obligation to the Company or such Guarantor with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; (iv) the several Initial Purchasers and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the Guarantors and that the several Initial Purchasers have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Initial Purchasers have not provided any legal, accounting, regulatory or tax advice with respect to the

offering contemplated hereby and the Company and the Guarantors have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate.

SECTION 19. *General Provisions.* This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile, email or other electronic transmission (*i.e.*, "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied)

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may be waived unless waived in writing by each party whom the condition is meant to benefit. The Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification provisions of Section 9 and the contribution provisions of Section 10, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the provisions of Sections 9 and 10 hereto fairly allocate the risks in light of the ability of the parties to investigate the Company, its affairs and its business in order to assure that adequate disclosure has been made in the Preliminary Offering Memorandum, the Pricing Disclosure Package and the Final Offering Memorandum (and any amendments and supplements thereto), as required by the Securities Act and the Exchange Act.

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If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

ARCH COAL, INC.

By: /s/ John T. Drexler

Name: John T. Drexler

Title: Senior Vice President and Chief Financial Officer

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ALLEGHENY LAND COMPANY  
ARCH COAL SALES COMPANY, INC.  
ARCH COAL TERMINAL, INC.  
ARCH COAL WEST, LLC  
ARCH DEVELOPMENT, LLC  
ARCH ENERGY RESOURCES, LLC  
ARCH RECLAMATION SERVICES, INC.  
ARCH WESTERN ACQUISITION CORPORATION  
ARCH WESTERN ACQUISITION, LLC  
ARCH WESTERN BITUMINOUS GROUP, LLC  
ARCH WESTERN FINANCE, LLC  
ARCH WESTERN RESOURCES, LLC  
ARCH OF WYOMING, LLC  
ARK LAND COMPANY  
ARK LAND KH, INC.  
ARK LAND LT, INC.  
ARK LAND WR, INC.  
ASHLAND TERMINAL, INC.  
BRONCO MINING COMPANY, INC.  
CANYON FUEL COMPANY, LLC  
CATENARY COAL HOLDINGS, INC.  
COAL-MAC, INC.  
COALQUEST DEVELOPMENT, LLC  
CUMBERLAND RIVER COAL COMPANY  
HAWTHORNE COAL COMPANY, INC.  
HUNTER RIDGE, INC.  
HUNTER RIDGE COAL COMPANY  
HUNTER RIDGE HOLDINGS, INC.  
ICG, INC.  
ICG, LLC  
ICG ADDCAR SYSTEMS, LLC

ICG BECKLEY, LLC  
 ICG EAST KENTUCKY, LLC  
 ICG EASTERN, LLC  
 ICG EASTERN LAND, LLC  
 ICG HAZARD, LLC  
 ICG HAZARD LAND, LLC  
 ICG ILLINOIS, LLC  
 ICG KNOTT COUNTY, LLC  
 ICG NATURAL RESOURCES, LLC  
 ICG TYGART VALLEY, LLC  
 INTERNATIONAL COAL GROUP, INC.  
 JULIANA MINING COMPANY, INC.  
 KING KNOB COAL CO., INC.  
 LONE MOUNTAIN PROCESSING, INC.  
 MARINE COAL SALES COMPANY

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MELROSE COAL COMPANY, INC.  
 MINGO LOGAN COAL COMPANY  
 MOUNTAIN COAL COMPANY, L.L.C.  
 MOUNTAIN GEM LAND, INC.  
 MOUNTAIN MINING, INC.  
 MOUNTAINEER LAND COMPANY  
 OTTER CREEK COAL, LLC  
 PATRIOT MINING COMPANY, INC.  
 POWELL MOUNTAIN ENERGY, LLC  
 PRAIRIE HOLDINGS, INC.  
 SHELBY RUN MINING COMPANY, LLC  
 SIMBA GROUP, INC.  
 THUNDER BASIN COAL COMPANY, L.L.C.  
 TRITON COAL COMPANY, LLC  
 UPSHUR PROPERTY INC.  
 VINDEK ENERGY CORPORATION  
 WESTERN ENERGY RESOURCES, INC.  
 WHITE WOLF ENERGY, INC.  
 WOLF RUN MINING COMPANY

By: /s/ John T. Drexler  
 Name: John T. Drexler  
 Title: Vice President

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The foregoing Purchase Agreement is hereby confirmed and accepted by the Representative as of the date first above written.

**MERRILL LYNCH, PIERCE, FENNER & SMITH  
 INCORPORATED**

Acting as the Representative of the  
 several Initial Purchasers named in  
 the attached Schedule A.

By: Merrill Lynch, Pierce, Fenner & Smith  
 Incorporated

By: /s/ John Pantalena  
 Name: John Pantalena  
 Title: Director

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**SCHEDULE A**

<b>Initial Purchasers</b>	<b>Aggregate Principal Amount of Securities to be Purchased</b>	<b>Initial Purchaser's Discount</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$ 102,021,000	\$ 2,025,000
Morgan Stanley & Co. LLC	68,010,000	1,350,000
Citigroup Global Markets Inc.	56,675,000	1,125,000

Credit Suisse Securities (USA) LLC	37,783,000	750,000
PNC Capital Markets LLC	37,783,000	750,000
BMO Capital Markets Corp.	5,289,000	105,000
CIBC World Markets Corp.	5,289,000	105,000
Credit Agricole Securities (USA) Inc.	5,289,000	105,000
Deutsche Bank Securities Inc.	3,778,000	75,000
FBR Capital Markets & Co.	3,778,000	75,000
Lazard Capital Markets LLC	1,889,000	37,500
Mitsubishi UFJ Securities (USA), Inc.	4,534,000	90,000
Mizuho Securities USA Inc.	3,967,000	78,750
Natixis Securities Americas LLC	4,534,000	90,000
RBC Capital Markets, LLC	4,534,000	90,000
RBS Securities Inc.	6,045,000	120,000
Santander Investment Securities Inc.	5,289,000	105,000
SMBC Nikko Capital Markets Limited.	4,534,000	90,000
Stifel, Nicolaus & Company, Incorporated	3,778,000	75,000
UBS Securities LLC	5,667,000	112,500
U.S. Bancorp Investments, Inc.	4,534,000	90,000
<b>Total</b>	<b>\$ 375,000,000</b>	<b>\$ 7,443,750</b>

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## SCHEDULE B

### Guarantors

Allegheny Land Company  
 Arch Coal Sales Company, Inc.  
 Arch Coal Terminal, Inc.  
 Arch Coal West, LLC  
 Arch Development, LLC  
 Arch Energy Resources, LLC  
 Arch Reclamation Services, Inc.  
 Arch Western Acquisition Corporation  
 Arch Western Acquisition, LLC  
 Arch Western Bituminous Group, LLC  
 Arch Western Finance, LLC  
 Arch Western Resources, LLC  
 Arch Of Wyoming, LLC  
 Ark Land Company  
 Ark Land KH, Inc.  
 Ark Land LT, Inc.  
 Ark Land WR, Inc.  
 Ashland Terminal, Inc.  
 Bronco Mining Company, Inc.  
 Canyon Fuel Company, LLC  
 Catenary Coal Holdings, Inc.  
 Coal-Mac, Inc.  
 CoalQuest Development, LLC  
 Cumberland River Coal Company  
 Hawthorne Coal Company, Inc.  
 Hunter Ridge, Inc.  
 Hunter Ridge Coal Company  
 Hunter Ridge Holdings, Inc.  
 ICG, Inc.  
 ICG, LLC  
 ICG ADDCAR Systems, LLC  
 ICG Beckley, LLC  
 ICG East Kentucky, LLC  
 ICG Eastern, LLC  
 ICG Eastern Land, LLC  
 ICG Hazard, LLC  
 ICG Hazard Land, LLC  
 ICG Illinois, LLC  
 ICG Knott County, LLC  
 ICG Natural Resources, LLC  
 ICG Tygart Valley, LLC  
 International Coal Group, Inc.  
 Juliana Mining Company, Inc.

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King Knob Coal Co., Inc.  
Lone Mountain Processing, Inc.  
Marine Coal Sales Company  
Melrose Coal Company, Inc.  
Mingo Logan Coal Company  
Mountain Coal Company, L.L.C.  
Mountain Gem Land, Inc.  
Mountain Mining, Inc.  
Mountaineer Land Company  
Otter Creek Coal, LLC  
Patriot Mining Company, Inc.  
Powell Mountain Energy, LLC  
Prairie Holdings, Inc.  
Shelby Run Mining Company, LLC  
Simba Group, Inc.  
Thunder Basin Coal Company, L.L.C.  
Triton Coal Company, LLC  
Upshur Property Inc.  
Vindex Energy Corporation  
Western Energy Resources, Inc.  
White Wolf Energy, Inc.  
Wolf Run Mining Company

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**ANNEX I**

*Resale Pursuant to Regulation S or Rule 144A.* Each Initial Purchaser understands that:

Such Initial Purchaser agrees that it has not offered or sold and will not offer or sell the Securities in the United States or to, or for the benefit or account of, a U.S. person (other than a distributor), in each case, as defined in Rule 902 of Regulation S (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering of the Securities pursuant hereto and the Closing Date, other than in accordance with Regulation S or another exemption from the registration requirements of the Securities Act. Such Initial Purchaser agrees that, during such 40-day restricted period, it will not cause any advertisement with respect to the Securities (including any “tombstone” advertisement) to be published in any newspaper or periodical or posted in any public place and will not issue any circular relating to the Securities, except such advertisements as are permitted by and include the statements required by Regulation S.

Such Initial Purchaser agrees that, at or prior to confirmation of a sale of Securities by it to any distributor, dealer or person receiving a selling concession, fee or other remuneration during the 40-day restricted period referred to in Rule 903 of Regulation S, it will send to such distributor, dealer or person receiving a selling concession, fee or other remuneration a confirmation or notice to substantially the following effect:

“The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and may not be offered and sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of your distribution at any time or (ii) otherwise until 40 days after the later of the date the Securities were first offered to persons other than distributors in reliance upon Regulation S and the Closing Date, except in either case in accordance with Regulation S under the Securities Act (or in accordance with Rule 144A under the Securities Act or to accredited investors in transactions that are exempt from the registration requirements of the Securities Act), and in connection with any subsequent sale by you of the Securities covered hereby in reliance on Regulation S under the Securities Act during the period referred to above to any distributor, dealer or person receiving a selling concession, fee or other remuneration, you must deliver a notice to substantially the foregoing effect. Terms used above have the meanings assigned to them in Regulation S under the Securities Act.”

Annex I - 1

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**ANNEX II**

**Company Additional Written Communication**

Electronic (Netroadshow) road show of the Company relating to the offering of the Notes dated November 13, 2012.

Annex II - 1

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**EXHIBIT B**

**\$375,000,000**

This Pricing Supplement is qualified in its entirety by reference to the Preliminary Offering Memorandum, dated November 13, 2012. The information in this Pricing Supplement supplements the Preliminary Offering Memorandum and supersedes the information in the Preliminary Offering Memorandum to the extent it is inconsistent with the information in the Preliminary Offering Memorandum. Capitalized terms used in this Pricing Supplement but not defined have the meanings given them in the Preliminary Offering Memorandum.

**Issuer:** Arch Coal, Inc.

**Size:** \$375,000,000

**Maturity:** June 15, 2019

**Coupon (Interest Rate):** 9.875%

**Yield to Maturity:** 10.750%

**Price to Public:** 95.934% of principal amount

**Interest Payment Dates:** June 15 and December 15 of each year payable to the holders of record on the June 1 or December 1, immediately preceding such date. First interest payment date June 15, 2013.

**Redemption Provision:** Beginning on December 15, 2016, the Company may redeem all or any portion of the Notes at the redemption prices set forth below, plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest, if any, due on the relevant interest payment date). The following prices are for Notes redeemed during the 12-month period commencing on December 15 of the years set forth below, and are expressed as percentages of principal amount:

<u>Year</u>	<u>Redemption Price</u>
2016	104.938%
2017	102.469%
2018 and thereafter	100.000%

At any time and from time to time, prior to December 15, 2015, on one or more occasions, the Company may redeem an aggregate principal amount of Notes not to exceed 35% of the original aggregate principal amount of the Notes (calculated giving effect to any issuance of Additional Notes) with

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the proceeds of one or more Public Equity Offerings, at a redemption price equal to 109.875% of the principal amount thereof, plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however*, that after giving effect to any such redemption, at least 65% of the original aggregate principal amount of the Notes (calculated giving effect to any issuance of Additional Notes) remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company or any of its Subsidiaries).

**Settlement Date:** November 21, 2012 (T+5)

**Joint Bookrunning Managers:** Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Morgan Stanley & Co. LLC  
Citigroup Global Markets Inc.  
Credit Suisse Securities (USA) LLC  
PNC Capital Markets LLC

**Co-Managers:** BMO Capital Markets Corp.  
CIBC World Markets Corp.  
Credit Agricole Securities (USA) Inc.  
Deutsche Bank Securities Inc.  
FBR Capital Markets & Co.  
Lazard Capital Markets LLC  
Mitsubishi UFJ Securities (USA), Inc.  
Mizuho Securities USA Inc.  
Natixis Securities Americas LLC  
RBC Capital Markets, LLC  
RBS Securities Inc.  
Santander Investment Securities Inc.  
SMBC Securities, Inc.  
Stifel, Nicolaus & Company, Incorporated

UBS Securities LLC  
U.S. Bancorp Investments, Inc.

144A CUSIP/ISIN:

039380 AH3 / US039380AH33

Reg. S CUSIP/ISIN:

U0393C AD7 / USU0393CAD75

**This communication is for informational purposes only and does not constitute an offer to sell, or a solicitation of an offer to buy any security. No offer to buy securities described herein can be accepted, and no part of the purchase price thereof can be received, unless the person making such investment decision has received and reviewed the information contained in the relevant prospectus or offering memorandum in making their investment decisions. This communication is not intended to be a confirmation as required under Rule 10b-10 of the Securities Exchange Act of 1934, as amended. A formal confirmation will be delivered to you separately. This notice shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the Notes in any state or jurisdiction in which such offer, solicitation or sale would be unlawful. The Notes will be offered and sold to qualified institutional buyers in the United States in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and to non-U.S. persons in offshore transactions in reliance on Regulation S under the Securities Act. The Notes have not been registered under**

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**the Securities Act or any state securities laws, and may not be offered or sold in the United States or to, or for the account or benefit of, U.S. persons absent registration or an applicable exemption from the registration requirement.**

**ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.**

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**Arch Coal Announces Pricing of \$375 Million Senior Notes Offering**

ST. LOUIS (Nov. 14, 2012) — Arch Coal, Inc. (NYSE:ACI) today announced the pricing of \$375 million aggregate principal amount of its 9.875% senior notes due 2019 at an issue price of 95.934% of principal amount, resulting in a yield to maturity of 10.75%. Due to strong investor demand, the offering was upsized to \$375 million from the previously announced \$350 million. Arch will pay interest on the notes on June 15 and December 15 of each year, beginning on June 15, 2013. The notes will be guaranteed by Arch's subsidiaries that guarantee indebtedness under Arch's senior secured credit facility.

The notes will be offered only to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and to non-U.S. persons in transactions outside the United States in reliance on Regulation S under the Securities Act. The offering is subject to market and other conditions. Arch intends to use the net proceeds from the offering for general corporate purposes.

This press release is being issued pursuant to Rule 135c under the Securities Act, and is neither an offer to sell nor a solicitation of an offer to sell or a solicitation of an offer to buy any securities. The notes have not been registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent registration or applicable exemption from registration requirements.

U.S.-based Arch Coal is a top five global coal producer and marketer. Arch is the most diversified American coal company, with mining complexes across every major U.S. coal supply basin. Its core business is supplying cleaner-burning, low-sulfur thermal and metallurgical coal to power generators and steel manufacturers on five continents.

*Forward-Looking Statements: This press release contains "forward-looking statements" — that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," or "will." Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, particular uncertainties arise from changes in the demand for our coal by the domestic electric generation industry; from legislation and regulations relating to the Clean Air Act and other environmental initiatives; from operational, geological, permit, labor and weather-related factors; from fluctuations in the amount of cash we generate from operations; from future integration of acquired businesses; and from numerous other matters of national, regional and global scale, including those of a political, economic, business, competitive or regulatory nature. These uncertainties may cause our actual future results to be materially different than those expressed in our forward-looking statements. We do not undertake to update our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. For a description of some of the risks and uncertainties that may affect our future results, you should see the risk factors described from time to time in the reports we file with the Securities and Exchange Commission.*

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