UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): **October 7, 2016 (October 5, 2016)**

ARCH COAL, INC.
(Exact name of registrant as specified in its charter)

Delaware	**001-13105**	**43-0921172**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

One City Place Drive, Suite 300, St. Louis, Missouri
(Address 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 (see General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o 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

As previously disclosed, on January 11, 2016, Arch Coal, Inc. ("Arch Coal" or "we") and certain of its direct and indirect subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). On September 13, 2016, the Bankruptcy Court entered an order, Docket No. 1324, confirming the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code dated as of September 11, 2016 (the "Plan"), which order was amended on September 15, 2016, Docket No. 1334. The Plan incorporates by reference certain documents filed with the Bankruptcy Court as part of the "Plan Supplement." Capitalized terms used but not defined in this Current Report on Form 8-K (this "Report") have the meanings set forth in the Plan.

On October 5, 2016, Arch Coal consummated the transactions contemplated by the Plan, which became effective on that date (the "Effective Date"). The description of the Plan in this Report is qualified in its entirety by reference to the full text of the Plan, a copy of which is filed as Exhibit 2.2 to Arch Coal's Current Report on Form 8-K filed with the Securities and Exchange Commission (the "SEC") on September 14, 2016.

New First Lien Debt Facility

On the Effective Date, pursuant to the Plan and as a condition to its effectiveness, Arch Coal entered into a new senior secured term loan credit agreement in an aggregate principal amount of $326.5 million (the "New First Lien Debt Facility") with Wilmington Trust, National Association, as administrative agent and collateral agent (in such capacities, the "Agent") for the lenders party thereto from time to time (collectively, the "Lenders"). The Lenders are all institutions that previously committed to make loans to Arch Coal under the DIP Credit Agreement (as defined below), and also received shares of Common Stock of Arch Coal pursuant to the Plan and will collectively hold 94% of Arch Coal's Common Stock upon emergence. The New First Lien Debt Facility will mature on the date that is five years after the Effective Date.

Borrowings under the New First Lien Debt Facility bear interest at a per annum rate equal to, at the option of Arch Coal, either (i) a London interbank offered rate plus an applicable margin of 9%, subject to a 1% LIBOR floor (the "LIBOR Rate"), or (ii) a base rate plus an applicable margin of 8%. Interest payments will be payable in cash, unless the Debtors' liquidity after giving effect to the applicable interest payment would not exceed $300 million, in which case interest will be payable in kind (any such interest that is paid in kind, the "PIK Interest"). The term loans provided under the New First Lien Debt Facility (the "Term Loans") are subject to quarterly principal amortization payments in an amount equal $816,250. To the extent any interest is paid as PIK Interest on any interest payment date, the amount of the Term Loans in respect of which such PIK Interest is payable will be deemed to have accrued additional interest over the preceding interest period at 1.00%, which additional interest will be capitalized and added to the principal amount of outstanding Term Loans.

The New First Lien Debt Facility are guaranteed by all existing and future wholly owned domestic subsidiaries of Arch Coal (collectively, the "Subsidiary Guarantors" and, together with Arch Coal, the "Loan Parties"), subject to customary exceptions, and is secured by first priority security interests on substantially all assets of the Loan Parties, including 100% of the voting equity interests of directly owned domestic subsidiaries and 65% of the voting equity interests of directly owned foreign subsidiaries, subject to customary exceptions.

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

The New First Lien Debt Facility is subject to certain usual and customary mandatory prepayment events, including 100% of net cash proceeds of (i) debt issuances (other than debt permitted to be incurred under the terms of the New First Lien Debt Facility) and (ii) non-ordinary course asset sales or dispositions, subject to customary thresholds,

exceptions and reinvestment rights.

The New First Lien Debt Facility contains customary affirmative covenants and representations.

The New First Lien Debt Facility also contains customary negative covenants, which, among other things, and subject to certain exceptions, include restrictions on (i) indebtedness, (ii) liens and guaranties, (iii) liquidations,

mergers, consolidations, acquisitions, (iv) disposition of assets or subsidiaries, (v) affiliate transactions, (vi) creation or ownership of certain subsidiaries, partnerships and joint ventures, (vii) continuation of or change in business, (viii) restricted payments, (ix) prepayment of subordinated indebtedness, (x) restrictions in agreements on dividends, intercompany loans and granting liens on the collateral, (xi) loans and investments, (xii) changes in organizational documents, (xiii) transactions with respect to bonding subsidiaries and (xiv) hedging transactions. The New First Lien Debt Facility does not contain any financial maintenance covenant.

The New First Lien Debt Facility contains customary events of default, subject to customary thresholds and exceptions, including, among other things, (i) non-payment of principal and non-payment of interest and fees, (ii) a material inaccuracy of a representation or warranty at the time made, (iii) a failure to comply with any covenant, subject to customary grace periods in the case of certain affirmative covenants, (iv) cross-events of default to indebtedness of at least $35,000,000, (v) cross-events of default to surety, reclamation or similar bonds securing obligations with an aggregate face amount of at least $50,000,000, (vi) uninsured judgments in excess of $35,000,000, (vii) any loan document shall cease to be a legal, valid and binding agreement, (viii) uninsured losses or proceedings against assets with a value in excess of $35,000,000, (ix) ERISA events, (x) a change of control or (xi) bankruptcy or insolvency proceedings relating to the Arch Coal or any material subsidiary of the Arch Coal.

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

Securitization Facility

On the Effective Date, Arch Coal extended and amended its existing $200 million trade accounts receivable securitization facility provided to Arch Receivable Company, LLC, a non-Debtor special-purpose entity that is a wholly owned subsidiary of Arch Coal ("Arch Receivable") (the "Extended Securitization Facility"), which continues to support the issuance of letters of credit and reinstates Arch Receivable's ability to request cash advances, as existed prior to the filing of the voluntary petitions for relief under the Bankruptcy Code. Pursuant to the Extended Securitization Facility, the Debtors agreed to a revised schedule of fees payable to the administrator and the providers of the Extended Securitization Facility.

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

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

Warrant Agreement

On the Effective Date, Arch Coal entered into a warrant agreement (the "Warrant Agreement") with American Stock Transfer & Trust Company, LLC as warrant agent and, pursuant to the terms of the Plan, issued warrants ("Warrants") to purchase up to an aggregate of 1,914,856 shares of Class A Common Stock, par value $0.01 per share, of Arch Coal (the "Class A Common Stock") to holders of claims arising under the Cancelled Notes (as defined below).

Each Warrant expires on October 5, 2023, and is initially exercisable for one share of Class A Common Stock at an initial exercise price of $57.00 per share. The Warrants are exercisable by a holder paying the exercise price in cash or on a cashless basis, at the election of the holder. The Warrants contain anti-dilution adjustments for stock splits, reverse stock splits, stock dividends, dividends and distributions of cash, other securities or other property, spin-offs and tender and exchange offers by Arch Coal or its subsidiaries to purchase Class A Common Stock at above-market prices.

If, in connection with a merger, recapitalization, business combination, transfer to a third party of substantially all of Arch Coal's consolidated assets or other transaction that results in a change to the Class A Common Stock (each, a "Transaction"), (i) the Transaction is consummated prior to the fifth anniversary of the Effective Date and the Transaction consideration to holders of Class A Common Stock is 90% or more listed common stock or common stock of a company that provides publicly available financial reporting, and holds management calls regarding the same, no less than quarterly ("Reporting Stock") or (ii) regardless of the consideration, the Transaction is consummated on or after the fifth anniversary of the Effective Date, the Warrants will be assumed by the surviving company and will become exercisable for the consideration that the holders of Class A Common Stock receive in such Transaction; *provided* that if the consideration such holders receive consists solely of cash, then upon the consummation of such Transaction, Arch Coal will pay for each Warrant an amount of cash equal to the greater of (i) (x) the amount of cash payable with respect to the number of shares of Class A Common Stock underlying the Warrant *minus* (y) the exercise price per share then in effect *multiplied by* the number of shares of Class A Common Stock underlying the Warrant and (ii) $0.

If a Transaction is consummated prior to the fifth anniversary of the Effective Date in which the Transaction consideration is less than 90% Reporting Stock, a portion of the Warrants corresponding to the portion of the Transaction consideration that is Reporting Stock will be assumed by the surviving company and will become exercisable for the Reporting Stock consideration that the holders of Class A Common Stock receive in such Transaction, and the portion of the Warrants corresponding to the portion of the Transaction consideration that is not Reporting Stock will, at the option of each holder, (i) be assumed by the surviving company and will become exercisable for the consideration that the holders of Class A Common Stock receive in such Transaction or (ii) be redeemed by Arch Coal for cash in an amount equal to the Black Scholes Payment (as defined in the Warrant Agreement).

The description of the Warrant Agreement is qualified in its entirety by reference to the full text of the Warrant Agreement, which is incorporated by reference herein. A copy of the Warrant Agreement is included herein as Exhibit 10.5.

Item 1.02 Termination of Material Definitive Agreement

On the Effective Date, by operation of the Plan, all outstanding obligations under the following notes issued by Arch Coal and guaranteed by certain subsidiary guarantors, (collectively, the "Cancelled Notes") were cancelled and the indentures governing such obligations were cancelled except as necessary to (a) enforce the rights, claims and interests of the applicable trustee vis-a-vis any parties other than the Debtors, (b) allow each trustee to receive distributions under the Plan and to distribute them to the holders of the Cancelled Notes in accordance with the terms of the applicable indenture, (c) preserve any rights of the applicable trustee to compensation, reimbursement and indemnification under each of the applicable indentures solely as against any money or property distributable to holders of Cancelled Notes, (iv) permit each of the trustees to

enforce any obligation owed to them under the Plan and (v) permit each of the trustees to appear in the chapter 11 cases or in any proceeding in the Bankruptcy Court or any other court:

- 7.000% Senior Notes due 2019, issued pursuant to an indenture dated as of June 14, 2011, by and among Arch Coal, as issuer, UMB Bank National Association, as trustee, and the guarantors named therein, as amended, supplemented or revised thereafter;
- 7.250% Senior Notes due 2020, issued pursuant to an indenture dated as of August 9, 2010, by and among Arch Coal, as issuer, U.S. Bank National Association, as trustee, and the guarantors named therein, as amended, supplemented or revised thereafter;
- 7.250% Senior Notes due 2021, issued pursuant to an indenture dated as of June 14, 2011, by and among Arch Coal, as issuer, UMB Bank National Association, as trustee, and the guarantors named therein, as amended, supplemented or revised thereafter;
- 9.875% Senior Notes due 2019, issued pursuant to an indenture dated as of November 21, 2012, by and among Arch Coal, as issuer, UMB Bank National Association, as trustee, and the guarantors named therein, as amended, supplemented or revised thereafter; and

- 8.000% Second Lien notes due 2019, issued pursuant to an indenture dated as of December 17, 2013, by and among Arch Coal, as issuer, Wilmington Savings Fund Society, as trustee and collateral agent, and the guarantors named therein, as amended, supplemented or revised thereafter.

On the Effective Date, by operation of the Plan, all outstanding obligations under the following credit agreement (the "Prepetition Credit Agreement") entered into by Arch Coal and guaranteed by certain of Arch Coal's subsidiaries and the related collateral, guaranty and other definitive agreements relating to the Prepetition Credit Agreement were cancelled and the Prepetition Credit Agreement was cancelled except as necessary to (i) enforce the rights, claims and interests of the Prepetition Agent and any predecessor thereof vis-a-vis the Lenders and any parties other than the Debtors, (ii) to allow the Prepetition Agent (as defined below) to receive distributions under the Plan and to distribute them to the lenders under the Prepetition Credit Agreement and (iii) preserve any rights of the Prepetition Agent and any predecessor thereof as against any money or property distributable to holders of claims arising out of the Prepetition Credit Agreement or any related transaction documents, including any priority in respect of payment and the right to exercise any charging lien:

- Amended and Restated Credit Agreement, dated as of June 14, 2011 (as amended by the First Amendment, dated as of May 16, 2012, the Second Amendment, dated as of November 20, 2012, the Third Amendment, dated as of November 21, 2012 and the Fourth Amendment, dated as of December 17, 2013), among the Arch Coal, Inc., as borrower, the lenders from time to time party thereto, Wilmington Trust, National Association, in its capacities as term loan facility administrative agent (as successor to Bank of America, N.A. in such capacity) and collateral agent (as successor to PNC Bank, National Association in such capacity) (the "Prepetition Agent")

On the Effective Date, all outstanding obligations under the following credit agreement (the "DIP Credit Agreement") other than contingent and/or unliquidated obligations were paid in cash in full, all commitments under the DIP Credit Agreement and the related transaction documents referred to therein as the "Loan Documents" were terminated, all liens on property of the Debtors arising out of or related to the DIP Facility terminated and the Loan Documents were cancelled except with respect to (a) contingent and and/or unliquidated obligations under the Loan Documents which survive the Effective Date and continue to be governed by the Loan Documents and (b) the relationships among the DIP Agent (as defined below) and the lenders under the DIP Credit Agreement, as applicable, including but not limited to, those provisions relating to the rights of the DIP Agent and the lenders to expense reimbursement, indemnification and other similar amounts, certain reinstatement obligations set forth in the DIP Credit Agreement and any provisions that may survive termination or maturity of the credit facility governed by the DIP Credit Agreement in accordance with the terms thereof:

- Superpriority Secured Debtor-In-Possession Credit Agreement, dated as of January 21, 2016 (as amended by the Waiver and Consent and Amendment No. 1, dated as of March 4, 2016, Amendment No. 2, dated as of March 28, 2016, Amendment No. 3, dated as of April 26, 2016, Amendment No. 4, dated as of June 10, 2016, Amendment No. 5, dated as of June 23, 2016, Amendment No. 6, dated as of July 20, 2016, and Amendment No. 7, dated as of September 28, 2016) among Arch Coal, Inc., as borrower, certain subsidiaries of Arch Coal, Inc., as guarantors, the lenders from time to time party there and Wilmington Trust, National Association, in its capacity as administrative agent and as collateral agent (in such capacities, the "DIP Agent").

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

The information regarding the Term Loan Facility and the Securitization Facility set forth in Item 1.01 of this Report under the heading "Credit Facilities" is incorporated by reference herein.

Item 3.02 Unregistered Sales of Equity Securities

Under the Plan, 24,589,834 shares of Class A Common Stock and 410,166 shares of Class B Common Stock, par value $.01 per share, ("Class B Common Stock" and together with Class A Common Stock, "Common Stock") were distributed to the secured lenders and to certain holders of general unsecured claims under the Plan on the Effective Date. In addition, on the Effective Date, Arch Coal issued Warrants to purchase up to an aggregate of 1,914,856 shares of Class A Common Stock. Arch Coal relied, based on the confirmation order it received from the Bankruptcy Court, on Section 1145(a)(1) of the U.S. Bankruptcy Code to exempt from the

registration requirements of the Securities Act of 1933, as amended (i) the offer and sale of Common Stock to the secured lenders and to the general unsecured creditors, (ii) the offer and sale of the Warrants to the holders of claims arising under the Cancelled Notes and (iii) the offer and sale of the Class A Common Stock issuable upon exercise of the Warrants. Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under Section 5 of the Securities Act and state laws if three principal requirements are satisfied:

- the securities must be offered and sold under a plan of reorganization and must be securities of the debtor, of an affiliate participating in a joint plan of reorganization with the debtor or of a successor to the debtor under the plan of reorganization;
- the recipients of the securities must hold claims against or interests in the debtor; and
- the securities must be issued in exchange, or principally in exchange, for the recipient's claim against or interest in the debtor.

The information regarding the terms governing the exercise of the Warrants set forth in Item 1.01 of this Report under the heading "Warrant Agreement" is incorporated by reference herein.

Item 3.03 Material Modification to Rights of Security Holders

The information regarding the cancellation of the debt securities of the Debtors set forth in Item 1.02 of this Report is incorporated by reference herein.

The information regarding the amendment and restatement of Arch Coal's Certificate of Incorporation and Bylaws set forth in Item 5.03 of this Report is incorporated by reference herein.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Departure and Appointment of Directors

On the Effective Date, by operation of the Plan, the following persons ceased to serve as directors of Arch Coal: James A. Sabala, Paul T. Hanrahan, Paul A. Lang, Theodore D. Sands, Douglas H. Hunt, J. Thomas Jones, George C. Morris III, Governor David D. Freudenthal, Patricia F. Godley, Wesley M. Taylor and Peter I. Wold.

On the Effective Date, by operation of the Plan, John W. Eaves, who was an existing director of Arch Coal, and James N. Chapman, Patrick J. Bartels Jr., Sherman K. Edmiston III, Patrick A. Kriegshauser, Richard A. Navarre and Scott D. Vogel became members of the Board until the first annual meeting of Arch Coal's stockholders to be held in 2017 (the "2017 Annual Meeting"), until their respective successors are duly elected and qualified or until their earlier death, resignation or removal.

Biographical information about Arch Coal's directors is set forth in the table below.

Name	Age	Position
Patrick J. Bartels, Jr.	40	Patrick J. Bartels, Jr. is a managing principal at Monarch Alternative Capital LP, which focuses on investing in stressed and distressed companies across various industries and geographies. He has served as a director of WCI Communities, Inc. since 2009. Prior to joining Monarch in 2002, Mr. Bartels was a high-yield investments analyst at Invesco. He began his career at PricewaterhouseCoopers LLP. Bartels holds the Chartered Financial Analyst designation.
James N. Chapman	54	James N. Chapman brings more than 30 years of investment banking experience across a wide range of industries, including metals and mining, energy, and natural resources, as well as significant experience as a capital markets and strategic planning consultant. Since 2004, Chapman has served as a non-executive Advisory Director of SkyWorks Capital, LLC, an aviation and aerospace management consulting services company.

(1) Arch to confirm.

John W. Eaves	58	John W. Eaves currently serves as Arch Coal's Chief Executive Officer. Mr. Eaves has served as a member of Arch's board of directors since 2006. During his tenure with the company, he has also held the positions of president and chief operating officer; senior vice president of marketing; and vice president of marketing and president of Arch Coal Sales, the company's marketing subsidiary. Mr. Eaves joined the corporation in 1987 after serving in various marketing-related positions at Diamond Shamrock Coal Company and Natomas Coal Company. In addition to his responsibilities with Arch Coal, he serves on the board of the National Mining Association, and he is immediate past chairman and president of the National Coal Council.
Sherman K. Edmiston III	54	Sherman K. Edmiston III has more than 20 years of experience working with companies undergoing major transitions as a principal investor, investment banker and advisor. He recently served as chief restructuring officer of Xinergy, Ltd., a Central Appalachian producer of thermal and metallurgical coal. Edmiston has served on a number of boards during his career and previously served as a member of the board of JL French Automotive Castings, Inc.
Patrick A. Kriegshauser	55	Patrick A. Kriegshauser serves as executive vice president and chief financial officer and as a principal owner of Sachs Electric Company, a leading specialty electrical and design firm. He has considerable experience in the coal and energy industries, including a 15-year career at Arch, during which he served as senior vice president and chief financial officer. In addition, he served on the board of directors of Walter Energy for 10 years.
Richard A. Navarre	56	Richard A. Navarre is an accomplished senior executive with more than 30 years of diverse international business and financial experience, including as president of Peabody Energy. In his 19 years with Peabody, Navarre had executive responsibility for virtually all areas of the company. During his tenure, Peabody's market cap grew from $480 million to more than $20 billion. He currently is a director on the boards of two publicly listed NYSE companies.
Scott D. Vogel	41	Scott D. Vogel is a partner at Vogel Partners LP, a private investment firm, after serving as managing director at Davidson Kempner Capital Management LP. During his 14-year tenure at Davidson Kempner, Vogel invested in a diverse set of industries, including industrials and industrial services, business services, transportation, and metals and mining. Previously, Vogel worked at MFP Investors, investing in special situations and turnaround opportunities for the private investment firm of Michael F. Price, and at Chase Securities. Vogel has served on numerous boards during his career and is currently a member of the board of Merrill Corp.

The persons chosen to serve as directors of Arch Coal as of the Effective Date were selected by holders of more than 66 2/3% of the outstanding principal amount of loans under the Prepetition Credit Agreement in consultation with John W. Eaves, Chief Executive Officer. The number of directors of Arch Coal, pursuant to the certificate of incorporation and by resolution of the Board, has been set at seven.

The Board has appointed James N. Chapman to serve as the Chairman of the Board.

Committees of the Board of Directors

The standing committees of the Board consist of an Audit Committee, a Personnel and Compensation Committee, and a Nominating and Corporate Governance Committee.

- The Board has appointed Patrick A. Kriegshauser, Richard A. Navarre and Sherman K. Edmiston III as the members of the Audit Committee.
- The Board has appointed James N. Chapman, Patrick J. Bartels, Jr. and Scott D. Vogel as the members of the Personnel and Compensation Committee.

- The Board has appointed James N. Chapman and Patrick J. Bartels, Jr. as the members of the Nominating and Corporate Governance Committee.

Indemnification of Directors and Executive Officers

As of the Effective Date, Arch Coal entered into indemnification agreements with each of its directors and executive officers. The indemnification agreements require Arch Coal to (a) indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to Arch Coal and (b) advance expenses reasonably incurred as a result of any proceeding against them as to which they could be indemnified. The agreements replaced any previously entered indemnification agreement between Arch Coal and its directors and executive officers. Arch Coal may enter into indemnification agreements with any future directors or executive officers.

The description of the indemnification agreements is qualified in its entirety by reference to the full text of the indemnification agreements, which are incorporated by reference herein. A copy of the form of indemnification agreement is included herein as Exhibit 10.6.

Executive Officers

As of the Effective Date, by operation of the Plan, the executive officers of Arch Coal consisted of the following existing executive officers of Arch Coal: John W. Eaves, Chief Executive Officer; Paul A. Lang, President and Chief Operating Officer; John T. Drexler, Senior Vice President and Chief Financial Officer; Kenneth D. Cochran, Senior Vice President — Operations; Robert G. Jones, Senior Vice President — Law, General Counsel and Secretary; John A. Ziegler, Jr., Chief Commercial Officer; Deck S. Slone, Senior Vice President — Strategy and Public Policy; and Allen R. Kelley Vice President — Human Resources.

Biographical information about Arch Coal's executive officers is set forth in the table below.

Name	Age	Position
Kenneth D. Cochran	55	Mr. Cochran has served as our Senior Vice President-Operations since August 2012. From May 2011 to August 2012, Mr. Cochran served as Group President of our western operations, which included Thunder Basin Coal Company, the Arch Western Bituminous Group, Arch of Wyoming and the Otter Creek development, and served as President and General Manager of Thunder Basin Coal Company from 2005 to April 2011. Prior to joining Arch Coal in 2005, Mr. Cochran spent 20 years with TXU Corporation.
John T. Drexler	46	Mr. Drexler has served as our Senior Vice President and Chief Financial Officer since 2008 and served as our principal accounting officer from January 2016 until the Effective Date. Mr. Drexler served as our Vice President-Finance and Accounting from 2006 to 2008. From 2005 to 2006, Mr. Drexler served as our Director of Planning and Forecasting. Prior to 2005, Mr. Drexler held several other positions within our finance and accounting department.
Robert G. Jones	59	Mr. Jones has served as our Senior Vice President-Law, General Counsel and Secretary since 2008. Mr. Jones served as Vice President-Law, General Counsel and Secretary from 2000 to 2008.
Allen R. Kelley	55	Mr. Kelley was appointed Vice President-Human Resources in March 2014. From 2008 to March 2014, Mr. Kelley served as our Vice President-Enterprise Risk Management. From 2005 to 2008, Mr. Kelley served as our Director of Internal Audit. Prior to 2005, Mr. Kelley held various finance and accounting positions within the corporate and operations functions of Arch Coal, Inc.
Paul A. Lang	55	Mr. Lang was elected our President and Chief Operating Officer in April 2015. He has served as our Executive Vice President and Chief Operating Officer since April 2012 and as our Executive Vice President-Operations from August 2011 to April 2012. Mr. Lang served as Senior Vice President-Operations from 2006 through August 2011, as President of Western Operations from 2005 through 2006 and President and General Manager of Thunder Basin Coal Company from 1998 to 2005.

Deck S. Slone	52	Mr. Slone has served as our Senior Vice President-Strategy and Public Policy since June 2012. Mr. Slone served as our Vice President-Government, Investor and Public Affairs from 2008 to June 2012. Mr. Slone served as our Vice President-Investor Relations and Public Affairs from 2001 to 2008.
John A. Ziegler, Jr.	49	Mr. Ziegler was appointed Chief Commercial Officer in March 2014. Mr. Ziegler served as our Vice President-Human Resources from April 2012 to March 2014. From October 2011 to April 2012, Mr. Ziegler served as our Senior Director-Compensation and Benefits. From 2005 to October 2011 Mr. Ziegler served as Vice President-Contract Administration, President of Sales, then finally Senior Vice President, Sales and Marketing and Marketing Administration. Mr. Ziegler joined Arch Coal in 2002 as Director-Internal Audit. Prior to joining Arch Coal, Mr. Ziegler held various finance and accounting positions with bioMerieux and Ernst & Young.

See "—Departure and Appointment of Directors" above for Mr. Eaves biographical information.

As of the Effective Date, John Lorson will serve as Vice President and Chief Accounting Officer, Arch Coal's principal accounting officer. Mr. Lorson has served as Arch Coal's Chief Accounting Officer since April 2008. Prior to that he served as Arch Coal's controller from July 1997 to April 2008. He is 54 years old.

Item 5.03 Amendments to Articles of Incorporation or Bylaws

On the Effective Date, pursuant to the terms of the Plan, Arch Coal filed an Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") with the office of the Secretary of State of Delaware. Also on the Effective Date, and pursuant to the terms of the Plan, Arch Coal adopted Amended and Restated Bylaws (the "Bylaws"). Descriptions of the material provisions of the Certificate of Incorporation and the Bylaws are contained in Arch Coal's registration statement on Form 8-A filed with the SEC on October 4, 2016, which description is incorporated by reference herein.

The descriptions of the Certificate of Incorporation and the Bylaws are qualified in their entirety by reference to the full texts of the Certificate of Incorporation and the Bylaws, which are incorporated by reference herein. Copies of the Certificate of Incorporation and the Bylaws are included herein as Exhibits 3.1 and 3.2, respectively.

Item 8.01 Other Events

NYSE Listing

On the Effective Date, the Class A Common Stock (CUSIP 039380407) was authorized for trading and listed on the NYSE under the symbol "ARCH" and Arch Coal ceased trading on the OTC Pink Sheets.

Press Release

On the Effective Date, Arch Coal issued a press release announcing its emergence from bankruptcy. A copy of the press release is included herein as Exhibit 99.1.

Forward-Looking Statements

This Report contains "forward-looking statements" — that is, statements related to future, not past, events, including Arch Coal's outlook. 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 potential demands for additional collateral for self-bonding; from any potential restructuring we do; 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.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit 3.1	Amended and Restated Certificate of Incorporation of Arch Coal, Inc. (incorporated by reference to Exhibit 3.1 of Arch Coal's registration statement on Form 8-A filed on October 4, 2016).
Exhibit 3.2	Bylaws of Arch Coal, Inc. (incorporated by reference to Exhibit 3.2 of Arch Coal's registration statement on Form 8-A filed on October 4, 2016).
Exhibit 4.1	Form of specimen Class A Common Stock certificate
Exhibit 4.2	Form of specimen Class B Common Stock certificate
Exhibit 4.3	Form of specimen Series A Warrant certificate (included as Exhibit A to the Warrant Agreement included herein as Exhibit 10.5)
Exhibit 10.1	Credit Agreement, dated as of October 5, 2016, among Arch Coal, Inc., as borrower, the lenders from time to time party thereto and Wilmington Trust, National Association, in its capacities as administrative agent and as collateral agent.
Exhibit 10.2	Third Amended and Restated Receivables Purchase Agreement among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as initial servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers.
Exhibit 10.3	Second Amended and Restated Purchase and Sale Agreement among the Arch Coal, Inc. and certain subsidiaries of the Arch Coal, Inc., as originators.
Exhibit 10.4	Second Amended and Restated Sale and Contribution Agreement between Arch Coal, Inc., as the transferor, and Arch Receivable Company, LLC.
Exhibit 10.5	Warrant Agreement, dated as of October 5, 2016, between Arch Coal, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent.
Exhibit 10.6	Indemnification Agreement between Arch Coal and the directors and officers of Arch Coal and its subsidiaries (form)
Exhibit 99.1	Press Release dated October 5, 2016

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.

Date: October 7, 2016

ARCH COAL, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Senior Vice President — Law, General Counsel & Secretary

EXHIBIT INDEX

Exhibit Number	Description
Exhibit 3.1	Amended and Restated Certificate of Incorporation of Arch Coal, Inc. (incorporated by reference to Exhibit 3.1 of Arch Coal's registration statement on Form 8-A filed on October 4, 2016).
Exhibit 3.2	Bylaws of Arch Coal, Inc. (incorporated by reference to Exhibit 3.2 of Arch Coal's registration statement on Form 8-A filed on October 4, 2016).
Exhibit 4.1	Form of specimen Class A Common Stock certificate
Exhibit 4.2	Form of specimen Class B Common Stock certificate
Exhibit 4.3	Form of specimen Series A Warrant certificate (included as Exhibit A to the Warrant Agreement included herein as Exhibit 10.5)
Exhibit 10.1	Credit Agreement, dated as of October 5, 2016, among Arch Coal, Inc., as borrower, the lenders from time to time party thereto and Wilmington Trust, National Association, in its capacities as administrative agent and as collateral agent.
Exhibit 10.2	Third Amended and Restated Receivables Purchase Agreement among Arch Receivable Company, LLC, as seller, Arch Coal Sales Company, Inc., as initial servicer, PNC Bank, National Association as administrator and issuer of letters of credit thereunder and the other parties party thereto, as securitization purchasers.
Exhibit 10.3	Second Amended and Restated Purchase and Sale Agreement among the Arch Coal, Inc. and certain subsidiaries of the Arch Coal, Inc., as originators.

Exhibit 10.4	Second Amended and Restated Sale and Contribution Agreement between Arch Coal, Inc., as the transferor, and Arch Receivable Company, LLC.
Exhibit 10.5	Warrant Agreement, dated as of October 5, 2016, between Arch Coal, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent.
Exhibit 10.6	Indemnification Agreement between Arch Coal and the directors and officers of Arch Coal and its subsidiaries (form)
Exhibit 99.1	Press Release dated October 5, 2016


ACA
ArchCoal
CLASS A COMMON STOCK
PAR VALUE $.01
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
CUSIP 039380 40 7
SEE REVERSE FOR CERTAIN DEFINITIONS
This certifies that
SPECIMEN
is the owner of
FULLY PAID AND NON-ASSESSABLE SHARES OF THE CLASS A COMMON STOCK OF
Arch Coal, Inc., transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon the surrender of this Certificate properly endorsed. This Certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.
Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.
Dated:
COUNTERSIGNED AND REGISTERED:
AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC
(Brooklyn, NY)
TRANSFER AGENT AND REGISTRAR
BY:
AUTHORIZED SIGNATURE
ARCH COAL, INC.
CORPORATE
SEAL
DELAWARE
Chief Executive Officer
Corporate Secretary

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	—	as tenants in common
TEN ENT	—	as tenants by the entireties
JT TEN	—	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT–.....Custodian.....
(Cust) (Minor)
under Uniform Gifts to Minors
Act.....
(State)

UNIF TRF MIN ACT–.....Custodian (until age.....)
(Cust)
.....under Uniform Transfers
(Minor)
to Minors Act.....
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____
(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ Shares
of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

AFFIXED MEDALLION SIGNATURE
GUARANTEE IMPRINT BELOW

X _____
(SIGNATURE)

X _____
(SIGNATURE)

_____

ABOVE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION SUCH AS A SECURITIES BROKER/DEALER, COMMERICAL BANK & TRUST COMPANY, SAVINGS AND LOAN ASSOCIATION OR A CREDIT UNION PARTICIPATING IN A MEDALLION PROGRAM APPROVED BY THE SECURITIES TRANSFER ASSOCIATION, INC.

Exhibit 4.2


NUMBER
ACB
SHARES
ArchCoal
CLASS B COMMON STOCK
PAR VALUE $.01
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
CUSIP 039380 50 6
SEE REVERSE FOR CERTAIN DEFINITIONS
This certifies that
SPECIMEN
is the owner of
FULLY PAID AND NON-ASSESSABLE SHARES OF THE CLASS B COMMON STOCK OF
Arch Coal, Inc., transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon the surrender of this Certificate properly endorsed. This Certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.
Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.
Dated:
COUNTERSIGNED AND REGISTERED:
AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC
(Brooklyn, NY)
TRANSFER AGENT AND REGISTRAR
BY:
AUTHORIZED SIGNATURE
ARCH COAL, INC.
CORPORATE
SEAL
DELAWARE
Chief Executive Officer
Corporate Secretary

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	—	as tenants in common
TEN ENT	—	as tenants by the entireties
JT TEN	—	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT—.....Custodian.....
(Cust) (Minor)
under Uniform Gifts to Minors
Act.....
(State)

UNIF TRF MIN ACT—.....Custodian (until age.....)
(Cust)
.....under Uniform Transfers
(Minor)
to Minors Act.....
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____
(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ Shares
of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

AFFIXED MEDALLION SIGNATURE GUARANTEE IMPRINT BELOW

X _____
(SIGNATURE)

X _____
(SIGNATURE)

ABOVE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION SUCH AS A SECURITIES BROKER/DEALER, COMMERICAL BANK & TRUST COMPANY, SAVINGS AND LOAN ASSOCIATION OR A CREDIT UNION PARTICIPATING IN A MEDALLION PROGRAM APPROVED BY THE SECURITIES TRANSFER ASSOCIATION, INC.

Exhibit 10.1

EXECUTION VERSION

$326,500,000.00

CREDIT AGREEMENT

Dated as October 5, 2016

by and among

ARCH COAL, INC.,
as Borrower,

THE LENDERS PARTY HERETO,

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Agent

TABLE OF CONTENTS

LIST OF SCHEDULES AND EXHIBITS

CREDIT AGREEMENT

THIS CREDIT AGREEMENT is dated as of October 5, 2016, and is made by and among **ARCH COAL, INC.**, a Delaware corporation (the "**Borrower**"), the **LENDERS** (as hereinafter defined) and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, in its capacities as administrative agent for the Lenders and collateral agent for the Lenders (in such capacities, together with its successors and assigns, in such capacities, the "**Agent**").

WHEREAS, the Borrower entered into that certain Amended and Restated Credit Agreement, dated as of June 14, 2011 (as amended by the First Amendment, dated as of May 16, 2012, the Second Amendment, dated as of November 20, 2012, the Third Amendment, dated as of November 21, 2012 and the Fourth Amendment, dated as of December 17, 2013, the "**Prepetition Credit Agreement**"), among the Borrower, the several banks and other financial institutions or entities party thereto as term loan lenders (the "**Prepetition Lenders**"), Wilmington Trust, National Association, in its capacity as term loan facility administrative agent (as successor to Bank of America, N.A. in such capacity), Wilmington Trust, National Association, in its capacity as collateral agent (as successor to PNC Bank, National Association in such capacity) (the "**Prepetition Collateral Agent**"), and certain other parties thereto, pursuant to which the Prepetition Lenders agreed, subject to the terms and conditions contained therein, to make available to the Borrower certain credit facilities as provided for therein;

WHEREAS, on January 11, 2016 (the "**Petition Date**"), the Borrower and certain of its subsidiaries (each, a "**Chapter 11 Debtor**" and collectively, the "**Chapter 11 Debtors**") filed voluntary petitions with the Bankruptcy Court for relief under Chapter 11 of the Bankruptcy Code (each case of a Chapter 11 Debtor, a "**Case**" and collectively, the "**Cases**");

WHEREAS, the joint Plan of Reorganization (as hereinafter defined) of the Chapter 11 Debtors was confirmed by the Bankruptcy Court on September 13, 2016 and will be consummated on the date hereof; and

WHEREAS, pursuant to the Plan of Reorganization, the Prepetition Lenders are entitled to receive, among other distributions, interests in an exit term loan facility in the original aggregate principal amount of $326,500,000 (such exit term facility, as evidenced hereby, being the "**Facility**"), on the terms and conditions set forth in this Agreement and the other Loan Documents.

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

ARTICLE 1
CERTAIN DEFINITIONS

Section 1.01. *Certain Definitions*. In addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly requires otherwise:

"**ABL Priority Collateral**" shall mean, collectively, each Loan Party's right, title or interest in or to all of the following types and items of property of such Loan Party, whether now owned or existing or hereafter created, acquired or arising and wherever located (and in each case subject to customary exceptions to be agreed in the intercreditor agreement entered into in connection with the applicable Permitted ABL Financing): (i) all inventory, (ii) all contracts, documents of title and other documents that evidence the ownership of or right to receive or possess, or that otherwise directly relate to, any inventory, including, without limitation, contracts and documents that relate to the acquisition or sale or other disposition of any inventory; (iii) all rights of an unpaid vendor with respect to inventory; and (iv) all Receivables Assets, but for the avoidance of doubt, excluding on any date, amounts on deposit in any account that are traceable as direct proceeds of the Term Loan Priority Collateral, any proceeds of Term Loan Priority Collateral, including any rights to payment arising from a disposition of Term Loan Priority Collateral, and contracts, documents of title and other documents that evidence the ownership of or right to receive or possess, or otherwise directly relate to the Term Loan Priority Collateral.

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

"**Additional PIK Interest**" shall have the meaning specified in Section 5.05(b).

"**Additional PIK Interest Rate**" shall mean 1.00% per annum.

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

"**Agent**" shall have the meaning specified in the introductory paragraph hereto.

"**Agent Fee Letter**" shall mean that certain Agent Fee Letter, dated as of October 5, 2016, between the Borrower and the Agent.

"**Agent Parties**" shall have the meaning specified in Section 13.15.

"**Agreement**" shall mean this Credit Agreement (including all schedules and exhibits), as the same may hereafter be supplemented, amended, restated, refinanced, replaced, or modified from time to time.

"**Annual Statements**" shall have the meaning specified in Section 6.07(a).

"**Applicable Margin**" shall mean (i) the percentage spread to be added to the LIBOR Rate applicable to Term Loans under the LIBOR Rate Option, which shall be equal to 9.00% and (ii) the percentage spread to be added to the Base Rate applicable to Term Loans under the Base Rate Option, which shall be equal to 8.00%.

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

"**Assignment and Assumption Agreement**" shall mean an assignment and assumption agreement entered into by a Lender and an assignee permitted under Section 13.09, in substantially the form of Exhibit 1.1(A).

"**Authorized Officer**" shall mean, with respect to any Loan Party, the Chief Executive Officer, President, Chief Financial Officer, Treasurer or Assistant Treasurer of such Loan Party or such other individuals, designated by written notice to the Agent from the Borrower, authorized to execute notices, reports and other documents on behalf of the Loan Parties required hereunder. The Borrower may amend such list of individuals from time to time by giving written notice of such amendment to the Agent.

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

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

"**Banking Law**" shall have the meaning specified in Section 10.10.

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

"**Bankruptcy Court**" shall mean the United States Bankruptcy Court for the Eastern District of Missouri or any other court having jurisdiction over the Cases from time to time.

"**Base Rate**" shall mean for any day a fluctuating rate per annum equal to the highest of (i) the Federal Funds Effective Rate plus 1/2 of 1%, (ii) the Prime Rate and (iii) the LIBOR Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. Any change in the Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

"**Base Rate Option**" shall mean the option of the Borrower to have Loans bear interest at the rate and under the terms set forth in Section 4.01(a)(i).

"**Benefit Arrangement**" shall mean an "employee benefit plan," within the meaning of Section 3(3) of ERISA, which is neither a Plan nor a Multiemployer Plan and which is maintained, sponsored or contributed to by any member of the ERISA Group.

"**Black Lung Act**" shall mean, collectively, the Black Lung Benefits Revenue Act of 1977, as amended and the Black Lung Benefits Reform Act of 1977, as amended.

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

"**Borrower**" shall have the meaning specified in the introductory paragraph hereto.

"**Borrower Materials**" shall have the meaning specified in Section 8.03(i).

"**Borrower Shares**" shall have the meaning specified in Section 6.02.

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

"**Business Day**" shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required to be closed for business in New York City, New York or the Agent's Principal Office and if the applicable Business Day relates to any Loan to which the LIBOR Rate Option applies, such day must also be a day on which dealings are carried on in the London interbank market.

"**Case**" or "**Cases**" shall have the meaning specified in the recitals hereof.

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

"**Chapter 11 Debtor**" or "**Chapter 11 Debtors**" shall have the meaning specified in the recitals hereof.

"**Coal Act**" shall mean the Coal Industry Retiree Health Benefits Act of 1992, as amended.

"**Coal Supply Agreement**" shall mean with respect to the Borrower or any of its Subsidiaries an agreement or contract in effect on the Effective Date or thereafter entered into for the sale, purchase, exchange, processing or handling of coal with an initial term of more than one year.

"**Collateral**" shall mean all of the "Collateral" as defined in any Collateral Document and all other assets that become subject to the Liens created by the Collateral Documents from time to time.

"**Collateral Documents**" shall mean, collectively, the Pledge Agreements, the Security Agreements, the Mortgages, the Assignments of Leases and Rents (if any), the Patent, Trademark and Copyright Security Agreements, the Control Agreements and each other agreement providing for a security interest in and/or Lien on the Collateral in favor of the Agent for the benefit of the Secured Parties.

"**Compliance Certificate**" shall have the meaning specified in Section 8.03(c).

"**Confirmation Order**" shall have the meaning specified in Section 7.01(b).

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

"**Contractual Obligation**" shall mean as to any Person, any provisions of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control Agreement**" shall mean, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Agent and the Required Lenders, among the Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant "control" (as defined under the applicable Uniform Commercial Code) over such account (and all assets on deposit therein or credited thereto) to the Agent, for the benefit of the Secured Parties.

"**Debt**" shall mean for any Person as of any date of determination the sum, without duplication, of any and all indebtedness, obligations or liabilities of such Person for or in respect of: (i) all indebtedness for borrowed money (including, without limitation, all subordinated

indebtedness), (ii) all amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) all indebtedness in respect of any other transaction (including production payments (excluding royalties), installment purchase agreements, forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements, (iv) reimbursement obligations (contingent or otherwise) under any letter of credit, (v) all indebtedness and other obligations of each Securitization Subsidiary in respect of any Permitted Receivables Financing, (vi) all payments such Person would have to make in the event of an early termination, on the date such Debt is being terminated, in respect of outstanding Hedging Transactions, or (vii) the amount of all indebtedness (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) in respect of all Guaranties by such Person (the "*Guarantying Person*") of Debt described in clauses (i) through (vi) above of other Persons (each such other Person being a "*Primary Obligor*" and the obligations of a Primary Obligor which are subject to a Guaranty by a Guarantying Person being "*Primary Obligations*") (it being understood that if the Primary Obligations of the Primary Obligor do not constitute Debt, then the Guaranty by the Guarantying Person of the Primary Obligations of the Primary Obligor shall not constitute Debt). It is expressly agreed that obligations in respect of any current trade liabilities (which are incurred in the ordinary course of business and which are not represented by a promissory note or other evidence of indebtedness) and current intercompany liabilities (but not any refinancings, extensions, renewals or replacements thereof) incurred in the ordinary course of business shall not be deemed "Debt" for purposes hereof.

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

"**Defaulting Lender**" shall mean any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to pay over to the Agent or any Lender any other amount required to be paid by it hereunder, (b) has, or has a direct or indirect parent company that has, become the subject of a Bankruptcy Event or a Bail-In Action, or (c) has failed at any time to comply with the provisions of Section 5.03 with respect to purchasing participations from the other Lenders, whereby such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its Ratable Share of such payments due and payable to all of the Lenders; provided that, for the avoidance of doubt, a Lender shall not be a Defaulting Lender solely by virtue of (1) the ownership or acquisition of any equity interest in such Lender by an Official Body or an instrumentality thereof, or (2) in the case of a solvent Lender, the precautionary appointment of an administrator, guardian, custodian or other similar official by an Official Body or instrumentality thereof under or based on the law of the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment not be publicly disclosed, in any such case where such action does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Official Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

As used in this definition and in Section 2.07, the term "**Bankruptcy Event**" shall mean, with respect to any Person, such Person or such Person's direct or indirect parent company becomes the subject of an Insolvency Proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by an Official Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Official Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

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

"**Disqualified Institution**" shall mean all competitors on the "disqualified institutions" list delivered by the Borrower to the Agent prior to the Effective Date. The list of Disqualified Institutions shall be posted to the Platform.

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

"**Domestic Subsidiary**" shall mean any Subsidiary that is organized under the laws of the United States or of any political subdivision of the United States.

"**EBITDA**" for any period of determination shall mean with respect to the Borrower and its consolidated Subsidiaries: (a) consolidated net income (or loss) (excluding the effect of non-cash compensation expenses related to common stock and other equity securities issued to

employees, extraordinary gains and losses, gains or losses on discontinued operations, equity earnings or losses of Affiliates (other than earnings or losses of the Borrower or any Subsidiary of the Borrower)), plus (b) for such period of determination the sum of the following, without duplication and to the extent included in determining consolidated net income under the immediately preceding clause (a): (i) interest expense (net of interest income), (ii) income tax expense, (iii) depreciation, depletion and amortization of property, plant, equipment and intangibles, (iv) non-cash debt extinguishment costs, (v) non-cash impairment charges or asset write-offs and non-cash charges due to cumulative effects of changes in accounting principles, (vi) any costs and expenses incurred in connection with the Cases and the consummation of the Plan of Reorganization and the consummation of the transactions contemplated thereby for such period, (vii) any charges arising from Fresh Start Reporting adjustments that do not impact the cash flows of the Borrower and its Subsidiaries and (viii) costs and expenses, including fees, incurred directly in connection with the consummation of the transactions contemplated under the Loan Documents, plus (c) cash dividends or distributions received from Affiliates (other than received from the Borrower or any Subsidiary of the Borrower) to the extent not included in determining consolidated net income minus (d) any gains arising from Fresh-Start Reporting adjustments that do not impact the cash flows of the Borrower and its Subsidiaries. All items included in the definition of EBITDA shall be determined in each case for the applicable Person for the period of determination on a consolidated basis in accordance with GAAP.

Notwithstanding anything to the contrary, the EBITDA for the Borrower and its Subsidiaries shall be deemed to be $100,000,000 for any date of determination for the period commencing on the Effective Date and ending on the date on which the annual financial statements for the fiscal year ended December 31, 2016 shall have been delivered to the Agent pursuant to Section 8.03(b).

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

A. acquires in a Permitted Acquisition any Person or business (the "*Acquired Person*") during any period of determination, then EBITDA of the Borrower and its Subsidiaries shall be increased for such period of determination by the EBITDA of the Acquired Person, subject to the following:

(1) the EBITDA of the Acquired Person shall be based upon financial statements reasonably acceptable to the Required Lenders (the "*Acquired Person's EBITDA*"); and

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

B. disposes of any business pursuant to Section 8.02(d)(v) of this Agreement: then EBITDA of the Borrower and its Subsidiaries shall, with respect to such dispossessed business, shall be increased or decreased, as applicable, for such period of determination by the EBITDA attributable to such dispossessed business, subject to the following:

(1) the EBITDA attributable to such business shall be based upon financial statements reasonably acceptable to the Required Lenders (the "*Dispossessed Business EBITDA*"); and

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

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

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Effective Date**" shall mean the date on which the conditions precedent specified in Section 7.01 are satisfied (or waived in accordance with Section 13.01).

"**Effective Date Lenders**" shall have the meaning specified in the definition of "Lenders".

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

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

"**Environmental Health and Safety Laws**" shall mean, collectively, any federal, state, local or foreign statute, Law (including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f300j, the Federal Air Pollution Control Act, 42 U.S.C. § 7401 et seq., the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 to 136y, the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. the Mine Safety and Health Act, 30 U.S.C. §§ 801 et seq., the Surface Mining Control and Reclamation Act 30 U.S.C. §§ 1201 et seq., the Atomic Energy Act, 42 U.S.C. § 2011 et seq., the National Historic Preservation Act, 16 U.S.C. § 470 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1278, each as amended, or any equivalent state or local statute, and any amendments thereto), code, consent decree, settlement agreement, directive or any binding judicial or agency interpretation, policy or guidance, in each case regulating: (i) pollution or pollution control; (ii) protection of human health from exposure to Regulated Substances; (iii) protection of natural resources or the environment; (iv) employee safety in the workplace and the protection of employees from exposure to Regulated Substances in the workplace (but excluding workers compensation and wage and hour laws); (v) the presence, use, management, generation, manufacture, processing, extraction, mining, treatment, recycling, refining, reclamation, labeling, transport, storage, collection, distribution, disposal or Release or threat of Release of Regulated Substances; (vi) the presence of Contamination; (vii) the protection of endangered or threatened species; and (viii) the protection of Environmentally Sensitive Areas.

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

"**Environmental Health and Safety Permit**" shall mean any applicable Permit required under any of the Environmental Health and Safety Laws.

"**Environmentally Sensitive Area**" shall mean (i) any wetland as defined by applicable Environmental Health and Safety Laws; (ii) any area designated as a coastal zone pursuant to applicable Environmental Health and Safety Laws; (iii) any area of historic or archeological significance or scenic area as defined or designated by applicable Environmental Health and Safety Laws; (iv) habitats of endangered species or threatened species as designated by applicable Environmental Health and Safety Laws; (v) a floodplain or other flood hazard area as defined pursuant to any applicable Environmental Health and Safety Laws; (vi) streams, rivers or other water bodies or springs classified, or designated or as otherwise protected by applicable Environmental Health and Safety Laws as a fishery, as having exceptional or high quality or value or as having recreational use; (vii) any area classified, designated or protected by applicable Environmental Health and Safety Laws as unsuitable for mining; and (viii) any man-made or naturally occurring surface feature classified, designated or protected by applicable

Environmental Health and Safety Laws from disturbance, the effects of blasting, subsidence and mining operations.

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

"**ERISA Group**" shall mean, at any time, the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control or treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" shall mean any of the events described in Article 9,

"**Excluded Accounts**" shall mean (a) any deposit account that is used solely for payment of payroll, bonuses, other compensation and related expenses, in each case, for employees or former employees, (b) escrow accounts to the extent the use of such escrowed funds is permitted under this Agreement and the amount on deposit therein in connection with any letter of intent is in respect of a purchase that would reasonably be expected to result in a Permitted Acquisition, (c) fiduciary or trust accounts, (d) zero-balance accounts, so long as the balance in such account is zero at the end of each Business Day and (e) any other deposit accounts with an aggregate daily balance as at the end of each Business Day of less than $1,500,000 in the aggregate for all such deposit accounts.

"**Excluded Property**" shall mean (a) those assets, including without limitation any undeveloped land, which (i) are existing on the Effective Date and listed on Schedule 1.1(E) or (ii) in the reasonable discretion of the Agent (acting at the direction of the Required Lenders), the taking of Liens thereupon is impractical, prohibited by law or commercially unreasonable, (b) assets subject to certificates of title, (c) the assets of any Non-Guarantor Subsidiary, (d) in excess of 65% of the voting equity interests of any Foreign Subsidiary of the Borrower, (e) the assets with respect to which any pledge or security interests thereof would be (i) prohibited by Law or, (ii) in the case of equity interests of non-wholly owned Subsidiaries or Permitted Joint Ventures, prohibited by the organizational documents of such non-wholly owned Subsidiary or Permitted Joint Venture, except to the extent such prohibition is ineffective or rendered unenforceable under applicable Law (including the UCC) (provided, however, that the proceeds of any such equity interests shall not be Excluded Property), (f) assets subject to Liens permitted under clause (ix)(A) of the definition of "Permitted Liens", but only to the extent described as an exclusion to collateral in the UCC financing statement filed by or on behalf of the Agent, as secured party, against the applicable Loan Party, (g) Excluded Accounts, provided that, for the avoidance of doubt, any proceeds of Collateral held from time to time in any such Excluded Account shall not cease to be Collateral solely

because such proceeds are held in an Excluded Account, (h) any owned real property acquired after the Effective Date with a fair market value not exceeding $1,500,000, (i) any real property lease entered into after the Effective Date with a Loan Party as lessee, and with the lessor being a Person that is not a Loan Party or Affiliate thereof, with

annual minimum royalties, rents or any similar payment obligations, not exceeding $1,500,000, (j) any contract or lease agreement if the grant of a security interest in such contract or lease agreement is prohibited by the terms of such contract or lease agreement or would give another party thereto any rights of termination or acceleration, except to the extent that (x) the term in such contract or lease providing for such prohibition or right of termination or acceleration is ineffective or rendered unenforceable under applicable Law (including the UCC) or (y) any consent or waiver has been obtained that would permit Agent's security interest or Lien to attach notwithstanding the prohibition or restriction on the pledge of or security interest in such contract or lease agreement, (k) any property which is subject to a Lien permitted under clause (vii) or (x) of the definition of Permitted Liens pursuant to documents which prohibit the applicable Loan Party from granting any other Liens in such property or to the extent the grant of a security interest therein would violate or invalidate such documents or would create a termination right in favor of any other party thereto (other than to the extent that any such prohibition would be rendered ineffective pursuant to the UCC or any other applicable law and other than to the extent all necessary consents to the creation, attachment and perfection of Agent's Liens thereon have been obtained), and, in any event, immediately upon the ineffectiveness, lapse or termination of such terms that prohibit such Loan Party from granting any other Liens in such Property or the obtainment of such consents to the creation, attachment and perfection of Agent's Liens thereon, such property shall cease to constitute an Excluded Property and (l) any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law; provided that "Excluded Property" shall not include any and all proceeds, products, substitutions and replacements of Excluded Property specified in clauses (a) through (l) of this definition to the extent such proceeds, products, substitutions and replacements do not themselves constitute Excluded Property under clauses (a) through (l) of this definition.

"**Excluded Taxes**" shall mean, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (c) in the case of a Foreign Lender, any withholding Tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 5.09(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 5.09(a), (d) any Taxes imposed under FATCA (or any amended or successor version of FATCA that is substantively comparable), (e) in the case of any Lender, any U.S. backup withholding Taxes and (f) Taxes imposed on or measured by overall

net income (however denominated), franchise Taxes imposed in lieu of net income taxes, and branch profits Taxes that are Other Connection Taxes.

"**Existing Receivables Financing**" shall mean the receivables financing pursuant to the following agreements each dated as of October 5, 2016, as may be amended, restated or otherwise modified from time to time: (1) the Second Amended and Restated Purchase and Sale Agreement by and among Arch Coal Sales Company, Inc., certain of the Borrower's Subsidiaries as the Originators thereunder and the Borrower, (2) the Second Amended and Restated Sale and Contribution Agreement by and among the Borrower and Arch Receivable Company, LLC, (3) the Third Amended and Restated Receivables Purchase Agreement by and among Arch Receivable Company, LLC, Arch Coal Sales Company, Inc., certain financial institutions from time to time parties thereto, as LC Participants (as defined therein), certain financial institutions from time to time parties thereto, as conduit purchasers, related committed purchasers, and purchaser agents and PNC Bank, National Association, as Administrator on behalf of the Purchasers and as LC Bank, and (4) other related agreements and documents.

"**Facility**" shall have that meaning set forth in the recitals hereto.

"**FATCA**" shall mean Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

"**FCPA**" shall have the meaning specified in Section 6.23.

"**Federal Funds Effective Rate**" shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged by a bank selected by the Agent in consultation with the Borrower to major banks on such day on such transactions as determined by the Agent in a commercially reasonable manner.

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

"**Foreign Lender**" shall mean any Lender that is not a U.S. Person.

"**Foreign Subsidiaries**" shall mean, for any Person, each Subsidiary of such Person that is (i) a "controlled foreign corporation" (a "**CFC**") under Section 957 of the Internal Revenue Code, (ii) any Subsidiary of a CFC or (iii) any Subsidiary substantially all of the assets of which constitute equity interests of CFCs.

"**Fresh Start Reporting**" shall mean the preparation of consolidated financial statements of the Borrower in accordance with American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Plan of Reorganization on a presumed effective date of October 1, 2016.

"**GAAP**" shall mean generally accepted accounting principles as are in effect from time to time, subject to the provisions of Section 1.03, and applied on a consistent basis both as to classification of items and amounts.

"**Guarantor**" shall mean at any time each of the Significant Subsidiaries of the Borrower that is party to the Guaranty Agreement on the Effective Date or, after the Effective Date, delivers a Guarantor Joinder in accordance with Section 8.01(l)(iv).

"**Guarantor Joinder**" shall mean a joinder by a Person as a Guarantor under the Loan Documents in the form of Exhibit 1.1(G)(1).

"**Guaranty**" of any Person shall mean any obligation of such Person guarantying or in effect guarantying any liability or obligation of any other Person in any manner, whether directly or indirectly, including any such liability arising by virtue of partnership agreements, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.

"**Guaranty Agreement**" shall mean the continuing Guaranty Agreement in substantially the form of Exhibit 1.1(G)(2) executed and delivered by each of the Guarantors for the benefit of the Secured Parties, as the same may be supplemented, amended, restated, replaced or modified from time to time.

"**Hedging Transaction**" shall mean any of the following transactions by the Borrower or any of its Subsidiaries: any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction of any combination of the foregoing transactions.

"**Historical Statements**" shall have the meaning assigned to that term in Section 6.07(a).

"**Immaterial Subsidiaries**" shall mean, as of any date, any Subsidiary (i) whose assets, as of the last day of the fiscal quarter of the Borrower then most recently ended for which financial statements have been provided to the Agent under Section 8.03(a) or (b), had an aggregate book value of less than $2,000,000, (ii) whose assets, when taken together with the assets of all other Immaterial Subsidiaries, had an aggregate book value of less than $5,000,000 as of the last day of the fiscal quarter of the Borrower then most recently ended for which financial statements have been provided to the Agent under Section 8.03(a) or (b).

"**Income Tax Regulations**" shall mean those regulations promulgated pursuant to the Internal Revenue Code.

"**Indemnified Taxes**" shall mean Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document.

"**Indemnitee**" shall have the meaning specified in Section 13.03(b).

"**Information**" shall mean all information received from the Loan Parties or any of their Subsidiaries relating to the Loan Parties or any of such Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent or any Lender on a non-confidential basis prior to disclosure by the Loan Parties or any of their Subsidiaries.

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

"**Interest Payment Date**" shall mean, (i) with respect to interest on Loans to which the Base Rate Option applies, (A) the first Business Day of each calendar quarter after the date hereof and (B) on the Termination Date and, (ii) with respect to interest on Loans to which the LIBOR Rate Option applies, (A) the last day of each Interest Period for those Loans and, if such Interest Period is longer than three (3) Months, also on the 90th day of such Interest Period, and (B) on the Termination Date.

"**Interest Period**" shall mean, in the case of Term Loans which bear interest under the LIBOR Rate Option, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one, two, three or six months and, to the extent offered by all Lenders at the time of the relevant conversion or renewal, twelve months, thereafter, as selected by the Borrower in its Term Loan Request; provided that (i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a LIBOR Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period pertaining to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period, and (iii) no Interest Period shall extend beyond the Stated Maturity Date.

"**Interest Rate Option**" shall mean any LIBOR Rate Option or Base Rate Option.

"**Interim Statements**" shall have the meaning specified in Section 6.07(a).

"**Internal Revenue Code**" shall mean the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

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

"**IRS**" shall mean the Internal Revenue Service.

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

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

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

"**LCA Election**" shall have the meaning specified in Section 1.02(b)(i).

"**LCA Test Date**" shall have the meaning specified in Section 1.02(b)(i).

"**Lenders**" shall mean the financial institutions named on Schedule 1.1(C) (as amended or supplemented from time to time) and their respective successors and assigns as permitted hereunder and designated as holding Term Loans, each of which is referred to herein as a Lender. The financial institutions named on Schedule 1.1(C) on the Effective Date are holders of a First Lien Credit Facility Claim (as defined in the Plan of Reorganization) and referred to herein as the "**Effective Date Lenders**"; each Effective Date Lender is deemed to be a party to this Agreement on the Effective Date.

"**Lending Office**" shall mean, as to any Lender, the office or offices of such Lender described as such in such Lender's administrative questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

"**LIBOR Rate**" shall mean, with respect to Term Loans comprising any Borrowing Tranche to which the LIBOR Rate Option applies for any Interest Period, the rate per annum equal to (x) the Intercontinental Exchange Benchmark Administration Ltd. LIBOR Rate ("**ICE LIBOR**"), as published by Reuters (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (y) if such rate is not available at such time for any reason, the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by a bank selected by the Agent in consultation with the Borrower to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period; provided that in no event shall the LIBOR Rate for any Term Loans be less than 1.00%.

"**LIBOR Rate Option**" shall mean the option of the Borrower to have Loans bear interest at the rate and under the terms set forth in Section 4.01(a)(ii).

"**LIBOR Reserve Percentage**" shall mean as of any day the maximum percentage in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "**Eurocurrency Liabilities**").

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

"**Limited Condition Acquisition**" shall mean any Permitted Acquisition or other Investment permitted hereunder which the Borrower or one or more of its Subsidiaries has contractually committed to consummate, the terms of which do not condition the Borrower's or such Subsidiary's, as applicable, obligation to close such Permitted Acquisition or other Investment on the availability of third-party financing.

"**Liquidity**" shall mean the sum of (i) unrestricted cash and Permitted Investments of the Borrower and its Domestic Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries), (ii) withdrawable funds from brokerage accounts of the Borrower and its Domestic Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) and (iii) any unused commitments that are available to be drawn by the Borrower pursuant to the terms of any Working Capital Facility.

"**Liquidity Test Date**" shall have the meaning specified in Section 5.05(b).

"**Liquidity Trigger Event**" shall have the meaning specified in Section 5.05(b).

"**LLC Interests**" shall have the meaning specified in Section 6.02.

"**Loan Documents**" shall mean this Agreement, the Agent Fee Letter, the Notes, the Patent, Trademark and Copyright Security Agreements, the Pledge Agreements, the Security Agreements, the Guaranty Agreement, each Guarantor Joinder, any Mortgages, the Control Agreements, any Permitted ABL Financing Intercreditor Agreement and any other instruments, certificates or documents delivered or contemplated to be delivered hereunder or thereunder or in connection herewith or therewith as the same may be supplemented, amended, restated, replaced, or modified from time to time in accordance herewith or therewith, and Loan Document shall mean any of the Loan Documents.

"**Loan Parties**" shall mean the Borrower and the Guarantors.

"**Loans**" shall mean collectively and "**Loan**" shall mean separately all Term Loans or any Term Loan.

"**London Banking Day**" shall mean any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"**Master Coal Purchase and Sale Agreement**" shall mean an agreement for the purchase and sale of coal entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of its business.

"**Material Adverse Change**" shall mean any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any other material Loan Document, (b) is or could reasonably be expected to be materially adverse to the business, properties, assets, financial condition, or results of operations of the Borrower and its Subsidiaries taken as a whole, (c) impairs materially or would reasonably be expected to impair materially the ability of the Loan Parties taken as a whole to pay the Obligations when due under the Loan Documents, or (d) impairs materially or would reasonably be expected to impair materially the ability of the Agent or any of the Lenders, to the extent permitted, to enforce their legal remedies pursuant to this Agreement or any other Loan Document.

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

Borrower under the Securities Exchange Act of 1934, as amended.

"**Material Subsidiary**" shall mean any Subsidiary of Borrower which at any time (i) has gross revenues equal to or in excess of five percent (5%) of the gross revenues of the Borrower and its Subsidiaries on a consolidated basis, or (ii) has total assets equal to or in excess of five

percent (5%) of the total assets of the Borrower and its Subsidiaries, in either case, as determined and consolidated in accordance with GAAP.

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

"**Mining Operations**" shall mean (i) the removal of coal and other minerals from the natural deposits or from waste or stock piles by any surface or underground mining methods; (ii) operations or activities conducted underground or on the surface associated with or incident to the preparation, development, operation, maintenance, opening and reopening of an underground or surface mine storage or stockpiling of mined materials, backfilling, sealing and other closure procedures related to a mine or the movement, assembly, disassembly or staging of any mining equipment; (iii) milling; (iv) coal preparation, coal processing or testing; (v) coal refuse disposal, coal fines disposal or the operation and maintenance of impoundments; (vi) the operation of any mine drainage system; (vii) reclamation activities and operations; or (viii) the operation of coal terminals, river or rail load-outs or any other transportation facilities.

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

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

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

"**Mortgage**" shall mean each of the fee and leasehold mortgages, deeds of trust, assignments of leases and rents and other security documents, in substantially the same form as the Mortgages (as defined in the Prepetition Credit Agreement) delivered to the Prepetition Collateral Agent pursuant to the Prepetition Credit Agreement or in such other form reasonably satisfactory to the Agent, the Required Lenders and the Borrower, delivered on or after the

Effective Date with respect to Real Property to be encumbered pursuant to Section 8.01(l) hereof, as each may be amended, supplemented or otherwise modified from time to time.

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

"**Multiple Employer Plan**" shall mean a Plan which has two or more contributing sponsors (including the Borrower or any member of the ERISA Group) at least two of whom are not under common control, as such a plan is described in Sections 4063 and 4064 of ERISA.

"**Net Cash Proceeds**" shall mean proceeds received after the Effective Date in cash from (a) any sale of property, net of (i) the customary out-of-pocket cash costs, fees and expenses paid or required to be paid in connection therewith, (ii) taxes paid or reasonably estimated to be payable as a result thereof and (iii) any amount required to be paid or prepaid on Debt (other than the Obligations and Debt owing to any Loan Party) secured by the property subject thereto or (b) any sale or issuance of equity interests or incurrence of Debt, in each case net of brokers', advisors' and investment banking fees and other customary out-of-pocket underwriting discounts, commissions and other customary out-of-pocket cash costs, fees and expenses, in each case incurred in connection with such transaction; provided that amounts provided as a reserve, in accordance with GAAP, against any liability under any indemnification obligations or purchase price adjustment associated with any of the foregoing shall not constitute Net Cash Proceeds except to the extent and at the time any such amounts are released from such reserve.

"**No Proceedings Letter**" shall mean that certain No Proceedings Letter Agreement, dated as of October 5, 2016, between the Borrower and the Agent.

"**Non-Consenting Lender**" shall have the meaning specified in Section 13.01.

"**Non-Guarantor Subsidiary**" shall mean any Subsidiary of the Borrower that is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary.

"**Notes**" shall mean, collectively, the promissory notes in the form of Exhibit 1.1(N) evidencing the Term Loans.

"**Obligations**" shall mean any obligation or liability of any of the Loan Parties, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, under or in connection with the Facility, the Loans, the related Notes, the Agent Fee Letter, or any other Loan Document, and including interest that accrues on the Term Loans after the commencement by or against any Loan Party or any Subsidiary thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest is allowed or allowable as a claim in such proceeding.

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

"**Other Taxes**" shall mean all present or future stamp or documentary taxes or any other similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such taxes that are imposed pursuant to an assignment, participation or a change of an applicable lending office that is not undertaken pursuant to Section 5.06(c).

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

"**Participant**" shall have the meaning specified in Section 13.09(d).

"**Participant Register**" shall have the meaning specified in Section 13.09(d).

"**Partnership Interests**" shall have the meaning given to such term in Section 6.02.

"**Patent, Trademark and Copyright Security Agreements**" shall mean collectively the Patent, Trademark and Copyright Security Agreements in substantially the form attached as exhibits to the applicable Security Agreement, each as executed and delivered by the applicable Loan Parties for the benefit of the Secured Parties, as the same may be supplemented, amended, restated, replaced or modified from time to time, and Patent, Trademark and Copyright Security Agreement shall mean any of the Patent, Trademark and Copyright Security Agreements.

"**Payment in Full**" or "**Paid in Full**" shall mean the indefeasible payment in full in cash of the Loans and other Obligations hereunder (other than indemnity and other contingent obligations as to which no claim has been asserted).

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

"**Perfection Certificate**" shall mean a perfection certificate in substantially the form attached hereto as Exhibit 1.1(P)(1).

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

"**Permitted ABL Financing**" shall mean the entry by the Borrower and any other Loan Party into a senior secured asset based revolving credit facility (an "**ABL Facility**"), which facility may be secured solely by the Collateral and the Liens in respect of which shall be subject at all times to a customary intercreditor agreement in form and substance reasonably satisfactory to the Agent, the Required Lenders and the Borrower (such intercreditor agreement, a "**Permitted ABL Financing Intercreditor Agreement**") pursuant to which the lenders party to any such ABL Facility (or an agent on their behalf) shall have a first Lien on the ABL Priority Collateral and, to the extent such ABL Facility is secured by Term Loan Priority Collateral, a second Lien on the Term Loan Priority Collateral and the Secured Parties shall have a first Lien on the Term Loan Priority Collateral and a second Lien on the ABL Priority Collateral; provided that the board of directors of the Borrower and each applicable Loan Party shall have approved such transaction.

"**Permitted ABL Financing Intercreditor Agreement**" shall have the meaning assigned to such term in the definition of Permitted ABL Financing.

"**Permitted Acquisition**" shall have the meaning assigned to such term in Section 8.02(c).

"**Permitted Investments**" shall mean:

(i) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof;

(ii) certificates of deposit and time deposits with maturities of 18 months or less from the date of acquisition and overnight bank deposits of any Lender or of any commercial bank having capital and surplus in excess of $500,000,000;

(iii) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (ii) of this definition with respect to securities issued or fully guaranteed or insured by the United States Government;

(iv) commercial paper of a domestic issuer rated at least A2 by Standard & Poor's or P2 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of Standard & Poor's and Moody's cease publishing ratings of investments;

(v) securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor's or A by Moody's;

(vi) securities with maturities of 18 months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (ii) of this definition;

(vii) corporate obligations such as notes, bonds, loan participation certificates, master notes, and variable rate demand notes rated at least A by Standard & Poor's or A2 by Moody's;

(viii) asset backed and mortgage backed securities and collateralized mortgage obligations rated AAA by Standard & Poor's or Aaa by Moody's;

(ix) money market auction rate preferred securities and auction rate notes with auctions scheduled no less frequently than every 49 days; and

(x) shares of money market mutual or similar funds which invest principally in assets satisfying the requirements of clauses (i) through (ix) of this definition.

"**Permitted Joint Venture**" shall mean any Person (i) with respect to which the ownership of equity interests thereof by the Borrower or any Subsidiary of the Borrower is accounted for in accordance with the "equity method" in accordance with GAAP; (ii) engaged in a line of business permitted by Section 8.02(g); and (iii) with respect to which the equity interests thereof were acquired by the Borrower or Subsidiary of the Borrower in an arm's-length transaction.

"**Permitted Liens**" shall mean:

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

(ii) Pledges or deposits made in the ordinary course of business to secure payment of reclamation liabilities, worker's compensation, or to participate in any fund in connection with worker's compensation, unemployment insurance, old-age pensions or other social security programs;

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

(iv) Good-faith pledges or deposits made in the ordinary course of business to secure performance of bids (including bonus bids), tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amount due thereunder or other amounts as may be customary, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business;

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

(vi) Liens created on the Collateral under the Loan Documents;

(vii) Liens on property leased by any Loan Party or Subsidiary of a Loan Party under capital leases (as the nature of such lease is determined in accordance with GAAP) securing obligations of such Loan Party or Subsidiary to the lessor under such leases and Purchase Money Security Interests on assets purchased by any Loan Party or Subsidiary of a Loan Party, provided that such Liens shall not extend to any assets that are not the subject of such leases or Purchase Money Security Interests; provided, further that the aggregate amount for the Borrower and its Subsidiaries of all loans, capital lease obligations and deferred payments secured as permitted by this clause (vii) shall not at any time outstanding exceed $125,000,000;

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

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

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

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

(ix) Liens granted pursuant to or in respect of (A) a Permitted Receivables Financing, so long as the Liens created pursuant to such Permitted Receivables Financing are limited to Receivables Assets and the assets of the applicable Securitization Subsidiary, or (B) a Permitted ABL Financing, so long as the Liens created pursuant to such Permitted ABL Financing are limited to assets constituting Collateral and, to the extent such Liens granted pursuant to or in respect of such Permitted ABL Financing are in respect of Term Loan Priority Collateral, such Liens on such Term Loan Priority Collateral are at all times subordinated to the Liens securing the Obligations on the terms provided in the Permitted ABL Financing Intercreditor Agreement;

(x) Liens assumed in connection with (but not incurred in contemplation of) a Permitted Acquisition constituting capital leases (as the nature of such lease is determined in accordance with GAAP) or Purchase Money Security Interests, provided that such Liens shall not extend to any assets that are not the subject of such assumed capital leases or Purchase Money Security Interests, and Permitted Refinancings thereof;

(xi) Liens relating to the pledge of the equity interests of a Bonding Subsidiary in favor of the provider of the surety bonds which provide payment assurances to the lessor of the leasehold interest leased by such Bonding Subsidiary related to the cost of such Bonding

Subsidiary of acquiring such leasehold interest and any bonus bid and royalty payments to the lessor thereunder;

(xii) the pledge of cash or marketable securities securing a Permitted Secured Letter of Credit Facility, to the extent the amount of such cash or value of marketable securities does not exceed 115% of the undrawn face amount of all letters of credit issued under such Permitted Secured Letter of Credit Facility;

(xiii) [reserved];

(xiv) Liens securing Debt or other obligations up to $10,000,000 in the aggregate at any time outstanding, including, without limitation on assets consisting of (a) Liens on stock or assets permitted to be acquired pursuant to Section 8.02(n) incurred at the time of such acquisition of such stock or assets (or within one year thereof) to finance the acquisition of such stock or assets, and (b) Liens existing on any assets at the date of acquisition of such assets, as such acquisition is permitted by Section 8.02(n) and 8.02(c), in each case as refinanced, extended, renewed or refunded;

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

(xvi) any Lien existing on the date of this Agreement and described on Schedule 1.1(P);

(xvii) [reserved];

(xviii) any Lien arising out of the Permitted Refinancing of any Debt secured by any Lien that is permitted by clauses (vi) and (xiv) of Section 8.02(a);

(xix) [reserved];

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

(xxi) option agreements and rights of first refusal granted with respect to assets that are permitted to be disposed of pursuant to the terms of Section 8.02(c) or Section 8.02(d) of this Agreement;

(xxii) [reserved];

(xxiii) Liens securing Debt of Non-Guarantor Subsidiaries permitted pursuant to Section 8.02(a)(xix) in an aggregate amount not to exceed $2,500,000 at any time;

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

(xxv) Liens existing as of the Effective Date on any of the Excluded Property;

(xxvi) option agreements and rights of first refusal granted with respect to assets that are permitted to be disposed of pursuant to the terms of Section 8.02(d);

(xxvii) any leases of assets permitted by Section 8.02(d);

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

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

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

"**Permitted Refinancing**" shall mean, with respect to any Debt, any refinancing, refunding, renewal, replacement or extension thereof, provided, that (i) such refinancing, refunding, renewal, replacement or extension permitted under the foregoing shall (A) not have any obligors and/or guarantors other than the obligors and/or guarantors on such Debt being extended, renewed, replaced, refunded or refinanced, (B) not be secured by any assets other than the assets (if any) securing the Debt being extended, renewed, replaced, refunded or refinanced, (C) be at least as subordinate to the Obligations as the Debt being extended, renewed, replaced, refunded or refinanced (and unsecured if the Debt being extended, renewed, replaced, refunded or refinanced is unsecured) or (D) not exceed in a principal amount the Debt being renewed, extended, replaced, refunded or refinanced except by an amount no greater than accrued and unpaid interest and premium thereon plus other amounts owing or paid related to such Debt, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing available commitments unutilized thereunder and (ii) except with respect to a Permitted Refinancing of Debt in respect of any capital lease (as determined in accordance with GAAP) or Debt of the Borrower and its Subsidiaries secured by Purchase Money Security Interests, the Weighted Average Life to Maturity thereof is greater than or equal to, and the final maturity thereof is not earlier than, that of the Debt being refinanced, refunded, renewed, replaced or extended.

"**Permitted Secured Letter of Credit Facility**" shall have the meaning assigned to such term in Section 8.02(a)(vii).

"**Person**" shall mean any individual, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof, or any other entity.

"**Petition Date**" shall have the meaning specified in the recitals hereof.

"**PIK Interest**" shall have the meaning specified in Section 5.05(b).

"**PIK Interest Catch-Up Payment**" shall mean, at any time, an optional prepayment of the Loans made by the Borrower pursuant to Section 5.06(a) in the amount of all PIK Interest and Additional PIK Interest paid by being capitalized and added to the then aggregate outstanding principal amount of the Loans since the Effective Date prior to such time, *less* any PIK Interest Catch-Up Payments made prior to such time.

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

"**Plan of Reorganization**" shall mean the chapter 11 plan of reorganization of the Chapter 11 Debtors substantially in the form of the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [ECF No. 1334, Appendix A] filed in the main Case of the jointly administered Chapter 11 Debtors, Case No. 16-40120 on September 13, 2016, with such amendments as shall be satisfactory in form and substance to the Majority Consenting Lenders (as defined therein).

"**Platform**" shall have the meaning specified in Section 8.03(i).

"**Pledge Agreements**" shall mean collectively the Pledge Agreements substantially in the form attached hereto as Exhibit 1.1(P)(2) in the case of the Borrower (with such changes as are agreed to by the Agent (at the written direction of the Required Lenders) and the Borrower) and substantially in the form attached hereto as Exhibit 1.1(P)(3) in the case of each Guarantor (with such changes as are agreed to by the Agent (at the written direction of the Required Lenders) and the Borrower), in each case executed and delivered for the benefit of the Secured Parties pursuant to Section 7.01(a)(ix) or Section 8.01(l), as the same may be supplemented, amended, restated, replaced, or modified from time to time, and Pledge Agreement shall mean any of the Pledge Agreements.

"**Potential Default**" shall mean any event or condition which with notice or passage of time, or both, would constitute an Event of Default.

"**Prepetition Collateral Agent**" shall have the meaning set forth in the recitals hereto.

"**Prepetition Credit Agreement**" shall have the meaning set forth in the recitals hereto.

"**Prepetition Lenders**" shall have the meaning set forth in the recitals hereto.

"**Prime Rate**" shall mean as of a particular date, the prime rate of interest as published on that date in The Wall Street Journal (Eastern Edition), or if The Wall Street Journal ceases to

quote such rate, a similar rate quoted by a national publication chosen by the Agent in its reasonable discretion. If The Wall Street Journal (or similar publication) is not published on a date for which the Prime Rate must be determined, the Prime Rate shall be the prime rate published on the nearest-preceding date.

"**Principal Office**" shall mean WTNA's address set forth on Schedule 1.1(C), or such other address or account as the Agent may from time to time notify to the Borrower and the Lenders.

"**Pro Forma Compliance with the Senior Secured Leverage Ratio**" shall mean, at any time that the Senior Secured Leverage Ratio, determined on a pro forma basis, as of the last day of the Test Period most recently completed prior to such time, is not greater than the ratio set forth in the table below opposite the last day of such Test Period:

Test Period Ending Date	Senior Secured Leverage Ratio
September 30, 2016, December 31, 2016	3.75:1.00
March 31, 2017, September 30, 2017, December 31, 2017	3.25:1.00
Thereafter	3.00:1.00

; provided that if Pro Forma Compliance with the Senior Secured Leverage Ratio is being tested at any time prior to the date on which the financial statements for the four consecutive fiscal quarter period ending September 30, 2016 are required to be delivered, such Pro Forma Compliance with the Senior Secured Leverage Ratio shall be deemed to require that, as of the last day of the most recently completed four consecutive fiscal quarter period of the Borrower, the Senior Secured Leverage Ratio determined on a pro forma basis is not greater than 3.75:1.00.

"**Prohibited Transaction**" shall mean any prohibited transaction as defined in Section 4975 of the Internal Revenue Code or Section 406 of ERISA for which neither an individual nor a class exemption has been issued by the United States Department of Labor.

"**Public Lender**" shall have the meaning specified in Section 8.03(i).

"**Purchase Money Security Interest**" shall mean Liens upon tangible personal property securing loans to any Loan Party or Subsidiary of a Loan Party or deferred payments by such Loan Party or Subsidiary for the purchase of such tangible personal property.

"**Ratable Share**" shall mean, as to any Lender, a fraction, the numerator of which is the principal amount of such Lender's Term Loans and the denominator of which is the aggregate principal amount of all Term Loans of all the Lenders at such time; provided that in the case of Section 2.07 when a Defaulting Lender shall exist, "Ratable Share" shall mean the percentage of the aggregate principal amount of the Term Loans (disregarding any Defaulting Lender's Term Loans) represented by such Lender's Term Loans.

"**Real Property**" shall mean, individually as the context requires, the real property (other than as set forth in the proviso below) that is owned or leased by any Loan Party, including, but not limited to the surface, coal and other mineral rights, interests and coal leases associated with the properties described on Schedule 1.1(R), and "Real Property" shall mean, collectively, as the context requires, all of the foregoing; provided, however, "Real Property" shall not include (i) Excluded Property, (ii) any asset that shall have been released, pursuant to Section 13.16 or Section 13.01(c) from the Liens created in connection with this Agreement, or (iii) any "building" or "mobile home" (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Laws).

"**Receivables Assets**" shall mean accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Borrower or any Subsidiary of the Borrower.

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

"**Register**" shall have the meaning specified in Section 13.09(c).

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

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

"**Reinvestment Deferred Amount**" shall have the meaning specified in Section 8.02(d)(v).

"**Related Parties**" shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

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

"**Remedial Action**" shall mean any investigation, identification, preliminary assessment, characterization, delineation, feasibility study, cleanup, corrective action, removal, remediation, risk assessment, fate and transport analysis, in-situ treatment, the treatment of discharges or seeps, containment, operation and maintenance or management in-place, control, abatement or other response actions to Regulated Substances and any closure or post-closure measures, or reclamation activities associated therewith.

"**Removal Effective Date**" shall have the meaning assigned to such term in Section 10.06.

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

"**Required Lenders**" shall mean the Lenders (other than any Defaulting Lender) holding more than 50% of the aggregate principal amount of the Term Loans (excluding any Defaulting Lender).

"**Resignation Effective Date**" shall have the meaning assigned to such term in Section 10.06.

"**Responsible Officer**" shall mean, with respect to the Borrower, each of the chief executive officer, president, chief financial officer, treasurer and any vice president of the Borrower and, as to any document delivered on the Effective Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of the Borrower, and with respect to the Agent, any officer assigned to the corporate trust office of such Person, including any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary, or any other officer of such Person customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Agreement, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"**Sanction(s)**" shall mean any international economic sanction administered or enforced by the Office of Foreign Asset Control, the United Nations Security Council, the European Union or Her Majesty's Treasury.

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

"**Secured Parties**" shall mean, collectively, the Lenders and the Agent.

"**Securitization Subsidiary**" shall mean a Subsidiary of the Borrower (all of the outstanding equity interests of which, other than de minimis preferred stock and director's qualifying shares, if any, are owned, directly or indirectly, by the Borrower) that is established

for the limited purpose of acquiring and financing Receivables Assets and interests therein of the Borrower or any Subsidiary of the Borrower and engaging in activities ancillary thereto.

"**Security Agreements**" shall mean collectively the Security Agreements substantially in the form attached hereto as Exhibit 1.1(S)(1) in the case of the Borrower (with such changes as are agreed to by the Agent (at the written direction of the Required Lenders) and the Borrower) and substantially in the form attached hereto as Exhibit 1.1(S)(2) in the case of each Guarantor (with such changes as are agreed to by the Agent (at the written direction of the Required Lenders) and the Borrower), in each case executed and delivered for the benefit of the Secured Parties pursuant to Section 7.01(a)(ix) or Section 8.01(l), as the same may be supplemented, amended, restated, replaced, or modified from time to time, and Security Agreement shall mean any of the Security Agreements.

"**Senior Secured Leverage Ratio**" shall mean the ratio of the amounts under the following clauses (a) and (b): (a) the aggregate amount of Debt (determined in accordance with GAAP) (other than (i) Debt of the type described in clause (iii) of the definition thereof constituting payments made or to be made to the U.S. Federal Bureau of Land Management with respect to the acquisition of any U.S. Federal coal lease by any Loan Party or Subsidiary of any Loan Party which payments are either deferred purchase price payments or bonus bid payments related to any such lease and (ii) Debt of the type described in clause (iv) of the definition thereof) of the Borrower and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries) that is secured by any assets of the Borrower or any of its Subsidiaries to (b) the sum of EBITDA of the Borrower and its Subsidiaries (other than Permitted Joint Ventures to the extent constituting Subsidiaries). For purposes of calculating the Senior Secured Leverage Ratio, Debt shall be determined as of the date of determination and EBITDA shall be determined as of the end of the then most recently ended fiscal quarter of the Borrower for which financial statements have been delivered pursuant to Section 8.03(a) or (b) for the four fiscal quarters then ended. It is expressly agreed that, for purposes of determining the Senior Secured Leverage Ratio, the difference between actual funded indebtedness and the fair market value of funded indebtedness recorded as required by the Statement of the Financial Accounting Standards Board No. 141 (as in effect on the Effective Date) will be excluded from indebtedness in the determination of Debt.

"**Significant Subsidiary**" shall mean individually any Subsidiary of the Borrower other than the Non-Guarantor Subsidiaries, and Significant Subsidiaries shall mean collectively all Subsidiaries of the Borrower other than the Non-Guarantor Subsidiaries.

"**Solvent**" shall mean, with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (ii) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such

Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Standard & Poor's**" shall mean Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc. and any successor thereto.

"**Stated Maturity Date**" shall mean October 5, 2021.

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

"**Subsidiary Shares**" shall have the meaning assigned to that term in Section 6.02.

"**Taxes**" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Official Body, including any interest, additions to tax or penalties applicable thereto.

"**Term Loan Priority Collateral**" shall mean any Collateral which is not ABL Priority Collateral.

"**Term Loan Request**" shall have the meaning assigned to that term in Section 2.05.

"**Term Loan**" shall have the meaning assigned to such term in Section 2.01.

"**Termination Date**" shall mean the earlier of (a) the Stated Maturity Date and (b) the date the Obligations are accelerated pursuant to Section 9.02.

"**Test Period**" shall mean, for any date of determination under this Agreement, the most recent period of four consecutive fiscal quarters of the Borrower for which financial statements have been delivered pursuant to Section 8.03(a) or (b), as applicable.

"**Transaction**" shall mean (i) the effectiveness of the Loan Documents and the deemed borrowing of the Loans on the Effective Date pursuant to Section 2.01, (ii) the payment of all premiums, fees and expenses in connection with the foregoing and (iii) the consummation of the Plan of Reorganization.

"**Uniform Commercial Code**" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to

be applied in connection with the perfection of security interests created by the Security Agreements.

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

"U.S. Person" shall mean a "**United States person**" within the meaning of Section 7701(a)(30) of the Internal Revenue Code, or any person treated as a United States person for purposes of the Internal Revenue Code.

"**U.S. Tax Compliance Certificate**" shall have the meaning assigned to that term in Section 5.09(e).

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

"**Working Capital Facility**" shall mean any Permitted Receivables Financing and any Permitted ABL Financing.

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

"**WTNA**" shall mean Wilmington Trust, National Association, together with its successors and assigns.

Section 1.02. *Interpretive Provisions*.

(a) *Construction*. Unless the context of this Agreement otherwise clearly requires, the following rules of construction shall apply to this Agreement and each of the other Loan Documents: (i) references to the plural include the singular, the plural, the part and the whole and the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; (ii) the words "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document as a whole; (iii) article, section, subsection, clause, schedule and exhibit references are to this Agreement or other Loan Document, as the case may be, unless otherwise specified; (iv) reference to any Person includes such Person's successors and assigns; (v) reference to any agreement, including this Agreement and any other Loan Document together with the schedules and exhibits hereto or thereto, document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated; (vi) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including"; (vii) the words "asset" and

"property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (viii) section headings herein and in each other Loan Document are included for convenience and shall not affect the interpretation of this Agreement or such Loan Document, and (ix) unless otherwise specified, all references herein to times of day shall be references to Eastern Time.

(b) *Limited Conditions Acquisitions*.

(i) In connection with any action being taken solely in connection with a Limited Condition Acquisition, for purposes of testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of consolidated total assets, if any), in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), the date of determination of whether any such action is permitted hereunder may be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**"), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the LCA Test Date for which consolidated financial statements of the Borrower are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCA Election and any of the ratios or baskets for which compliance was determined or tested as of the LCA Test Date are exceeded as a result of fluctuations in any such ratio or basket, including due to fluctuations in consolidated total assets of the Borrower or the Person subject to such Limited Condition Acquisition, at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to the incurrence of Debt or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Borrower, or the prepayment, redemption, purchase, defeasance or other satisfaction of Debt on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be tested by calculating the availability under such ratio or basket on a pro forma basis (A) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have been consummated and (B) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Debt and the use of proceeds thereof) have not been consummated.

(ii) In connection with any action being taken primarily in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement which requires that no Potential Default or Event of Default, as applicable, has occurred, is continuing or would result from any such action, as applicable, such condition may, at the option of the Borrower, be deemed satisfied, so long as no Potential Default or Event of Default, as applicable, exists on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Borrower has exercised its option under this Section 1.02(b), and any Potential Default or Event of Default occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such Potential Default or Event of Default shall be deemed to not have occurred or be continuing for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

(iii) In connection with any action being taken in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein, such condition may, at the option of the Borrower, be deemed satisfied, so long as the Borrower is in compliance with such representations and warranties on the date the definitive agreements for such Limited Condition Acquisition are entered into. For the avoidance of doubt, if the Borrower has exercised its option under this Section 1.02(b), and any breach of a representation or warranty occurs following the date the definitive agreements for the applicable Limited Condition Acquisition were entered into and prior to the consummation of such Limited Condition Acquisition, any such breach shall be deemed to not have occurred for purposes of determining whether any action being taken in connection with such Limited Condition Acquisition is permitted hereunder.

Section 1.03. *Accounting Principles; Changes in GAAP*. Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters and all financial statements to be delivered pursuant to this Agreement shall be made and prepared in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP; provided, however that all accounting terms used in Section 8.02 (and all defined terms used in the definition of any accounting term used in Section 8.02) shall have the meaning given to such terms (and defined terms) under GAAP as in effect on the date hereof applied on a basis consistent with those used in preparing Statements referred to in Section 6.07(a) (after giving effect to Fresh Start Reporting, as applicable).

ARTICLE 2
THE LOANS

Section 2.01. *The Loans*. On the Effective Date:

(a) Subject to the terms and conditions hereof and in accordance with the Plan of Reorganization, each Effective Date Lender (i) is deemed to have made a term loan to the Borrower (each a "Term Loan") in the amount set forth opposite such Effective Date Lender's name on Schedule 1.1C and (ii) is deemed to have executed and delivered this Agreement, regardless of whether such Effective Date Lender has executed and delivered a signature page hereto. On the Effective Date, the Term Loans shall bear interest pursuant to the LIBOR Rate Option with an Interest Period of 3 months.

(b) Any amounts deemed borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

Section 2.02. *Reserved*.

Section 2.03. *Reserved*.

Section 2.04. *Agent Fee Letter*. The Borrower shall pay to the Agent for its own account fees in the amounts and at the times specified in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever

Section 2.05. *Term Loan Requests*. Each conversion to or the renewal of the LIBOR Rate Option shall be made upon the Borrower's duly completed irrevocable request therefor substantially in the form of Exhibit 2.5, completed and signed by a Responsible Officer of the Borrower, or a request by telephone immediately confirmed in writing by letter, facsimile or telex in such form (each, a "**Term Loan Request**"). Each Term Loan Request must be received by the Agent not later than 11:00 a.m. three Business Days prior to the requested date of any conversion to or renewal of LIBOR Rate Loans or of any conversion of LIBOR Rate Loans to Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section must be confirmed promptly by delivery to the Agent of a written Term Loan Request, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or renewal of LIBOR Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $500,000 in excess thereof. Each conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Term Loan Request (whether telephonic or written) shall specify (i) whether the Borrower is requesting a conversion of Term Loans, or a renewal of LIBOR Rate Loans, (ii) the requested date of the conversion or renewal, as the case may be (which shall be a Business Day), (iii) the principal amount of Term Loans to be converted or renewed, (iv) whether the LIBOR Rate Option or Base Rate Option shall apply to such Term Loans to be converted to, and (v) if applicable, the duration of the Interest Period with respect thereto. During the existence of an Event of Default, no Term Loans may be requested as, converted to or renewed as LIBOR Rate Loans without the consent of the Required Lenders.

Section 2.06. *Loan Conversions and Continuation; Obligations of Lenders Several; Repayment of Loans*.

(a) *Loan Conversions and Continuations*. Following receipt of a Term Loan Request the Agent shall promptly notify each Lender of the amount of its Ratable Share of the applicable Term Loans, and if no timely notice of a conversion or renewal is provided by the Borrower, the

Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 4.05.

(b) *[Reserved]*.

(c) *[Reserved]*.

(d) *Obligations of Lenders Several*. The obligations of the Lenders to make payments pursuant to Section 13.03(c) are several and not joint. The failure of any Lender to make any payment under Section 13.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its payment under Section 13.03(c).

(e) *[Reserved]*.

(f) *Repayment of Term Loans*. The Borrower shall repay to the Agent, for the benefit of the Lenders, (i) on the first Business Day of each March, June, September and December, commencing on December 1, 2016, principal of the Term Loans in equal quarterly installments of $816,250 and (ii) on the Termination Date, the aggregate principal amount of all Term Loans outstanding on such date.

(g) *Notes*. Any Lender may request that Loans made (or deemed made) by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form attached hereto as Exhibit 1.1(N).

Section 2.07. *Defaulting Lenders*. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then, so long as such Lender is a Defaulting Lender, the outstanding Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 13.01); provided that the restriction in this Section 2.07 shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of each Lender or each Lender directly affected thereby.

ARTICLE 3
RESERVED

ARTICLE 4
INTEREST RATES

Section 4.01. *Interest Rate Options*. The Borrower shall pay interest in respect of the outstanding unpaid principal amount of the Loans at the Base Rate Option or LIBOR Rate Option applicable to the Loans, it being understood that, subject to the provisions of this Agreement, the Borrower may select different Interest Rate Options and different Interest Periods to apply simultaneously to the Loans comprising different Borrowing Tranches and may convert to or renew one or more Interest Rate Options with respect to all or any portion of the

Loans comprising any Borrowing Tranche; provided that there shall not be at any one time outstanding more than nine (9) Borrowing Tranches in the aggregate among all of the Loans and provided, further that if an Event of Default exists and is continuing, the Borrower may not request, convert to, or renew the LIBOR Rate Option for any Loans and the Required Lenders may demand that all existing Borrowing Tranches bearing interest under the LIBOR Rate Option shall be converted immediately to the Base Rate Option, subject to the obligation of the Borrower to pay any indemnity under Section 5.10 in connection with such conversion. If at any time the designated rate applicable to any Loan made by any Lender exceeds such Lender's highest lawful rate, the rate of interest on such Lender's Loan shall be limited to such Lender's highest lawful rate.

(a) *Interest Rate Options*. The Borrower shall have the right to select from the following Interest Rate Options applicable to the Loans:

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

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

(b) *Rate Quotations*. The Borrower may call the Agent on or before the date on which a Term Loan Request is to be delivered to receive an indication of the rates then in effect, but it is acknowledged that such projection shall not be binding on the Agent or the Lenders nor affect the rate of interest which thereafter is actually in effect when the election is made.

Section 4.02. *Interest Periods*. At any time when the Borrower shall select, convert to or renew a LIBOR Rate Option, the Borrower shall notify the Agent thereof at least three (3) Business Days prior to the effective date of such LIBOR Rate Option by delivering a Term Loan Request; provided that the Term Loans deemed made on the Effective Date shall initially bear interest at the LIBOR Rate Option for a 3-month Interest Period. The notice shall specify an Interest Period during which such Interest Rate Option shall apply. Notwithstanding the preceding sentence, in the case of the renewal of a LIBOR Rate Option at the end of an Interest Period, the first day of the new Interest Period shall be the last day of the preceding Interest Period, without duplication in payment of interest for such day.

Section 4.03. *Interest After Default*.

(a) *Obligations*. Each Obligation hereunder if not paid when due shall bear interest at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.0% per annum plus the rate otherwise applicable to such Loan or (ii) in the case of any other overdue amounts, the sum of the rate of interest applicable under the Base Rate Option plus an additional 2.0% per annum from the time such overdue Obligation becomes due and payable and until it is paid in full.

(b) *Acknowledgment*. The Borrower acknowledges that the increase in rates referred to in this Section 4.03 reflects, among other things, the fact that such Loans or other amounts have become a substantially greater risk given their default status and that the Lenders are entitled to additional compensation for such risk; and all such interest shall be payable by Borrower upon demand by the Required Lenders or by the Agent at the written direction of the Required Lenders.

Section 4.04. *LIBOR Rate Unascertainable; Illegality; Increased Costs; Deposits Not Available.* (a) *Unascertainable*. If on any date on which a LIBOR Rate would otherwise be determined or if the Required Lenders determine that for any reason in connection with any request for a conversion to or continuation of a LIBOR Rate Loan that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBOR Rate Loan, (ii) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with an existing or proposed Base Rate Loan, or (iii) the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

(b) *Illegality; Increased Costs; Deposits Not Available*. If at any time any Lender shall have determined that:

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

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

(iii) after making all reasonable efforts, deposits of the relevant amount in Dollars for the relevant Interest Period for a Loan, or to banks generally, to which a LIBOR Rate Option applies, respectively, are not available to such Lender with respect to such Loan, or to banks generally, in the interbank eurodollar market,

then the Agent shall have the rights specified in Section 4.04(c).

(c) *Agent's and Lender's Rights*. In the case of an event specified in Section 4.04(b) above, such Lender shall promptly so notify the Agent and endorse a certificate to such notice as to the specific circumstances of such notice, and the Agent shall promptly send copies of such notice and certificate to the other Lenders and the Borrower. Upon such date as shall be specified in such notice (which shall not be earlier than the date such notice is given), the obligation of such Lender to allow the Borrower to convert to or renew a LIBOR Rate Option shall be suspended until the Agent shall have later notified the Borrower, or such Lender shall have later notified the Agent, of such Lender's determination that the circumstances giving rise to such previous determination no longer exist. If any Lender notifies the Agent of a determination under Section 4.04(b), the Borrower shall, subject to the Borrower's indemnification Obligations under Section 5.10, as to any Loan of the Lender to which a LIBOR Rate Option applies, on the date specified in such notice either convert such Loan to the Base Rate Option otherwise available with respect to such Loan or prepay such Loan in accordance with Section 5.06(a). Absent due notice from the Borrower of conversion or prepayment, such Loan shall automatically be converted to the Base Rate Option otherwise available with respect to such Loan upon such specified date.

Section 4.05. *Selection of Interest Rate Options*. If the Borrower fails to select a new Interest Period to apply to any Borrowing Tranche of Loans under the LIBOR Rate Option at the expiration of an existing Interest Period applicable to such Borrowing Tranche in accordance with the provisions of Section 4.02, the Borrower shall be deemed to have continued such Borrowing Tranche under the LIBOR Rate Option with a 3-month Interest Period commencing upon the last day of the existing Interest Period, provided that, if an Event of Default exists and is continuing, the Borrower shall be deemed to have converted such Borrowing Tranche to the Base Rate Option commencing upon the last day of the existing Interest Period.

ARTICLE 5
PAYMENTS

Section 5.01. *Payments*. All payments and prepayments to be made in respect of principal, interest, fees or amounts due from the Borrower hereunder shall be payable prior to 2:00 p.m. on the date when due without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower, and without set-off, counterclaim, defense, recoupment or other deduction of any nature, and an action therefor shall immediately accrue. Such payments shall be made to the Agent at its Principal Office for the ratable accounts of the Lenders (except as otherwise may be provided with respect to a Defaulting Lender and except as provided in Section 5.08, 5.09 or 5.10) in (except as provided in Section 5.05(b) with respect to PIK Interest and Additional PIK Interest) U.S. Dollars and in immediately available funds, and the Agent shall promptly distribute such amounts to the Lenders in immediately available funds. The Agent's and each Lender's statement of account, ledger or other relevant record shall, in the absence of manifest error, be conclusive as the statement of the amount of principal of and interest on the Loans and other amounts owing under this Agreement and shall be deemed an "account stated."

Section 5.02. *Pro Rata Treatment of Lenders*. Each conversion to or renewal of any Interest Rate Option and each payment or prepayment by the Borrower with respect to principal or interest shall (except as otherwise may be provided with respect to a Defaulting Lender and

except as provided in Section 5.08, 5.09 or 5.10) be payable ratably among the Lenders entitled to such payment in accordance with the amount of principal and interest as set forth in this Agreement.

Section 5.03. *Sharing of Payments by Lenders*. If any Lender shall, by exercising any right of setoff, counterclaim or banker's lien, by receipt of voluntary payment, by realization upon security, or by any other non-pro rata source, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than the pro-rata share of the amount such Lender is entitled thereto, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, together with interest or other amounts, if any, required by Law (including court order) to be paid by the Lender or the holder making such purchase; and

(ii) the provisions of this Section 5.03 shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of the Loan Documents or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 5.03 shall apply).

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

Section 5.04. *Presumptions by Agent*. Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

Section 5.05. *Interest Payment Dates*.

(a) Interest on Loans shall be due and payable in arrears on each Interest Payment Date. Interest on mandatory prepayments of principal under Section 5.06(b) shall be due on the date such mandatory prepayment is due. Interest on the other principal amount of each Loan or other monetary Obligation shall be due and payable on demand after such principal amount or other monetary Obligation becomes due and payable (whether on the Stated Maturity Date, upon acceleration or otherwise).

(b) Notwithstanding the foregoing, if Liquidity, calculated as of the close of business two (2) Business Days immediately prior to any Interest Payment Date would not exceed $300,000,000 after giving effect to the interest due and payable on such Interest Payment Date (such date occurring two (2) Business Days prior to any Interest Payment Date being referred to herein as a "**Liquidity Test Date**") as if paid on such Liquidity Test Date (such occurrence in respect of any Interest Payment Date, a "**Liquidity Trigger Event**" with respect to such Interest Payment Date), the interest due and payable on such Interest Payment Date shall be capitalized and added to the aggregate principal balance of the Loans on such Interest Payment Date (to be applied pro rata among the Loans held by the Lenders) (such interest that is capitalized and added to the aggregate principal balance of the Loans being referred to herein as "**PIK Interest**"); provided, however, that all interest payable on any Interest Payment Date shall be fully paid in cash, unless the Agent shall have received from the Borrower at least one (1) Business Day prior to the applicable Interest Payment Date a certificate signed by an Authorized Officer of the Borrower certifying that a Liquidity Trigger Event has occurred with respect to such Interest Payment Date (and setting forth a calculation thereof) and stating that all interest payable on such Interest Payment Date shall be paid as PIK Interest. To the extent that any interest in respect of the outstanding unpaid principal amount of the Loans is paid as PIK Interest on any Interest Payment Date in accordance herewith, additional interest shall be deemed to have accrued on the portion of the Loans in respect of which such PIK Interest is payable, during the period commencing on the previous Interest Payment Date with respect to such portion of principal of the Loans and ending on such Interest Payment Date, at the Additional PIK Interest Rate, and such additional interest shall be capitalized and added to the aggregate principal amount of the Loans on such Interest Payment Date (to be applied pro rata among the Loans held by the Lenders) (such additional interest that is capitalized and added to the aggregate principal balance of the Loans being referred to herein as "**Additional PIK Interest**"). Upon being capitalized and added to the then aggregate outstanding principal amount of the Loans, PIK Interest and Additional PIK Interest shall (A) be treated as principal of the Loans for all purposes of this Agreement and the other Loans Documents and (B) bear interest initially in the same manner as the underlying Borrowing Tranche on which interest is paid on such Interest Payment Date (i.e., having the same Interest Rate Option, if applicable, and the same Interest Period end date as such Borrowing Tranche). Notwithstanding the forgoing, in the case of any prepayment or repayment of the principal amount of any Loan (including on the Stated Maturity Date, upon acceleration or otherwise), all accrued and unpaid interest on the principal amount prepaid or repaid shall be payable in U.S. Dollars and in immediately available funds.

Section 5.06. *Prepayments*.

(a) *Voluntary Prepayments*. The Borrower shall have the right at its option from time to time to prepay the Loans in whole or part without premium or penalty (except as provided in Section 5.10). Whenever the Borrower desires to prepay any part of the Loans, it shall provide a prepayment notice to the Agent by 11:00 a.m. at least three (3) Business Days prior to the date of prepayment of the Loans that are subject to the LIBOR Rate Option and one (1) Business Day prior to the date of prepayment of the Loans that are subject to the Base Rate Option:

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

(ii) a statement indicating the application of the prepayment between Loans to which the Base Rate Option applies and Loans to which the LIBOR Rate Option applies; and

(iii) the total principal amount of such prepayment, which shall not be less than $1,000,000.

All prepayment notices shall be irrevocable. The principal amount of the Loans for which a prepayment notice is given, together with interest on such principal amount except with respect to Loans to which the Base Rate Option applies, shall be due and payable on the date specified in such prepayment notice as the date on which the proposed prepayment is to be made. Except as provided in Section 4.04(c), if the Borrower prepays a Loan but fails to specify the applicable Borrowing Tranche which the Borrower is prepaying, the prepayment shall be applied first to Loans to which the Base Rate Option applies, then to Loans to which the LIBOR Rate Option applies. Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Lenders under Section 5.10.

(b) *Mandatory Prepayments*.

(i) *Sales of Assets*. Within five (5) Business Days of any sale of assets or series of related sales of assets authorized by Section 8.02(d)(v) resulting in Net Cash Proceeds for all such sales of assets in excess of $10,000,000 in the aggregate and subject to Section 5.06(b)(ii) below, the Borrower shall immediately pay or cause to be paid an aggregate amount equal to 100% of such Net Cash Proceeds in excess of such $10,000,000 to the Agent for distribution to the Lenders in accordance with each such Lender's Ratable Share of the Facility based on the aggregate amount of Term Loans outstanding at such time.

(ii) *Reinvestment Proceeds*. Within the earlier of (a) the date occurring 180 days after receipt thereof (or, if the Borrower or any Subsidiary enters into a legally binding commitment to reinvest such Net Cash Proceeds within 180 days following receipt thereof, within the later of (i) 180 days following receipt thereof and (ii) 90 days of the date of such legally binding commitment) and (b) the date on which the Borrower shall have determined not to, or shall have otherwise ceased to, acquire or repair assets useful in the business of the Borrower and its Subsidiaries with all or any portion of the relevant Reinvestment Deferred Amount, the Borrower shall immediately pay or cause to be paid an aggregate amount equal to 100% of such Net Cash Proceeds of such

Reinvestment Deferred Amount, *minus* any amount thereof expended to acquire or repair assets useful in the business of the Borrower and its Subsidiaries; provided that Net Cash Proceeds in excess of $100,000,000 in the aggregate from sales of assets under Section 8.02(d)(v) shall not be subject to the reinvestment right described above.

(iii) *Debt Issuances*. Within five (5) Business Days of any issuances, offerings or placements of any Debt of any Loan Party not permitted by Section 8.02(a), the Borrower shall immediately pay or cause to be paid an aggregate amount equal to 100% of such Net Cash Proceeds to the Agent for distribution to the applicable Lenders in accordance with each such Lender's Ratable Share of the Facility based on the aggregate amount of Term Loans outstanding at such time.

(iv) *Declined Proceeds*. The Borrower shall deliver to Agent notice at least two (2) Business Days prior to the date required to make a mandatory prepayment pursuant to Section 5.06(b)(i) or Section 5.06(b)(ii) and Agent shall promptly notify each Lender of such notice. Any Lender may elect, by notice to the Agent by telephone (confirmed by hand delivery or facsimile) at least two (2) Business Days (or such shorter period as may be established by the Agent) prior to such required prepayment date, to decline all or any portion of any prepayment of its Term Loans pursuant to Section 5.06(b)(i) or Section 5.06(b)(ii)) (such declined amounts, the "**Declined Proceeds**"). Any Declined Proceeds shall be offered to the Lenders not so declining such prepayment (with such Lenders having the right to decline any prepayment with Declined Proceeds at the time and in the manner specified by the Agent). To the extent such Lenders elect to decline their pro rata shares of such Declined Proceeds, such remaining Declined Proceeds may be retained by the Borrower.

Except as provided in Section 4.04(c), if the Borrower prepays a Loan but fails to specify the applicable Borrowing Tranche which the Borrower is prepaying, the prepayment shall be applied first to Loans to which the Base Rate Option applies, then to Loans to which the LIBOR Rate Option applies (and in direct order of Interest Period maturities). Any prepayment hereunder shall be subject to the Borrower's Obligation to indemnify the Lenders under Section 5.10.

(c) *Replacement of a Lender*. In the event any Lender (i) gives notice under Section 4.04(b), (ii) requests compensation under Section 5.08, or requires the Borrower to pay any additional amount to any Lender or any Official Body for the account of any Lender pursuant to Section 5.09, (iii) is a Defaulting Lender, (iv) becomes subject to the control of an Official Body (other than normal and customary supervision and other than as set forth in subsection (2) of the definition of "Defaulting Lender" contained herein), or (v) is a Non-Consenting Lender referred to in Section 13.01, then in any such event the Borrower may, at its sole expense, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.09 (other than Section 13.09(b)(i)), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(A) the Borrower shall have paid to the Agent the assignment fee specified in Section 13.09;

(B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.10) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(C) in the case of any such assignment resulting from a claim for compensation under Section 5.08(a) or payments required to be made pursuant to Section 5.09, such assignment will result in a reduction in such compensation or payments thereafter; and

(D) such assignment does not conflict with applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 5.07. *Mitigation Obligations*. Each Lender agrees that upon receiving actual knowledge of the occurrence of any event giving rise to increased costs or other special payments under Section 4.04(b), Section 5.08 or Section 5.09 with respect to such Lender, it will (a) promptly notify the Agent and the Borrower of the occurrence of such event and (b) if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event or appoint an agent or representative to deal with any relevant Official Body, provided that such designation or appointment does not cause such Lender and its lending office to suffer any economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section shall affect or postpone any of the Obligations of the Borrower or any other Loan Party or the rights of the Agent or any Lender provided in this Agreement.

Section 5.08. *Increased Costs*.

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Agent or any Lender (except any reserve requirement reflected in the LIBOR Rate);

(ii) subject the Agent or any Lender to any tax of any kind whatsoever with respect to this Agreement or any Loan under the LIBOR Rate Option made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 5.09 and Excluded Taxes); or

(iii) impose on the Agent, any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or any Loan under the LIBOR Rate Option made by such Lender; and the result of any of the foregoing shall be to increase the cost to the Agent or Lender of continuing, converting into, or maintaining any Loan under the LIBOR Rate Option (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Agent or Lender hereunder (whether of principal, interest or any other amount)

then, upon request of the Agent or Lender, the Borrower will pay to the Agent or Lender, as the case may be, such additional amount or amounts as will compensate the Agent or Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital and Liquidity Requirements*. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital and liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Loans held by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement; Repayment of Outstanding Loans; Borrowing of New Loans*. A certificate of the Agent or a Lender setting forth the amount or amounts necessary to compensate the Agent or such Lender or its holding company, as the case may be, as specified in Section 5.08(a) or 5.08(b) and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Agent or such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) *Delay in Requests*. Failure or delay on the part of the Agent or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Agent's or such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate the Agent or a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Agent or such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Agent's or such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 5.09. *Taxes.* (a) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes, except as required by applicable Law; provided that if the Borrower shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions

applicable to additional sums payable under this Section) the Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Official Body in accordance with applicable Law.

(b) *Payment of Other Taxes by the Borrower*. Without limiting the provisions of Section 5.09(a) above, the Borrower shall timely pay, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes to the relevant Official Body in accordance with applicable Law.

(c) *Indemnification by the Borrower*. The Borrower shall indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by or required to be withheld from a payment to the Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Official Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) *Evidence of Payments*. Promptly after any payment of Indemnified Taxes or Other Taxes by the Borrower to an Official Body pursuant to this Section 5.09 (but in any event within thirty (30) days after the date of such payment), the Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Official Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) *Status of Lenders*. Any Lender that is entitled to an exemption from or reduction of withholding tax under the Law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. Notwithstanding the submission of such documentation claiming a reduced rate of or exemption from U.S. withholding tax, the Agent shall be entitled to withhold United States federal income taxes at the full 30% withholding rate if in its reasonable judgment it is required to do so under the due diligence requirements imposed upon a withholding agent under § 1.1441-7T(b) of the Income Tax Regulations. Further, the Agent is indemnified under § 1.1461-1(e) of the Income Tax Regulations against any claims and demands of any Lender or assignee or participant of a Lender for the amount of any tax it deducts and withholds in accordance with regulations under § 1441 of the Internal Revenue Code. In addition, any Lender, upon request by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent, as applicable, to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, any Foreign Lender shall deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) two (2) duly completed valid originals of IRS Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) two (2) duly completed valid originals of IRS Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Internal Revenue Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Internal Revenue Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax Compliance Certificate**") and (y) two duly completed valid originals of IRS Form W-8BEN or W-8BEN-E,

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender granting a typical participation), executed originals of IRS Form W-8IMY, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, U.S. Tax Compliance Certificate, Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership (and not a participating Lender) and one or more beneficial owners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such beneficial owner,

(v) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower to determine the withholding or deduction required to be made, or

(vi) To the extent that any Lender is not a Foreign Lender, such Lender shall submit to the Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent) two (2) executed originals of an IRS Form W-9 or any other form prescribed by applicable Law certifying that such Lender is not a Foreign Lender and is exempt from backup withholding.

If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section

1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 5.09, "**FATCA**" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(f) *Refunds*. If the Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 5.09, it shall pay over such refund (or the amount of any credit in lieu of refund) to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under Section 5.09, net of all out-of- pocket expenses (including Taxes) of the Agent or the relevant Lender, as the case may be, and without interest (other than any interest paid by the relevant Official Body with respect to such refund or credit in lieu of refund)), provided that the Borrower, upon the request of the Agent or the relevant Lender, agrees to repay the amount paid over to the Borrower (plus any interest, penalties or other charges imposed by the relevant Official Body) if the Agent or the relevant Lender is required to repay such refund or credit in lieu of refund to such Official Body. Notwithstanding anything to the contrary in this paragraph 5.09(f), in no event will the indemnified party

be required to pay any amount to an indemnifying party pursuant to this paragraph 5.09(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. Neither the Agent nor any Lender shall be obliged to disclose information regarding its tax affairs or computations to Borrower in connection with this Section 5.09(f) or any other provision of Section 5.09. Upon the Borrower's reasonable written request, each Lender shall reasonably cooperate with the Borrower in contesting or seeking a refund of Indemnified Taxes or Other Taxes; provided that such cooperation shall not be required if, in such Lender's reasonable discretion, it would subject such Lender to any material unreimbursed out-of-pocket cost or expense or otherwise be materially disadvantageous to the Lender.

(g) *Survival*. Notwithstanding anything to the contrary in this Agreement, each party's obligations under this Section 5.09 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 5.10. *Indemnity*. In addition to the compensation or payments required by Section 5.08 or Section 5.09, the Borrower shall indemnify each Lender against all liabilities, losses or expenses (including loss of anticipated profits, any foreign exchange losses and any

loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract), for the avoidance of doubt and duplication, excluding all Taxes for which compensation is payable by the Borrower under Section 5.08(a), all Indemnified Taxes for which indemnification is available under Section 5.09(c) and all Taxes to the extent associated with payments that make the appropriate Lender whole in relation to its after-tax position had the payments called for under the Agreement and the Loan Documents been made as contemplated (without regard to this Section 5.10), which such Lender sustains or incurs as a consequence of any:

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

(b) attempt by the Borrower to revoke (expressly, by later inconsistent notices or otherwise) in whole or part any Term Loan Requests under Section 2.05 or Section 4.02 or notice relating to prepayments under Section 5.06, or

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

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

Section 5.11. *[Reserved]*.

Section 5.12. *Indemnification by the Lender*. Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (b) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.09(d) or 13.09(c) relating to the maintenance of a Participant Register, and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Official Body. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document

or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this Section 5.12.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

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

Section 6.01. *Organization and Qualification*. Each Loan Party and each Subsidiary of each Loan Party is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each Loan Party and each Subsidiary of each Loan Party has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, except where the failure to have such power would not reasonably be expected to result in any Material Adverse Change. Each Loan Party and each Subsidiary of each Loan Party is duly licensed or qualified and in good standing in each jurisdiction where the property owned or leased by it or the nature of the business transacted by it or both makes such licensing or qualification necessary and where the failure to so qualify would reasonably be expected to result in a Material Adverse Change.

Section 6.02. *Shares of Borrower; Subsidiaries; and Subsidiary Shares*. As of the Effective Date, Schedule 6.2 states the name of each of the Borrower's Subsidiaries, its jurisdiction of incorporation, its authorized capital stock, the issued and outstanding shares (referred to herein as the "**Subsidiary Shares**") and the owners thereof if it is a corporation, its outstanding partnership interests (the "**Partnership Interests**") and the owners thereof if it is a partnership and its outstanding limited liability company interests, the voting rights associated therewith (the "**LLC Interests**") and the owners thereof if it is a limited liability company. As of the Effective Date, Schedule 6.2 also sets forth for each Subsidiary of the Borrower and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary. As of the Effective Date, Schedule 6.2 also sets forth the jurisdiction of incorporation of the Borrower, its authorized capital stock (the "**Borrower Shares**") and the voting rights associated therewith. The Borrower and each Subsidiary of the Borrower has good title to all of the Subsidiary Shares, Partnership Interests and LLC Interests it purports to own, free and clear in each case of any Lien, other than Permitted Liens. Except as set forth on Schedule 6.2, all Borrower Shares, Subsidiary Shares, Partnership Interests and LLC Interests have been validly issued, and all Borrower Shares, all Partnership Interests, all LLC Interests and all Subsidiary Shares are fully paid and nonassessable. All capital contributions and other consideration required to be made or paid in connection with the issuance of the Partnership Interests and LLC Interests have been made or paid, as the case may be, except where the failure to do so would not result in a Material Adverse Change. As of the Effective Date, there are no options, warrants or other rights outstanding to purchase any such Subsidiary Shares, Partnership Interests or LLC Interests except as indicated on Schedule 6.2.

Section 6.03. *Power and Authority*. Each Loan Party has full power to enter into, execute, deliver and carry out this Agreement and the other Loan Documents to which it is a party, to incur the Debt contemplated by the Loan Documents and to perform its Obligations

under the Loan Documents to which it is a party, and all such actions have been duly authorized by all necessary proceedings on its part.

Section 6.04. *Validity and Binding Effect*. This Agreement has been duly and validly executed and delivered by each Loan Party, and each other Loan Document which any Loan Party is required to execute and deliver on or after the date hereof will have been duly executed and delivered by such Loan Party on the required date of delivery of such Loan Document. This Agreement and each other Loan Document constitutes, or will constitute, legal, valid and binding obligations of each Loan Party which is or will be a party thereto on and after its date of delivery thereof, enforceable against such Loan Party in accordance with its terms, except to the extent that enforceability of any of such Loan Document may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance.

Section 6.05. *No Conflict*. Neither the execution and delivery of this Agreement or the other Loan Documents by any Loan Party, nor the consummation of the transactions herein or therein contemplated or compliance with the terms and provisions hereof or thereof by any of them will (a) conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents of any Loan Party or any Subsidiary of any Loan Party or (ii) except as would not reasonably be expected to result in Material Adverse Change, any Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party or any Subsidiary of any Loan Party is a party or by which any Loan Party or any Subsidiary of any Loan Party is bound or subject to, or (b) result in the creation or enforcement of any Lien, charge or encumbrance whatsoever upon any property (now or hereafter acquired) of any Loan Party or any Subsidiary of any Loan Party (other than the Liens granted under the Loan Documents).

Section 6.06. *Litigation*. Except as set forth on Schedule 6.6, there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Official Body which individually or in the aggregate would reasonably be expected to result in a Material Adverse Change. None of the Loan Parties nor any Subsidiary of any Loan Party is in violation of any order, writ, injunction or any decree of any Official Body which would reasonably be expected to result in a Material Adverse Change.

Section 6.07. *Financial Statements.* (a) *Historical Statements*. The Borrower has delivered to the Lenders or their affiliates copies of (i) its audited consolidated year-end financial statements for and as of the end of the fiscal year ended December 31, 2015 (the "**Annual Statements**") and (ii) its unaudited consolidated interim financial statements for the fiscal year to date and as of the end of the fiscal quarter ended June 30, 2016 (the "**Interim Statements**") (the Annual Statement and the Interim Statements being collectively referred to as the "**Historical Statements**"). The Historical Statements were compiled from the books and records maintained by the Borrower's management, are correct and complete in all material respects and fairly represent the consolidated financial condition of the Borrower and its Subsidiaries as of their dates and the results of operations for the fiscal periods then ended and have been prepared

in accordance with GAAP consistently applied, subject (in the case of the Interim Statements) to normal year-end audit adjustments.

(b) Since the Effective Date, there has been no Material Adverse Change.

Section 6.08. *Margin Stock.*

None of the Loan Parties nor any Subsidiary of any Loan Party engages or intends to engage principally, or as one of its important activities, in the business of extending credit for the purpose, immediately, incidentally or ultimately, of purchasing or carrying margin stock (within the meaning of Regulation U).

Section 6.09. *Full Disclosure*. Neither this Agreement nor any other Loan Document, nor any certificate, statement, agreement or other documents furnished in writing by or on behalf of a Loan Party or any Subsidiary thereof to the Agent or any Lender in connection herewith (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains with respect to the Borrower and its Subsidiaries any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not materially misleading; provided that to the extent any such certificate, statement, agreement or other document was based upon or constitutes a forecast or projection, such Loan Party represents only that the relevant Loan Party acted in good faith and utilized assumptions believed by it to be reasonable at the time made (it being understood that any such forecasts or projections are subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, that no assurance can be given that any such forecasts or projections will be realized and that actual results may differ from any such forecasts or projections and such differences may be material).

Section 6.10. *Taxes*. Except where failure to do so would not reasonably be expected to result in a Material Adverse Change, all federal, state, local and other tax returns required to have been filed with respect to each Loan Party and each Subsidiary of each Loan Party have been filed, and payment or adequate provision has been made for the payment of all taxes, fees, assessments and other governmental charges which have or may become due pursuant to said returns or to assessments received, except to the extent that such taxes, fees, assessments and other charges are being contested in good faith by appropriate proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made. There are no agreements or waivers extending the statutory period of limitations applicable to any federal income tax return of any Loan Party or Subsidiary of any Loan Party for any period.

Section 6.11. *Consents and Approvals*. No consent, approval, exemption, order or authorization of, or a registration or filing with, any Official Body or any other Person is necessary to authorize or permit under any Law in connection with the execution, delivery and carrying out of this Agreement and the other Loan Documents by any Loan Party, except for the Confirmation Order or as listed on Schedule 6.11, all of which shall have been entered, obtained or made on or prior to the Effective Date.

Section 6.12. *No Event of Default; Compliance With Instruments and Material Contracts*. No event has occurred and is continuing and no condition exists or will exist after giving effect to the borrowings of the Term Loans deemed to be made on the Effective Date under or pursuant to the Loan Documents which constitutes an Event of Default or Potential Default. None of the Loan Parties or any Subsidiary of any Loan Party is in violation of (a) any term of its certificate of incorporation, bylaws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents or (b) any agreement or instrument to which it is a party or by which it or any of its properties may be subject or bound where such violation could reasonably be expected to result in a Material Adverse Change. All Material Contracts to which any Loan Party or Subsidiary of any Loan Party is bound are valid, binding and enforceable upon such Loan Party or Subsidiary and to the best knowledge of the Borrower upon each of the other parties thereto in accordance with their respective terms except in each case to the extent the same could not reasonably be expected to result in a Material Adverse Change. None of the Loan Parties or their Subsidiaries is bound by any Contractual Obligation, or subject to any restriction in any organization document, or any requirement of Law which could reasonably be expected to result in a Material Adverse Change.

Section 6.13. *Insurance*. As of the Effective Date, Schedule 6.13 lists all material insurance policies to which any Loan Party or Subsidiary of any Loan Party is a party, all of which are valid and in full force and effect as of the Effective Date. Such policies provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each Loan Party and each Subsidiary of each Loan Party in accordance with prudent business practice in the industry of the Loan Parties and their Subsidiaries. Each Loan Party has taken all actions required under the Flood Laws or reasonably requested by the Agent or the Required Lenders to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including to the extent applicable, but not limited to, providing the Agent with

the address and/or GPS coordinates of each structure located upon any real property that will be subject to a Mortgage in favor of the Agent, for the benefit of the Secured Parties, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral.

Section 6.14. *Compliance With Laws*. The Loan Parties and their Subsidiaries are in compliance in all material respects with all applicable Laws (other than Environmental Health and Safety Laws which are specifically addressed in Section 6.18) in all jurisdictions in which any Loan Party or Subsidiary of any Loan Party is doing business except where the failure to do so would not reasonably be expected to result in a Material Adverse Change.

Section 6.15. *Investment Companies*. None of the Loan Parties is an "investment company" registered or required to be registered under the Investment Company Act of 1940.

Section 6.16. *Plans and Benefit Arrangements*. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change:

(a) The Borrower and each other member of the ERISA Group are in compliance with any applicable provisions of ERISA with respect to all Benefit Arrangements, Plans, and Multiemployer Plans. There has been no Prohibited Transaction with respect to any Benefit

Arrangement or any Plan or, to the knowledge of the Borrower, with respect to any Multiemployer Plan or Multiple Employer Plan, which could result in any liability of the Borrower or any other member of the ERISA Group. The Borrower and all other members of the ERISA Group have made when due any and all payments required to be made under any agreement relating to a Multiemployer Plan or a Multiple Employer Plan or any Law pertaining thereto. With respect to each Plan and Multiemployer Plan, the Borrower and each other member of the ERISA Group (i) have fulfilled their obligations under the minimum funding standards of ERISA, (ii) have not incurred any liability to the PBGC, and (iii) have not had asserted against them any penalty for failure to fulfill the minimum funding requirements of ERISA. All Plans, Benefit Arrangements and, to the knowledge of the Borrower, Multiemployer Plans have been administered in accordance with their terms and applicable Law.

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

(c) No event requiring notice to the PBGC under Section 303(k)(4) of ERISA has occurred or is reasonably expected to occur with respect to any Plan, and no amendment with respect to which security is required under Section 307 of ERISA has been made or is reasonably expected to be made to any Plan.

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

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

Section 6.17. *Employment Matters*.

(a) Each of the Loan Parties and each of their Subsidiaries is in compliance with the Labor Contracts and all applicable federal, state and local labor and employment Laws including those related to equal employment opportunity and affirmative action, labor relations, minimum wage, overtime, child labor, medical insurance continuation, worker adjustment and relocation notices, immigration controls and worker and unemployment compensation, except where the failure to comply could reasonably be expected to result in a Material Adverse Change. There are no outstanding grievances, arbitration awards or appeals therefrom arising out of the Labor Contracts or current or threatened strikes, picketing, handbilling or other work stoppages or slowdowns at facilities of any of the Loan Parties or any of their Subsidiaries which in any case could reasonably be expected to result in a Material Adverse Change.

(b) Each of the Loan Parties, each of their Subsidiaries and each of the "related persons" (as defined in the Coal Act) of each Loan Party and each Subsidiary of each Loan Party are in compliance in all material respects with the Coal Act. None of the Loan Parties, any

Subsidiary of any Loan Party nor any related person of any Loan Party or its Subsidiaries has any liability under the Coal Act except with respect to premiums or other payments required thereunder which have been paid when due and except to the extent that the liability thereunder would not reasonably be expected to result in a Material Adverse Change. The Loan Parties and their Subsidiaries are in compliance in all material respects with the Black Lung Act, except to the extent excused by the Bankruptcy Code by virtue of commencement of the Cases or by order of the Bankruptcy Court. None of the Loan Parties nor any of their Subsidiaries has any liability under the Black Lung Act except with respect to premiums, contributions or other payments required thereunder which have been paid when due and except to the extent that the liability thereunder would not reasonably be expected to result in a Material Adverse Change.

Section 6.18. *Environmental Health and Safety Matters*. Except as set forth on Schedule 6.18:

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

(b) the Loan Parties and their Subsidiaries hold and are operating in compliance with applicable Environmental Health and Safety Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Change, and none of the Loan Parties has received any written notice from an Official Body that such Official Body has or intends to suspend, revoke or adversely amend or alter, whether in whole or in part, any such Environmental Health and Safety Permit, except any such notice which could not reasonably be expected to result in a Material Adverse Change;

(c) there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary of any Loan Party at law or equity before any Official Body challenging an application for, or the modification, amendment or issuance of, any Environmental Health and Safety Permit, in each case which could reasonably be expected to result in a Material Adverse Change;

(d) neither any real property, whether owned or leased, of any Loan Party or any Subsidiary of any Loan Party nor their respective operations conducted thereon violates any Environmental Health and Safety Order of any Official Body made pursuant to Environmental Health and Safety Laws except for noncompliance with respect thereto which could not reasonably be expected to result in a Material Adverse Change;

(e) there are no pending or, to the knowledge of any Loan Party, threatened Environmental Health and Safety Claims against any real property, whether owned or leased, of any Loan Party or any Subsidiary of any Loan Party nor against any Loan Party or any Subsidiary of any Loan Party, in each case which could reasonably be expected to result in a Material Adverse Change;

(f) none of the Loan Parties has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding Environmental Health and Safety Laws, including any with regard to their activities at any real property, whether owned or leased, of the

Loan Parties or the business operated by the Loan Parties, or any prior business for which the Borrower has retained liability under any Environmental Health and Safety Law, in each case which could reasonably be expected to result in a Material Adverse Change; and

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

Section 6.19. *Effective Date of the Plan of Reorganization*. On the effective date of the Plan of Reorganization, (i) the Transaction shall have been substantially consummated in accordance with the terms of the Plan of Reorganization and all applicable Laws, (ii) all consents and approvals of, and filings and registrations with, and all other actions in respect of, all Governmental Authorities required in order to make or consummate the Transaction have been obtained, given, filed or taken or waived and are or will be in full force and effect (or effective judicial relief with respect thereto has been obtained), (iii) all applicable waiting periods with respect thereto (if any) have or, prior to the time when required, will have, expired without, in all such cases, any action being taken by any competent authority which restrains, prevents, or imposes material adverse conditions upon the Transaction, and (iv) no unstayed judgment, order or injunction shall be in effect prohibiting or imposing material adverse conditions upon the Transaction.

Section 6.20. *Title to Real Property*. Each Loan Party and each Subsidiary of each Loan Party has (i) Mining Title to all Active Operating Properties that are necessary or appropriate for the Borrower and its Subsidiaries to conduct their respective operations, (ii) and, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change, good and valid title to all of their other respective assets, in the case of both the foregoing items (i) and (ii) of this sentence, free and clear of all Liens and encumbrances except Permitted Liens, and subject to the terms and conditions of the applicable leases; provided, however, a Loan Party or a Subsidiary of a Loan Party shall not be in breach of the foregoing in the event that (x) it fails to own a valid leasehold interest which, either considered alone or together with all other such valid leaseholds which it fails to own, is not material to the continued operations of such Loan Party or Subsidiary of such Loan Party or (y) such Loan Party's or such Subsidiary's interest in a leasehold is less than fully marketable because the consent of the lessor to future assignments has not been obtained.

Section 6.21. *Patents, Trademarks, Copyrights, Licenses, Etc.*. Each Loan Party and each Subsidiary of each Loan Party owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights, without conflict with the rights of others, necessary for the Loan Parties to own and operate their properties and to carry on their businesses as presently conducted and planned to be conducted by such Loan

Parties and Subsidiaries, except where the failure to so own or possess with or without such conflict would reasonably be expected to result in a Material Adverse Change.

Section 6.22. *Security Interests*. The Collateral Documents are effective to create in favor of the Agent for the benefit of the Secured Parties a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. Upon the filing of financing statements relating to said security interests in each office and in each jurisdiction where required in order to perfect the security interests described above, the Liens created by the Security Agreements in favor of the Agent for the benefit of the Secured Parties will constitute fully perfected first priority Liens (subject to Permitted Liens) on, and security interests in, all right, title and interest of the Loan Parties in such Collateral to the extent perfection can be obtained by filing such financing statements. All filing fees and other expenses in connection with each such action have been or will be paid by the Borrower. Subject to the qualifications and limitations set forth expressly in the Mortgages, the Liens granted to the Agent for the benefit of the Secured Parties pursuant to each of the Mortgages constitute a valid first priority Lien under applicable law, subject only to Permitted Liens. Subject to the qualifications and limitations set forth expressly in the Control Agreements, the Liens granted to the Agent for the benefit of the Secured Parties pursuant to each of the Control Agreements constitute a valid first priority Lien under applicable law, subject only to Permitted Liens.

Section 6.23. *Sanctions and Anti-Corruption Laws.* None of the Borrower or any of its Subsidiaries, nor, to the knowledge the Borrower, any director, officer, employee, or agent of the Borrower or any of its Subsidiaries is: (i) the subject of any Sanctions, or (ii) located, organized or resident in a country or territory that is the subject of Sanctions. The Borrower and its Subsidiaries and, to the knowledge of the Borrower, their respective directors, officers, and employees, and their respective agents that will act in any capacity in connection with or benefit from the credit facility established hereby, are in compliance in all material respects with all applicable Sanctions and with the Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"), and all other applicable anti-corruption laws.

Section 6.24. *Status of Pledged Collateral*. All the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral to be pledged pursuant to the Pledge Agreements are or will be upon issuance validly issued and nonassessable and owned beneficially and of record by the pledgor thereof free and clear of any Lien or restriction on transfer, except as otherwise provided by the Pledge Agreements and except as the right of the Secured Parties to dispose of the Subsidiary Shares, Partnership Interests or LLC Interests may be limited by the Securities Act of 1933, as amended, and the regulations promulgated by the Securities and Exchange Commission thereunder and by applicable state securities laws. There are no shareholder, partnership, limited liability company or other agreements or understandings with respect to the Subsidiary Shares, Partnership Interests or LLC Interests included in the Collateral, except for the partnership agreements and limited liability company agreements described on Schedule 6.24. The Loan Parties have delivered true and complete copies of such partnership agreements and limited liability company agreements to each Agent.

Section 6.25. *Surety Bonds.* All surety, reclamation and similar bonds required to be maintained by the Borrower or any of its Subsidiaries under any Environmental Health and Safety Laws or Contractual Obligation are in full force and effect except for any failure which

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

Section 6.26. *Coal Supply Agreements.* As of the Effective Date, all Coal Supply Agreements to which the Borrower or any of its Subsidiaries is subject or by which it is bound are in full force and effect, except for any failure which individually or when taken together with all failures under all Coal Supply Agreements would not reasonably be expected to result in a Material Adverse Change.

Section 6.27. *Solvency.* As of the Effective Date, after giving effect to the Transaction on such date, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 6.28. *Updates to Schedules.* Should any of the information or disclosures provided on any of the Schedules attached hereto become outdated or incorrect in any material respect, the Borrower (1) may at any other time, or (2) shall, in connection with the delivery of the financial statements pursuant to Section 8.03(a) or 8.03(b) or a Guarantor Joinder delivered hereunder, provide the Agent, in writing, with such revisions or updates to such Schedule as may be necessary or appropriate to update or correct same and in the event that the Loan Parties should acquire after the Effective Date any parcel of real property (other than Excluded Property), the Loan Parties shall update Schedule 1.1(R) to include such real property to the extent such schedule is no longer accurate; provided, however, that no Schedule shall be deemed to have been amended, modified or superseded by any such correction or update, nor shall any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedule be deemed to have been cured thereby, unless and until the Agent, at the direction of the Required Lenders, pursuant to Section 13.16, shall have accepted in writing such revisions or updates to such Schedules (other than revisions or updates to Schedules 1.1(R), 6.2, 6.13 and 6.24, which result solely from actions of the Loan Parties permitted hereunder, which revised schedules shall be deemed to be accepted by the Agent upon delivery of such Schedules by the Borrower thereto).

ARTICLE 7
CONDITIONS PRECEDENT

Section 7.01. *Conditions Precedent to Effectiveness.* This Agreement shall become effective on the first date on which each of the following conditions is satisfied (or waived in accordance with Section 13.01):

(a) The Agent shall have received each of the following in form and substance reasonably satisfactory to the Required Lenders:

(i) Executed counterparts of this Agreement from the Agent and the Borrower;

(ii) A certificate dated the Effective Date and signed by the Secretary or an Assistant Secretary or other Authorized Officer of each of the Loan Parties, certifying as appropriate as to: (A) all action taken by each Loan Party in connection with this Agreement and the other Loan Documents; (B) the names of the Authorized Officers authorized to sign the Loan Documents and their true signatures; and (C) copies of its organizational documents as in effect on the Effective Date certified by the appropriate state official where such documents are filed in a state office together with certificates from the appropriate state officials as to the continued existence and good standing of each Loan Party in each state where organized;

(iii) A written opinion of Davis Polk & Wardwell LLP, counsel for the Loan Parties, dated the Effective Date, in form and substance reasonably satisfactory to the Required Lenders;

(iv) A certificate from a Responsible Officer of the Borrower as to the following certifications (as of the Effective Date): (A) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party are true and correct in all material respects on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct in all material respects as of such earlier date) and (B) no Event of Default or Potential Default has occurred and is continuing;

(v) the Historical Statements;

(vi) the No Proceedings Letter;

(vii) Notes payable to the Lenders (and their registered assigns) to the extent requested by any Lender pursuant to Section 2.06(g);

(viii) a solvency certificate substantially in the form attached hereto as Exhibit 7.01 certified by the chief financial officer or the treasurer of the Borrower as to the Solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transaction and the transactions contemplated hereby;

(ix) executed counterparts of the Guaranty Agreement, each Security Agreement and each Pledge Agreement;

(x) proper financing statements under the Uniform Commercial Code of the applicable jurisdictions of organization covering the Collateral described in the Security Agreements and appropriate equity certificates and powers evidencing the Collateral pledged pursuant to the Pledge Agreements;

(xi) Patent, Trademark and Copyright Security Agreements covering the registered intellectual property listed on the applicable schedules to such Patent,

Trademark and Copyright Security Agreements, duly executed by the Borrower and each other person that is a Loan Party on the Effective Date;

(xii) evidence that adequate insurance, including flood insurance, if applicable, required to be maintained under this Agreement is in full force and effect, with additional insured, mortgagee and lender loss payable special endorsements attached thereto in form and substance reasonably satisfactory to the Required Lenders, naming the Agent as additional insured, mortgagee and lender loss payee, and evidence that the Loan Parties have taken all action required under the Flood Laws and/or reasonably requested by the Agent or the Required Lenders to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing the Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a Mortgage in favor of the Agent, for the benefit of the Secured Parties, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral;

(xiii) the Perfection Certificate; and

(xiv) bring down (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches.

(b) The final order confirming the Plan of Reorganization (the "**Confirmation Order**"), shall have been entered and shall not be subject to a stay or have been reversed, modified or amended (other than as otherwise agreed to by the Agent and the Required Lenders), all conditions precedent to the effectiveness or consummation thereof shall have been satisfied, and the Plan of Reorganization shall have been, or contemporaneously with the effectiveness of this Agreement shall be, consummated.

(c) The Borrower shall have paid all fees payable on or before the Effective Date as required by this Agreement, the Agent Fee Letter or any other Loan Document.

Without limiting the generality of the provisions of the last paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 7.01 (and irrespective of whether any Effective Date Lender has signed this Agreement), each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender, unless the Agent shall have received written notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

ARTICLE 8
COVENANTS

Section 8.01. *Affirmative Covenants.* The Borrower covenants and agrees that until payment in full of the Loans and interest thereon and satisfaction of all of the Loan Parties' other Obligations under the Loan Documents (other than indemnification and other contingent

obligations not yet due and owing or for which no claims have been asserted), the Borrower shall, and shall cause each of its Subsidiaries to, comply at all times with the following affirmative covenants:

(a) *Preservation of Existence, Etc.* The Borrower shall maintain its legal existence as a corporation. The Borrower shall cause each of its Subsidiaries to maintain its legal existence as a corporation, limited partnership or limited liability company, as the case may be, except as otherwise expressly permitted in Section 8.02(c) or Section 8.02(d). The Borrower shall maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify or maintain such qualification could not reasonably be expected to result in a Material Adverse Change. The Borrower shall cause each of its Subsidiaries to maintain its license or qualification and good standing in each jurisdiction in which its ownership or lease of property or the nature of its business makes such license or qualification necessary, except where the failure to so qualify would not reasonably be expected to result in a Material Adverse Change.

(b) *Payment of Liabilities, Including Taxes, Etc.* Except where failure to do so could not reasonably be expected to result in a Material Adverse Change, the Borrower shall, and shall cause each of its Subsidiaries to, duly pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid after becoming due, might become a lien or charge upon any properties of the Borrower or any Subsidiary of the Borrower, provided that neither the Borrower nor any Subsidiary of the Borrower shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings and with respect to which there are proper reserves as required by GAAP, but only to the extent that failure to discharge any such liabilities would not adversely affect the value of the Collateral in any material respect.

(c) *Maintenance of Insurance.* Each Loan Party shall, and shall cause each of its Subsidiaries to, insure its properties and assets against loss or damage by fire and such other insurable hazards as such assets are commonly insured (including fire, extended coverage, property damage, workers' compensation, public liability and business interruption insurance) and against other risks (including errors and omissions) in such amounts as similar properties and assets are insured by prudent companies in similar circumstances carrying on similar businesses, and with reputable and financially sound insurers, including self-insurance to the extent customary. The Loan Parties shall deliver to the Agent (x) on the Effective Date and annually thereafter an original certificate of insurance of the Loan Parties' independent insurance broker describing and certifying as to the existence of the insurance on the Collateral required to be maintained by this Agreement and the other Loan Documents, together with a copy of the endorsement described in the next sentence attached to such certificate and, (y) at the request of the Agent, from time to time a summary schedule indicating all insurance then in force with respect to each of the Loan Parties. Such policies of insurance shall contain special endorsements, in form and substance reasonably acceptable to the Agent, with the consent of the Required Lenders, which shall (i) specify the Agent as an additional insured, mortgagee and lender loss payee as its interests may appear, with the understanding that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of the applicable

Loan Parties and not that of the insured, (ii) provide that the interest of the Lenders shall be insured regardless of any breach or violation by the applicable Loan Parties of any warranties, declarations or conditions contained in such policies or any action or inaction of the applicable Loan Parties or others insured under such policies, (iii) provide to the extent commercially available that no cancellation of such policies for any reason (including non-payment of premium) shall be effective until at least ten (10) days after receipt by the Agent of written notice of such cancellation, (iv) be primary without right of contribution of any other insurance carried by or on behalf of any additional insureds with respect to their respective interests in the Collateral, and (v) provide that inasmuch as the policy covers more than one insured, all terms, conditions, insuring agreements and endorsements (except limits of liability) shall operate as if there were a separate policy covering each insured. The applicable Loan Parties shall notify the Agent promptly of any casualty or condemnation event causing a loss or decline in value of the Collateral in excess of $50,000,000 and the estimated (or actual, if available) amount of such loss or decline. Upon the occurrence of an Event of Default that has not been waived, monies constituting insurance proceeds or condemnation proceeds (pursuant to the Mortgages, if any) shall be paid to the Agent and applied in accordance with Section 9.02(e) and the Collateral Documents.

Each Loan Party shall take all actions required under the Flood Laws and/or reasonably requested by the Agent or the Required Lenders, to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, to the extent applicable, providing the Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a Mortgage in favor of the Agent, for the benefit of the Secured Parties, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws.

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

(e) *Visitation Rights.* The Borrower shall, and shall cause each of its Subsidiaries to, permit any of the officers or authorized employees or representatives of the Agent or any of the Lenders (so long as no Event of Default has occurred and is continuing, at the Agent's or Lender's expense) to visit and inspect during normal business hours any of its properties and to examine and make excerpts from its books and records and discuss its business affairs, finances and accounts with its officers, all in such detail and at such times and as often as any of the Lenders may reasonably request, provided that (i) each Lender shall provide the Borrower and the Agent with reasonable notice prior to any visit or inspection, (ii) all such visits and

inspections shall be made in accordance with the Borrower's standard safety, visit and inspection procedures and (iii) no such visit or inspection shall interfere with such Borrower's normal business operation. In the event any Lender desires to conduct an audit of the Borrower or any Subsidiary of the Borrower, such Lender shall conduct such audit contemporaneously with any audit to be performed by the Agent.

(f) *Keeping of Records and Books of Account.* The Borrower shall, and shall cause each Subsidiary of the Borrower to, maintain and keep proper books of record and account which enable the Borrower and its Subsidiaries to issue financial statements in accordance with GAAP and as otherwise required by applicable Laws of any Official

Body having jurisdiction over the Borrower or any Subsidiary of the Borrower, and in which full, true and correct entries shall be made in all material respects of all its dealings and business and financial affairs.

(g) [Reserved].

(h) *Compliance With Laws; Sanctions.* The Borrower shall, and shall cause each of its Subsidiaries to, comply with all applicable Laws (other than Environmental, Health and Safety Laws which are specifically addressed in Section 8.01(i)) in all respects, provided that it shall not be deemed to be a violation of this Section 8.01(h) if any failure to comply with any Law would not result in fines, penalties, costs, other similar liabilities or injunctive relief which in the aggregate could not reasonably be expected to result in a Material Adverse Change. The Borrower shall, and shall cause each of its Subsidiaries to, maintain in effect measures or policies and procedures reasonably designed to ensure compliance by the Borrower, each of its Subsidiaries and the respective directors, officers, employees and agents of the Borrower and each of its Subsidiaries with applicable anti-corruption laws and applicable Sanctions.

(i) *Environmental, Health and Safety Matters*. The Borrower shall, and shall cause each of its Subsidiaries to (i) comply with applicable Environmental, Health and Safety Laws and Environmental, Health and Safety Orders, (ii) obtain, maintain in full force and effect and comply with the terms and conditions of all Environmental, Health and Safety Permits; (iii) take reasonable precautions to prevent Contamination on the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party; (iv) take reasonable precautions against the imposition, attachment, filing or recording of any Lien (other than Permitted Liens) or other encumbrance authorized by Environmental, Health and Safety Laws (other than Permitted Liens) to be imposed, attached or be filed or recorded against the Real Property or any other real property owned or leased by any of them; and (v) perform or pay for performance of any Remedial Actions necessary to (A) respond to any Environmental, Health and Safety Orders or Environmental, Health and Safety Complaints related to the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party, or (B) to manage Contamination at, in, on, under, emanating to or from or otherwise affecting the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party; except, in the case of each of clauses (i)-(v) above, as could not reasonably be expected to result in a Material Adverse Change; provided, in each case, that a failure to take such actions described above shall not be a violation of this Section 8.01(i) if the Borrower or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental, Health and Safety Laws.

(j) [*Reserved*].

(k) [*Reserved*].

(l) *Collateral; Further Assurances.*

(i) *Collateral Documents and Liens*.

(A) The Borrower shall and shall cause each of the Loan Parties to execute and deliver to the Agent for the benefit of the Secured Parties, the Collateral Documents reasonably necessary, or as the Agent or Required Lenders may deem necessary, to grant first priority perfected liens and security interests (subject only to Permitted Liens) in favor of the Agent for the benefit of the Secured Parties with respect to substantially all of the assets of the Loan Parties, other than Excluded Property. Notwithstanding the foregoing, the Loan Parties shall work diligently with the Agent and Lenders to confirm that all documentation has been prepared, executed and recorded which is necessary to grant a Lien on all Real Property, as extracted minerals and fixtures of the Loan Parties (other than Excluded Property) in favor of the Agent for the benefit of the Secured Parties, including opinions of local counsel in each applicable jurisdiction, with such opinions to be reasonably satisfactory in form, scope and substance to the Agent and the Required Lenders in their respective reasonable discretion, within (x) in the case of Real Property existing on the Effective Date, 120 days after the Effective Date and (y) in the case of Real Property acquired or leased after the Effective Date, 120 days after the date of such acquisition or entry into such lease, as applicable, which date, in each case, may be extended by the Agent at the direction of the Required Lenders in their reasonable discretion; provided, however, that no Loan Party shall be required to deliver Collateral Documents as to any leasehold interest held by such Loan Party in Real Property the perfection of a Lien in which requires a consent from a third party such as a Governmental Authority, landlord, fee owner or a similar party (in each case other than an Affiliate of such Loan Party) and such consent has not been received despite the fact that such Loan Party has used commercially reasonable efforts to obtain the same.

(B) The Borrower shall and shall cause each Loan Party, from time to time, at its expense, to preserve and protect the Agent's Lien on the Collateral as a continuing first priority perfected Lien, subject only to Permitted Liens and except to the extent otherwise permitted hereunder, and shall do such other acts and things as may be necessary or as the Agent or the Required Lenders may reasonably deem necessary from time to time in order to preserve, perfect and protect the Liens granted under the Loan Documents and to exercise and enforce its rights and remedies thereunder with respect to the Collateral, except to the extent otherwise permitted hereunder.

(ii) *Equity Interests in Bonding Subsidiaries*. In the event that the Borrower or any Subsidiary of the Borrower is required to pledge the equity interests of any

Bonding Subsidiary in favor of any provider of surety bonds required by the lessor of the leasehold interest held by such Bonding Subsidiary as otherwise permitted by Section 8.02(q), then prior to the granting of such lien, the Borrower shall use commercially reasonable good faith effort to grant a second priority perfected lien in such equity interests to the Agent for the benefit of the Secured Parties subject to an intercreditor agreement in form and substance reasonably satisfactory to the Agent, the Required Lenders and the Borrower.

(iii) *Requirements for Permitted Joint Ventures*. Notwithstanding the foregoing provisions of this Section 8.01(l), if a Person is a Permitted Joint Venture, neither the Borrower nor any Subsidiary of the Borrower shall be required to pledge the equity interests of such Permitted Joint Venture if and only if and to the extent that the limited liability company agreement, limited partnership agreement, joint venture agreement, general partnership agreement or other constituent documents of such Permitted Joint Venture or other material agreement related to the Investment in such Permitted Joint Venture would prohibit the granting of such Liens, provided that, (A) in the case of Knight Hawk Holdings, LLC, no later than 120 days after the Effective Date (or such longer period as may be extended by the Agent with the consent of the Required Lenders), (B) in the case of any other Person that is a Permitted Joint Venture on the Effective Date, if the value of the equity interests of such Permitted Joint Venture held by the Borrower or such Subsidiary materially increases after the Effective Date and if requested by the Agent or the Required Lenders, no later than 120 days after receipt by the Borrower of written notice from the Agent or Required Lenders of such request or (C) in the case of a Person that becomes a Permitted Joint Venture after the Effective Date, upon the date of the date that such Person becomes a Permitted Joint Venture, the equity interests of such Permitted Joint Venture shall be held by a JV Holding Company, unless the organizational documents of such Permitted Joint Venture permit the equity interests therein to be pledged as Collateral to the Agent or unless the Required Lenders have determined in their sole discretion that the transfer of such equity interests to a JV Holding Company shall not be required. For the avoidance of doubt, nothing in this Section 8.01(l) shall require any Loan Party to take any action to grant or perfect a security interest in any assets constituting Excluded Property.

(iv) *Requirements for Significant Subsidiaries*.

(A) Guarantees. Within forty-five (45) days (or such longer period as may be extended by the Agent with the consent of the Required Lenders in their reasonable discretion) after any Significant Subsidiary is formed or acquired after the Effective Date or a Subsidiary becomes a Significant Subsidiary, the Borrower shall: (i) cause each such Significant Subsidiary to execute a Guarantor Joinder pursuant to which it shall join as a Guarantor each of the documents to which the Guarantors are parties; (ii) execute and deliver to the Agent documents, modified as appropriate to relate to such Significant Subsidiary, in the forms described in Sections 7.01(a)(ii), 7.01(a)(iii) and 7.01(a)(iv) and (iii) deliver to the Agent such other documents and agreements as the Agent or Required Lenders may reasonably request.

(B) Collateral. Within forty-five (45) days (or such longer period as may be extended by the Agent with the consent of the Required Lenders in their reasonable discretion) after any Significant Subsidiary is formed or acquired after the Effective Date or a Subsidiary becomes a Significant Subsidiary, the Borrower shall cause such new Significant Subsidiary to, unless the Required Lenders otherwise agree in writing, (i) execute and deliver to the Agent a Perfection Certificate, relating to such Significant Subsidiary, (ii) pledge the equity interests (except to the extent constituting Excluded Property) it owns in any other Significant Subsidiary to the Agent for the benefit of the Secured Parties on a first priority perfected basis pursuant to a Pledge Agreement substantially in the form attached hereto as Exhibit 1.1(P)(3), (iii) cause all of the issued and outstanding capital stock, partnership interests, member interests or other equity interest of such Significant Subsidiary (except to the extent constituting Excluded Property) that are owned by another Loan Party to be pledged on a first priority perfected basis to the Agent for the benefit of the Secured Parties pursuant to the Pledge Agreements, (iv) execute and deliver to the Agent for the benefit of the Secured Parties Collateral Documents in form and substance reasonably satisfactory to the Agent, including without limitation a Security Agreement substantially in the form attached hereto as Exhibit 1.1(S)(2), Patent, Trademark and Copyright Security Agreements and Mortgages, (subject to the below proviso) necessary or reasonably requested by the Agent or Required Lenders to grant first priority perfected liens and security interests (subject only to Permitted Liens) in favor of the Agent for the benefit of the Secured Parties in substantially all of the assets of such new Significant Subsidiary, including proper financing statements under the Uniform Commercial Code of the applicable jurisdictions of organization covering the Collateral described in the relevant Collateral Documents and appropriate equity certificates and powers evidencing the Collateral pledged pursuant to the relevant Pledged Agreement(s), (v) obtain Uniform Commercial Code, lien, tax, mortgage, leasehold mortgage, and judgment searches (including searches of the applicable real estate indexes), with the results, form scope and substance of such searches to be reasonably satisfactory to the Agent, (vi) deliver opinions of legal counsel with respect to such new Significant Subsidiary, including opinions of local counsel in each applicable jurisdiction, as such opinions may be reasonably requested by the Agent or the Required Lenders and with such opinions to be reasonably satisfactory in form, scope and substance to the Agent or the Required Lenders in their respective reasonable discretion and (vii) provide the Agent with evidence that such new Significant Subsidiary has taken all actions required under the Flood Laws and/or reasonably requested by the Agent or the Required Lenders, to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral to the extent such Collateral includes any “building” or “mobile home” (each as defined in Regulation H as promulgated by the Federal Reserve Board under the Flood Laws), including, but not limited to, providing the Agent with the address and/or GPS coordinates of each structure on any real property that is or will be subject to a Mortgage in favor of the Agent, for the benefit of the Secured Parties, and, to the extent required, obtaining flood insurance for such property, structures and

contents prior to such property, structures and contents becoming Collateral; provided, however, with respect to any Real Property (other than, for the avoidance of doubt, Excluded Property) of a Significant Subsidiary that is formed or acquired after the Effective Date or of a Subsidiary that becomes a Significant Subsidiary after the Effective Date that is required to be subject to a Mortgage, and any as-extracted minerals or fixtures (as such terms are defined in the Uniform Commercial Code) which are required to be subject to a Mortgage or a Security Agreement, the requirements of this Section 8.01(l) shall be satisfied with respect to Real Property and with respect to fixtures and as extracted collateral if the Borrower and the applicable Significant Subsidiary take all steps within one-hundred twenty (120) days following the date a Subsidiary becomes a Significant Subsidiary (or such longer period as may be extended by the Agent with the consent of the Required Lenders) necessary or reasonably requested by the Agent or the Required Lenders to grant first priority perfected liens (subject only to Permitted Liens) in favor of the Agent for the benefit of the Secured Parties with respect to such Collateral.

(m) *Subordination of Intercompany Loans.* Each Loan Party agrees that any intercompany Debt, loans or advances owed by any Loan Party to any other Loan Party shall be subordinated to the payment of the Obligations.

(n) *Ratings*. The Borrower shall exercise commercially reasonable efforts to obtain and to maintain ratings from Moody’s and Standard & Poor’s for the Loans.

(o) *Post-Closing Covenants.* (i) Within sixty (60) days following the Effective Date (or such longer period as may be extended by the Agent with the consent of the Required Lenders), the Borrower shall have delivered Control Agreements with respect to each Deposit Account of the Loan Parties (other than Excluded Accounts), each duly executed by, in addition to the applicable Loan Party, the applicable financial institution, as the depositary bank, and the Agent, as the secured party.

(ii) Within one-hundred twenty (120) days following the Effective Date (or such longer period as may be extended by the Agent with the consent of the Required Lenders), the Borrower shall have delivered a fully executed Mortgage with respect to all Real Property (other than Excluded Property), including opinions of local counsel in each applicable jurisdiction, with such opinions to be reasonably satisfactory in form, scope and substance to the Agent and the Required Lenders in their respective reasonable discretion.

(iii) Within one-hundred twenty (120) days following the Effective Date (or such longer period as may be extended by the Agent with the consent of the Required Lenders), the Borrower shall have formed, with respect to Knight Hawk Holdings, LLC, a JV Holding Company and transferred all equity interests held by the Borrower and its Subsidiaries in Knight Hawk Holdings, LLC to such JV Holdings Company.

(iv) Within one-hundred twenty (120) days following the Effective Date (or such longer period as may be extended by the Agent with the consent of the Required Lenders), the Borrower shall have delivered to the Agent favorable opinions, in form and substance reasonably satisfactory to the Required Lenders, of external counsel for the applicable Loan Parties, covering certain corporate and UCC perfection matters relating to the Loan Parties organized in Kentucky, West Virginia and Virginia.

Section 8.02. *Negative Covenants.* The Borrower covenants and agrees that until payment in full of the Loans and interest thereon and satisfaction of all of the Loan Parties’ other

Obligations hereunder (other than indemnification and other contingent obligations not yet due and owing or for which no claims have been asserted), the Borrower shall, and shall cause each of its Subsidiaries to, comply with the following negative covenants:

(a) *Debt.* The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time create, incur, assume or suffer to exist any Debt, except:

(i) Debt under the Loan Documents or in respect of any of the other Obligations;

(ii) Debt (including, without limitation, letters of credit) on account of any demand, request or requirement of any Official Body for any surety bond, letter of credit or other financial assurance pursuant to any Mining Law, Reclamation Law or Environmental Health and Safety Laws, or any related Permit in an aggregate amount not to exceed $150,000,000;

(iii) [reserved];

(iv) [reserved];

(v) (A) Debt of any Loan Party payable to any other Loan Party, it being understood and agreed that such Debt is subordinated to the Obligations of the Loan Parties under the Loan Documents, (B) Debt of any Non-Guarantor Subsidiary payable to any other Non- Guarantor Subsidiary, (C) loans or guaranties from any Non-Guarantor Subsidiary to any Loan Party and (D) Debt of any Non-Guarantor Subsidiary payable to any Loan Party to the extent such Debt would constitute a permitted Investment under clause Section 8.02(n)(xxi);

(vi) Debt of the Borrower and its Subsidiaries existing on the Effective Date and included on Schedule 8.02(i) and any Permitted Refinancings thereof;

(vii) Debt of the Borrower or any Subsidiary of the Borrower under a letter of credit facility in an amount, when combined with the aggregate amount of Debt permitted pursuant to Section 8.02(a)(xii), not to exceed $300,000,000 in the aggregate so long as: (A) the purpose of such facility is to provide letters of credit necessary in the business of the Borrower and its Subsidiaries, including without limitation to secure surety and other bonds, and (B) such Debt, if secured, is only secured as permitted by clause (xii) of the definition of Permitted Liens (a "**Permitted Secured Letter of Credit Facility**");

(viii) [reserved];

(ix) Debt or other obligations of the Borrower and its Subsidiaries in respect of any capital lease (as determined in accordance with GAAP) or Debt of the Borrower and its Subsidiaries secured by Purchase Money Security Interests so long as the aggregate amount for the Borrower and its Subsidiaries of all Debt and other obligations permitted by this clause (ix) shall not exceed, at any time outstanding $125,000,000;

(x) Debt of the Borrower or any Subsidiary assumed or incurred in connection with any Permitted Acquisition or Permitted Joint Venture and any Permitted Refinancing thereof, so long as, in each case, the Borrower shall be in Pro Forma Compliance with the Senior Secured Leverage Ratio after giving pro forma effect to such Debt and the use of proceeds thereof as if such Debt was incurred or assumed at the beginning of the most recent four consecutive fiscal quarters ending prior to such assumption or incurrence for which consolidated financial statements of the Borrower have been delivered to the Agent pursuant to Section 8.03(a) or (b) (and if such Debt has a floating formula rate, such Debt shall be deemed to have an implied rate of interest for such four fiscal quarter period for purposes hereof determined by utilizing the rate which is or would be in effect with respect to such Debt as of the date of such assumption or incurrence);

(xi) subject to Section 8.02(n)(vi) and Section 8.02(q), Debt of any Bonding Subsidiary payable to the Borrower;

(xii) Debt of (i) the Securitization Subsidiaries in Permitted Receivables Financings and (ii) the Loan Parties in Permitted ABL Financings in an amount, when combined with the aggregate amount of Debt permitted pursuant to Section 8.02(a)(vii), does not exceed $300,000,000 in the aggregate;

(xiii) Debt in respect of Hedging Transactions entered into in the ordinary course of business for non-speculative purposes;

(xiv) Debt secured by Liens permitted by clause (xiv) of the definition of Permitted Liens;

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

(xvi) Debt relating to the financing of insurance policy premiums;

(xvii) other Debt in an aggregate principal amount not to exceed $20,000,000; provided that the amount of Debt permitted by this clause (xvii) that is secured shall not exceed $10,000,000; and

(xviii) Debt of Non-Guarantor Subsidiaries which, when combined with the aggregate amount of Investments permitted pursuant Section 8.02(n)(xxi), does not exceed $2,500,000 at any one time.

(b) *Liens; Guaranties.* The Borrower shall not, and shall not permit any of its Subsidiaries to, (i) at any time create, incur, assume or suffer to exist any Lien on any of its respective property or assets, tangible or intangible, now owned or hereafter acquired, except, Permitted Liens, and (ii) at any time, directly or indirectly, enter into any agreement, that prohibits or restricts the Borrower's or its Subsidiaries' ability to grant a security interest or Lien on any of the Collateral to the Agent or the Lenders in connection with this Agreement or any other Loan Document (as such Agreement or Loan Documents may be amended, restated, modified or supplemented).

Each of the Loan Parties shall not, and shall not permit any of its Subsidiaries to, at any time, directly or indirectly, become or be liable in respect of any Guaranty, or assume, guaranty, become surety for, endorse or otherwise agree, become or remain directly or contingently liable upon or with respect to any obligation or liability of any other Person, except for (i) Guaranties of the Loan Parties or their Subsidiaries permitted hereunder, including pursuant to Section 8.02(a) and Section 8.02(n), (ii) any Guaranty by any Loan Party of representations, warranties, performance covenants, or indemnities arising in connection with any sale or other disposition of assets of any Loan Party permitted by this Agreement, (iii) any existing Guaranty that is set forth on Schedule 8.02(b) and (iv) endorsements of negotiable or other instruments for deposit or collection in the ordinary course of business.

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

(i) (A) any Loan Party, other than the Borrower, may consolidate or merge into the Borrower or any other Loan Party and the security interest granted by the Borrower pursuant to the Collateral Documents shall remain in full force and effect, (B) any Non-Guarantor Subsidiary may consolidate or merge into any other Non-Guarantor Subsidiary, (C) any Non-Guarantor Subsidiary may consolidate or merge into any Loan Party, so long as such Loan Party survives such merger or consolidation and the security interest granted by the Borrower pursuant to the Collateral Documents shall remain in full force and effect, and (D) any transaction otherwise permitted by Section 8.02(d) and Section 8.02(n) shall be permitted under this Section 8.02(c);

(ii) the Subsidiaries listed on Schedule 8.02(c) may dissolve, liquidate or wind-up its affairs or become a party to any merger or consolidation;, in each case, solely to the extent expressly contemplated by and in accordance with the Plan Supplement filed with the Bankruptcy Court with respect to the Bankruptcy Cases [Doc. No. 1257] as Exhibit 6; provided that Apogee Holdco, Inc. may dissolve within 30 days of the Effective Date as contemplated in the manner described to the Agent and the Lenders prior to the Effective Date, so long as it has no material assets.

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

(1) the business acquired, or the business conducted by the Person whose ownership interests are being acquired, as applicable, shall be substantially the same as, or shall support or be complementary to, one or more line or lines of business conducted by the Loan Parties and shall comply with Section 8.02(g), in the case of any merger a Loan Party shall be the surviving entity after giving effect to such transaction and, to the extent that a Significant Subsidiary is acquired or formed in connection with or as a result of such acquisition, the Loan Parties shall promptly comply with the

provisions of Section 8.02(f) and Section 8.01(l)(iv), and in connection with such acquisition and the granting of such Liens and security interests, the Borrower shall deliver to the Agent for the benefit of the Secured Parties such opinions of counsel, certificates and such other Loan Documents as the Agent or Required Lenders may reasonably request;

(2) no Potential Default or Event of Default shall exist immediately prior to and after giving effect to such Permitted Acquisition; provided that, subject to Section 1.02(b), in the case of any Limited Condition Acquisition, at the option of the Borrower, this Section 8.02(c)(iii)(2) may be deemed satisfied so long as no Potential Default or Event of Default exists on the date the definitive agreements for such Limited Condition Acquisition are entered into;

(3) if the consideration to be paid by the Loan Parties for such Permitted Acquisition exceeds $15,000,000, at least three (3) Business Days prior to consummation of such Permitted Acquisition the Borrower shall have delivered to the Agent (x) all executed copies or drafts (with final, executed copies to be subsequently delivered as soon as available) of material agreements, documents and instruments in connection with or related to such Permitted Acquisition and (y) a certificate signed by the Secretary or an Assistant Secretary or other Responsible Officer of the Borrower evidencing a resolution of the board of directors (or other governing body) of the applicable Loan Party approving such Permitted Acquisition;

(4) the Borrower shall be in Pro Forma Compliance with the Senior Secured Leverage Ratio after giving pro forma effect to such Permitted Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to such Permitted Acquisition for which consolidated financial statements of the Borrower have been delivered to the Agent pursuant to Section 8.03(a) or (b); and

(5)the business acquired, or the business conducted by the Person whose ownership interests are being acquired, shall be located in the United States and the Person acquired (if applicable) shall be organized under the laws of any State of the United States; provided that the Borrower or any its Subsidiaries shall be permitted to consummate Permitted Acquisitions that do not satisfy the requirements of this clause (5) in an aggregate amount of up to $20,000,000;

(iv) The Borrower or any of its Subsidiaries may acquire by purchase, lease or otherwise all or substantially all of the assets or equity interests of a Securitization Subsidiary; and

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

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

(i) (A) transactions involving the sale of inventory in the ordinary course of business, (B) any sale, transfer, lease, sublease or license of assets in the ordinary course of business which are no longer necessary or required in the conduct of any Loan Party's business or the grant in the ordinary course of business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests, (C) any sale of accounts arising from the export outside of the U.S. of goods or services by any Loan Party, provided that (x) at the time of any such sale, no Event of Default shall exist or shall result from such sale, (y) such sale shall be for fair market value and (z) the consideration to be paid to the Borrower and its Subsidiaries as permitted by this clause (C) shall consist solely of cash, (D) any lease, sublease or license of assets (with a Loan Party as the lessor, sublessor or licensor) in the ordinary course of business, provided that the interests of the Loan Parties in any such lease, sublease or license are subject to the Agent's first priority security interest subject to Permitted Liens, and (E) transfers of condemned property as a result of the exercise of "eminent domain" or other similar policies to the respective Official Body or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of properties that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement;

(ii) (x) any sale, transfer or lease of assets by any Subsidiary of the Borrower which is a Guarantor to any other Loan Party (y) any sale, transfer or lease of assets by any Non-Guarantor Subsidiary to any Loan Party or (z) any sale, transfer or lease of assets by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary;

(iii) [reserved];

(iv) any purchase or sale or other transfer (including by capital contribution) of Receivables Assets pursuant to a Permitted Receivables Financing;

(v) any sale, transfer or lease of assets, other than those specifically excepted pursuant to clauses (i) through (iv) above or pursuant to clause (vi) below, provided that with respect to all such sales, transfer or lease of assets, pursuant to this Section 8.02(d)(v): (A) at the time of any such disposition, no Event of Default shall exist or shall result from such disposition, (B) such sale, transfer or lease shall be for fair market value, (C) the consideration to be paid to the Borrower and its Subsidiaries as permitted by this clause (v) shall consist of cash in an amount that is not less than 85% of such

consideration; provided, however, for purposes of this clause (C), the following will be deemed to be cash: (1) any reclamation and other liabilities arising under applicable Permits, applicable workers' compensation acts and the federal black lung laws and other liabilities associated with the applicable employees, in each case that are assumed by the transferee with respect to the applicable sale, transfer or lease pursuant to a customary assumption or similar agreement and (2) any letters of credit with respect to the reimbursement of which the Borrower or its Subsidiaries are obligated, to the extent such letters of credit relate to the assets or business subject to such sale, transfer or lease and are cancelled no later than 60 days following such sale, transfer or lease and for which the transferee with respect to the applicable sale, transfer or lease has guaranteed or indemnified the reimbursement of any drawing thereunder on customary terms, (D) if the consideration to be paid to the Borrower and its Subsidiaries per any such sale, transfer or lease exceeds $10,000,000, the Borrower shall have delivered to the Agent a certificate indicating compliance with the requirements of this Section 8.02(d)(v) prior to consummating such sale, transfer or lease, (E) the Net Cash Proceeds for all such sales, transfers or leases, in excess of $10,000,000, in the aggregate, are applied as a mandatory prepayment of the Loans in accordance with, and to the extent required under, the provisions of Section 5.06(b)(i) above; provided that (1) no such mandatory prepayment shall be required if and to the extent such Net Cash Proceeds are applied within the date occurring 180 days after receipt thereof (or, if the Borrower or any Subsidiary enters into a legally binding commitment to reinvest such Net Cash Proceeds within 180 days following receipt thereof, within the later of (i) 180 days following receipt thereof and (ii) 90 days of the date of such legally binding commitment) to the purchase by the Borrower or a Subsidiary of the Borrower, as the case may be, of substitute assets (such Net Cash Proceeds, "**Reinvestment Deferred Amounts**") and (2) in the case of any such sale, transfer or lease of assets for consideration in excess of $10,000,000, the Borrower shall have delivered to the Agent a certificate of the chief financial officer or the treasurer of the Borrower, certifying as to (x) the amount of Net Cash Proceeds and (y) the fact that the Borrower or a Subsidiary of the Borrower, as the case may be, shall invest such Net Cash Proceeds to acquire or repair assets useful in the business of the Borrower and its Subsidiaries within 180 days after receipt thereof (or, if the Borrower or any Subsidiary enters into a legally binding commitment to reinvest such Net Cash Proceeds within 180 days following receipt thereof, within the later of (i) 180 days following receipt thereof and (ii) 90 days of the date of such legally binding commitment) and (F) the aggregate Net Cash Proceeds received from any sales, transfers or leases (or series of related sales, transfers or leases) pursuant to this Section 8.02(d)(v) shall not exceed $100,000,000; provided that sales, transfers and leases (or series of related sales, transfers or leases) resulting in aggregate Net Cash Proceeds in excess of $100,000,000 shall be permitted under this Section 8.02(d)(v) so long as (x) such excess Net Cash Proceeds are applied as a mandatory prepayment of the Loans in accordance with the provisions of Section 5.06(b)(i) above (without giving effect to the reinvestment right described above or in Section 5.06(b)(ii) and (y) the aggregate Net Cash Proceeds received from any sales, transfers or leases (or series of related sales, transfers or leases) pursuant to this Section 8.02(d)(v) shall not exceed $200,000,000;

(vi) any sale, transfer, lease or disposition of assets as part of an Investment which is either (y) an Investment in a Permitted Joint Venture which is permitted by clause (1) of Section 8.02(f), or (z) an Investment permitted by Section 8.02(n);

(vii) any transactions otherwise permitted by Section 8.02(c) or Section 8.02(i);

(viii) [reserved]; and

(ix) those sales, transfers or other dispositions set forth on Schedule 8.02(d).

(e) *Affiliate Transactions.* The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or carry out any transaction (including purchasing property or services from or selling property or services to) with any Affiliate of the Borrower unless (1) such transaction is not otherwise prohibited by this Agreement and (2) such transaction is either (a) entered into upon fair and reasonable arm's-length terms and conditions or (b) would be entered into by a prudent Person in the position of such Loan Party; provided, however that this Section 8.02(e) shall not prohibit (i) the consummation of the Transaction, (ii) any dividend or distribution which is not otherwise prohibited by this Agreement, (iii) any transaction described on Schedule 8.02(e) (including any modification, extension or renewal thereof on terms no less favorable to the parties thereto than the terms of such transaction as described on such Schedule) which is not otherwise prohibited by this Agreement, and (iv) any transaction provided for in, or in connection with, a Permitted Receivables Financing.

(f) *Subsidiaries, Partnerships and Joint Ventures.* The Borrower shall not, and shall not permit any of its Subsidiaries to, own or create directly or indirectly any Subsidiaries other than (i) Non-Guarantor Subsidiaries, including any Securitization Subsidiary which is the subject of clause (iii) below) which are not Significant Subsidiaries, (ii) any Significant Subsidiary which has complied with Section 8.01(l), and (iii) any Securitization Subsidiary whose equity interests are pledged to the Agent for the benefit of the Secured Parties (pursuant to the applicable Pledge Agreement) and which has otherwise complied with Section 8.01(l).

Neither the Borrower nor any Subsidiary of the Borrower shall become or agree to become a joint venturer or hold a joint venture interest in any joint venture:

(1) except that the Loan Parties may make an Investment in a Permitted Joint Venture, so long as the Borrower and its Subsidiaries at all times are in compliance with all requirements of the following clauses (A) through (G) or to the extent otherwise permitted under Section 8.02(n):

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

(B) the Investment made in a Permitted Joint Venture permitted under clause(1)(A) immediately above is either (y) of the type described in clauses (i), (ii) or (iv) of the definition of Investment, or (z) of the type described in clauses (iii) or (v) of the definition of Investment and, on the date such Investment is made, the amount of the Guaranty or other obligation, as the case may be, is reasonably estimable;

(C) other than the amount of an Investment permitted under clause (1)(B) immediately above of the type described in clause (iii) or clause (v) of the definition of Investment, there is no recourse to any Loan Party or any Subsidiary

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

(D) the Borrower shall be in Pro Forma Compliance with the Senior Secured Leverage Ratio after giving pro forma effect to the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the Investment for which consolidated financial statements of the Borrower are available (provided that, for the avoidance of doubt, any EBITDA of such Permitted Joint Venture shall not be included in such calculation of the Senior Secured Leverage Ratio);

(E) to the extent the Investment in any such Permitted Joint Venture exceeds $15,000,000, at least three (3) Business Days prior to making any Investment in a Permitted Joint Venture which is otherwise permitted by this clause (1) of this Section 8.02(f), the Borrower shall have delivered to the Agent (x) all executed copies or drafts (with final, executed copies to be subsequently delivered as soon as available) of material agreements, documents and instruments in connection with or related to such Investment and (y) a certificate signed by the Secretary or an Assistant Secretary or other Responsible Officer of the Borrower evidencing a resolution of the board of directors (or other governing body) of the applicable Loan Party approving such Investment;

(F) the equity interests owned, directly or indirectly, by the Borrower in such Permitted Joint Venture (including Knight Hawk Holdings, LLC but excluding any other Permitted Joint Venture existing on the Effective Date unless the value of such Permitted Joint Venture materially increases after the Effective Date and the Agent or the Required Lenders request that the equity interests owned by the Borrower or a Subsidiary in such Permitted Joint Venture be transferred to a JV Holding Company) shall be held by a JV Holding Company; provided, that such requirement shall not apply to any Permitted Joint Venture as to which the organizational documents of such Permitted Joint Venture permit the equity interests therein to be pledged as Collateral to the Agent or as to which the Required Lenders have determined in their discretion that the transfer of such equity interests to a JV Holding Company shall not be required; and

(G) no Potential Default or Event of Default shall exist immediately prior to and after giving effect to each Investment in a Permitted Joint Venture which is otherwise permitted by this clause (1) of this Section 8.02(f);

(g) *Continuation of or Change in Business.* The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the business of the Loan Parties and their Subsidiaries, substantially as conducted and operated by the Loan Parties and their Subsidiaries, taken as a whole, as of the Effective Date or business that supports or is complimentary to such business, and the Loan Parties shall not permit any material change in the nature of such business.

(h) *[Reserved]*.

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

(i) [reserved];

(ii) [reserved];

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

(iv) (A) so long as no Event of Default shall exist immediately prior to or after giving effect to such stock purchase or redemption, stock purchases or redemptions (other than repurchases described in clause (B) of this Section 8.02(i)(iv)) in connection with the rights of employees or members of the board of directors of the Borrower or any of its Subsidiaries of any capital stock or equity interests issued pursuant to an employee or board of directors equity subscription agreement, equity option agreement or equity ownership arrangement or other compensation plan permitted to be issued hereunder, provided that the aggregate consideration of such stock purchase and redemptions made pursuant to this clause (A) shall not exceed $5,000,000 and (B) repurchases of equity interests deemed to occur upon (1) the exercise of stock options if the equity interests represent a portion of the exercise price thereof or (2) the withholding of a portion of equity interests issued to employees and other participants under an equity compensation program of the Borrower and its Subsidiaries, in each case to cover withholding tax obligations of such persons in respect of such issuance;

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

(vi) the Borrower may declare and make dividends or other distributions in an amount not to exceed $75,000,000 in the aggregate; provided that, commencing after the date for which financial statements for the fiscal quarter ending September 30, 2016 are delivered pursuant to Section 8.03(a), additional dividends and distributions may be paid (x) at any time the Senior Secured Leverage Ratio is less than 2.50:1.00 after giving pro

forma effect to such dividend or distribution and the transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they had occurred at the beginning of the most recent four consecutive fiscal quarters ending prior to the making of such dividends or distributions for which consolidated financial statements of the Borrower are delivered pursuant to Section 8.03(a) or (b) and (y) so long as no PIK Interest has been paid under this Agreement (or, if PIK Interest has been paid, the Borrower shall have made a PIK Interest Catch-Up Payment after the then most recently occurred Interest Payment Date).

(j) [*Reserved*].

(k) *Payment of Other Debt.* The Borrower shall not, and shall not permit any of its Subsidiaries to, prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity in any manner any Debt that is owed to a third party that is subordinated to the Obligations, except:

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

(ii) for a Permitted Refinancing thereof; or

(iii) so long as no Event of Default has occurred and is continuing, other payments of or in respect of any such Debt in an aggregate amount not to exceed $20,000,000.

(l) *No Restriction in Agreements on Dividends or Certain Loans.* The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into or be bound by any agreement (i) which prohibits or restricts, in any manner the payment of dividends by any of its Subsidiaries (whether in cash, securities, property or otherwise), or (ii) which prohibits or restricts in any manner the making of any loan to the Borrower by any of its Subsidiaries or payment of any Debt or other obligation owed to any Loan Party, other than, in each case, (A) restrictions applicable to a Securitization Subsidiary in connection with a Permitted Receivables Financing, (B) restrictions imposed by any applicable law, rule or regulation (including applicable currency control laws and applicable state or provincial corporate statutes restricting the payment of dividends or any other distributions in certain circumstances) and (C) restrictions in effect under any Debt outstanding on the Effective Date or any customary restrictions contained in documents governing any other Debt permitted under Section 8.02(a).

(m) [*Reserved*].

(n) *Loans and Investments.* The Borrower shall not, and shall not permit any of its Subsidiaries to, at any time make any Investment (other than bonds required in the ordinary course of business of the Borrower, such as, and without limitation, surety bonds, royalty bonds or bonds securing performance by the Borrower or a Subsidiary of the Borrower under bonus bids), notes or securities of, or any partnership interest (whether general or limited) or limited liability company interest in, or any other Investment or interest in, or make any capital

contribution to, any other Person, or agree, become or remain liable to do any of the foregoing, except:

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

(ii) (A) Investments by the Borrower or any of its Subsidiaries in any Loan Party and (B) Investments by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary;

(iii) (A) Permitted Investments and (B) any Investments arising in connection with any Hedging Transactions;

(iv) Investments in Permitted Joint Ventures as permitted by Section 8.02(f);

(v) [reserved];

(vi) loans by the Borrower to any Bonding Subsidiary; provided, however that (x) prior to any loan being made to any Bonding Subsidiary, such loan shall be evidenced by a note, reasonably satisfactory to the Agent at the written direction of the Required Lenders, and such note shall be pledged pursuant to the applicable Collateral Document to the Agent for the benefit of the Secured Parties, and (y) any loans by the Borrower to any Bonding Subsidiary shall in each and every case be subject to Section 8.02(q);

(vii) [reserved];

(viii) other Investments, in connection with or related to the operations of the Borrower and its Subsidiaries, not exceeding $30,000,000;

(ix) Investments arising as a result of Permitted Receivables Financings;

(x) [reserved];

(xi) [reserved];

(xii) [reserved];

(xiii) [reserved];

(xiv) Investments by Borrower of the type described in clause (i) of the definition of Investment in any Bonding Subsidiary, provided that any such Investments by the Borrower in any Bonding Subsidiary shall in each case be subject to Section 8.02(q);

(xv) any transaction which is an Investment permitted by Section 8.02(c) (including, without limitation, any Permitted Acquisition), Section 8.02(d) (including,

without limitation, Investments arising out of the receipt by Borrower or any Subsidiary of noncash consideration for the sale of assets permitted thereunder) or Section 8.02(i);

(xvi) any guaranty which is permitted under Section 8.02(b);

(xvii) [reserved];

(xviii) (A) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and (B) loans or advances to employees made in the ordinary course of business and consistent with past practice, provided that such loans and advances to all such employees do not exceed an aggregate amount of $5,000,000 outstanding at any time;

(xix) Investments existing as of the Effective Date and set forth on Schedule 8.02(n), and extensions, renewals, modifications, restatements or replacements thereof; provided that no such extension, renewal, modification, restatement or replacement shall increase the amount of the original loan, advance or investment, except by an amount equal to any premium or other reasonable amount paid in respect of the underlying obligations and fees and expenses incurred in connection with such extension, renewal, modification, restatement or replacement;

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

(xxi) Investments by the Borrower and the Guarantors in Non-Guarantor Subsidiaries, which, when combined with the aggregate amount of Debt permitted pursuant Section 8.02(a)(xviii), does not exceed $2,500,000 at any time.

(o) [*Reserved*].

(p) *Changes in Organizational Documents and Loan Party Information*. (i) The Borrower shall not, and shall not permit any of its Subsidiaries that are Loan Parties to, amend in any respect its certificate of incorporation (including any provisions or resolutions relating to capital stock), by-laws, certificate of limited partnership, partnership agreement, certificate of formation, limited liability company agreement or other organizational documents, without providing (A) in the case of the Borrower, at least ten (10) calendar days' prior written notice to the Agent and the Lenders and (B) in the case of any other Loan Party, prior written notice to the Agent and the Lenders and, in the event such change would be materially adverse to the Lenders as reasonably determined by the Agent or Required Lenders, obtaining the prior written consent of the Required Lenders; provided, however, that this Section 8.02(p) shall not require the consent of the Required Lenders to any such change to the limited liability company agreement or other organizational documents of any Securitization Subsidiary made to facilitate any Permitted Receivables Financing.

(ii) The Borrower shall not, and shall not permit any of its Subsidiaries that are Loan Parties to, effect any change (A) in its legal name, (B) in the location of its chief

executive office, (C) in its identity or organizational structure, (D) in its Federal Taxpayer Identification Number (or equivalent thereof) or organizational identification number, if any, or (E) in its jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), unless it shall have given the Agent prior written notice thereof (or, solely in the case of the Borrower, ten calendar days' prior written notice thereof) clearly describing such change and providing such other information in connection therewith as the Agent or Required Lenders may reasonably request.

(q) *Transactions With Respect to the Bonding Subsidiaries.*

(i) [reserved].

(ii) Except as otherwise expressly permitted under this Agreement, the Borrower shall not permit any Bonding Subsidiary to (x) own any assets other than a leasehold interest, as lessee, in a coal lease where the lessor is a Person that is not an Affiliate of the Borrower and cash and marketable securities necessary to assure either the lessor of such leasehold interest of the performance of all obligations by such Bonding Subsidiary thereunder or to assure the provider of surety bonds described in the following clause (y) that such Bonding Subsidiary is able to perform its obligations to such provider under the described surety bonds; and (y) incur any Debt or other obligation or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) except those to the lessor of the coal lease owned by such Bonding Subsidiary and those in favor of the provider of the surety bonds which provide payment assurances to such lessor under the coal lease owned by such Bonding Subsidiary related to the cost of acquiring such leasehold interest, the bonus bid and royalty payments thereunder and the costs and expenses incidental to such lease; provided, however that in lieu of any surety bond described in the preceding clause (ii) such Bonding Subsidiary may request that the Borrower obtain a letter of credit on behalf of such Bonding Subsidiary and such Bonding Subsidiary may incur reimbursement obligations in connection therewith.

Section 8.03. *Reporting Requirements.* The Borrower covenants and agrees that until payment in full of the Loans and interest thereon, satisfaction of all of the Loan Parties' other Obligations hereunder and under the other Loan Documents (other than indemnification and other contingent obligations not yet due and owing or for which no claim has been made) and termination of the Commitments, the Borrower will furnish or cause to be furnished to the Agent, for delivery to each of the Lenders:

(a) *Quarterly Financial Statements.* Within forty-five (45) calendar days after the end of each of the first three fiscal quarters in each fiscal year (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), financial statements of the Borrower and its Subsidiaries, consisting of a consolidated balance sheet as of the end of such fiscal quarter, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the fiscal quarter then ended and the fiscal year through that date, all in reasonable detail and certified (subject to normal year-end audit adjustments) by the Chief Executive Officer, President, Treasurer or Chief

Financial Officer of the Borrower as having been prepared in accordance with GAAP, consistently applied, and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year. The Borrower will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 8.03(a) if within forty-five (45) days after the end of its fiscal quarter (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), the Borrower delivers to the Agent (for delivery to each of the Lenders) a copy of the Borrower's Form 10Q as filed with the SEC and the financial statements contained therein meet the requirements described in this Section.

(b) *Annual Financial Statements.* Within ninety (90) days after the end of each fiscal year of the Borrower (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), financial statements of the Borrower and its Subsidiaries consisting of a consolidated balance sheet as of the end of such fiscal year, related consolidated statements of income and stockholders' equity and related consolidated statement of cash flows for the fiscal year then ended, all in reasonable detail and setting forth in comparative form the financial statements as of the end of and for the preceding fiscal year, and certified, in the case of the consolidated financial statements, by independent certified public accountants of nationally recognized standing reasonably satisfactory to the Required Lenders (it being understood and agreed that Ernst & Young LLP is reasonably satisfactory). The certificate or report of accountants shall be free of qualifications (other than (i) any consistency qualification that may result from a change in the method used to prepare the financial statements as to which such accountants concur and (ii) any "going concern" or like qualifications as may be required as a result of a projected failure to comply with a financial covenant in any Permitted ABL Financing or an upcoming maturity date under the Facility or any Working Capital Facility that is scheduled to occur within one (1) year of the time the report and opinion are delivered) and shall not indicate the occurrence or existence of any event, condition or contingency which would materially impair the prospect of payment or performance of any covenant, agreement or duty of any Loan Party under any of the Loan Documents. The Borrower will be deemed to have complied with the delivery requirements with respect to the consolidated financial statements required to be delivered under this Section 8.03(b) if within ninety (90) days after the end of its fiscal year (or such earlier date, from time to time established by the SEC in accordance with the Securities Exchange Act of 1934, as amended), the Borrower delivers to the Agent (for delivery to each of the Lenders) a copy of the Borrower's Annual Report and Form 10-K as filed with the SEC and the financial statements and certification of public accountants contained therein meet the requirements described in this Section.

(c) *Certificate of the Borrower.* Concurrently with any delivery of financial statements under Section 8.03(a) and (b), a certificate of the Borrower signed by a Responsible Officer (a "**Compliance Certificate**"), substantially in the form of Exhibit 8.03(c): (i) confirming that, except as described pursuant to Section 8.03(e)(i), no Event of Default or Potential Default exists and is continuing on the date of such Compliance Certificate, (ii) containing a list of each Significant Subsidiary and each Non-Guarantor Subsidiary (and whether such Subsidiary is a Bonding Subsidiary, an Immaterial Subsidiary, a Securitization Subsidiary, a Foreign Subsidiary or a non-wholly owned Subsidiary), other than those set forth

on Schedule 6.2 and (iii) confirming that each Significant Subsidiary has joined the Loan Documents in accordance with the requirements of Section 8.01(l).

(d) *SEC Website.* Reports required to be delivered pursuant to Sections 8.03(a)(i) and 8.03(b) above shall be deemed to have been delivered on the date on which such report is posted on the SEC's website at www.sec.gov, and such posting shall be deemed to satisfy the reporting requirements of Sections 8.03(a)(i) and 8.03(b).

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

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

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

(f) *Certain Events.* Written notice to the Agent for distribution to the Lenders:

(i) as required by Section 8.02(c), with respect to any proposed acquisition of assets pursuant to such Section;

(ii) of the occurrence of any event for which the Borrower is required to make a mandatory prepayment pursuant to Section 5.06(b);

(iii) within the time limits set forth in Section 8.02(p), any material amendment to the organizational documents of any Loan Party (for purposes of the foregoing, it shall be deemed material for, among other things, any amendment to affect the name of the entity, its state of formation or its outstanding equity interests or the transferability thereof) and also within such time limits of the other notices required by such Section; and

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

(g) *Environmental, Health and Safety Matters*. Reasonably prompt written notice upon Borrower or applicable Subsidiary obtaining actual knowledge of any of the following which has resulted or could reasonably be expected to result in a Material Adverse Change: (A) the existence of Contamination; (B) the receipt by Borrower or any of its Subsidiaries of an Environmental, Health and Safety Claim or an Environmental, Health and Safety Complaint; (C) the imposition, attachment, filing or recording against the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party of a Lien (other than a Permitted Lien) or other encumbrance authorized under Environmental, Health and Safety Laws; (D) the inability to obtain or renew an Environmental, Health and Safety Permit, a notice from an Official Body that it has, will or intends to suspend, revoke or adversely amend or alter, in whole or in part, any Environmental, Health and Safety Permit or knowledge that a Person has filed a suit or claim or instituted a proceeding challenging the application for, or the modification, amendment or issuance of any Environmental, Health and Safety Permit; or (E) any violation of Environmental, Health and Safety Laws, Environmental, Health and Safety Permits or Environmental, Health

and Safety Orders by any of Borrower or any of its Subsidiaries; provided, in each case, that a failure to provide such written notice shall not be a violation of this Section 8.03(g) if the Borrower or the applicable Subsidiary is in good faith reasonably contesting such matter in the applicable jurisdiction in accordance with applicable Environmental, Health and Safety Laws.

(h) *Other Reports and Information.*

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

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

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

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

(i) *Platform.* The Borrower hereby acknowledges that (i) the Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "**Platform**") and (ii) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 13.10); (y) all Borrower Materials marked "PUBLIC"" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Agent shall be entitled to treat any Borrower Materials that are not marked 'PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

ARTICLE 9
DEFAULT

Section 9.01. *Events of Default.* An Event of Default shall mean the occurrence or existence of any one or more of the following events or conditions (whatever the reason therefor and whether voluntary, involuntary or effected by operation of Law):

(a) *Payments Under Loan Documents*. The Borrower shall fail to pay (i) any principal of any Loan (including scheduled installments, mandatory prepayments, or the payment due at maturity) when due hereunder within one (1) Business Day after such amount becomes due or (ii) any interest on any Loan or any fee owing hereunder or under the Agent Fee Letter within three (3) Business Days after such interest or fee becomes due in accordance with the terms hereof or thereof.

(b) *Breach of Warranty*. Any representation or warranty made at any time by the Borrower herein or by any of the Loan Parties in any other Loan Document, or in any certificate, other instrument or statement furnished pursuant to the provisions hereof or thereof, shall prove to have been false or incorrect in any material respect as of the time it was made or furnished.

(c) *Breach of Negative Covenants, Certain Other Covenants or Visitation Rights*. Any of the Loan Parties shall default in the observance or performance of any covenant contained in Section 8.01(a), Section 8.01(e), Section 8.02, or Section 8.03(e)(i).

(d) [Reserved].

(e) *Breach of Other Covenants.*

(i) Any of the Loan Parties shall fail to timely perform the covenants set forth in Section 8.01(l)(iv), Section 8.03(a), Section 8.03(b) or Section 8.03(c) and such default shall continue unremedied for a period of fifteen (15) days after the earlier of (x) any senior officer of any Loan Party becomes aware of the occurrence thereof or (y) the date upon which the Borrower has received written notice of such failure from the Agent.

(ii) Any of the Loan Parties shall default in the observance or performance of any other covenant, condition or provision hereof or of any other Loan Document and such default shall continue unremedied for a period of thirty (30) days after the earlier of (x) any officer of any Loan Party becomes aware of the occurrence thereof or (y) the date upon which the Borrower has received written notice of such default from the Agent.

(f) *Defaults in Other Agreements or Debt; Bonding Matters*.

(i) A default or event of default shall occur at any time under the terms of any other agreement involving borrowed money or the extension of credit or any Debt under which any Loan Party or Subsidiary of any Loan Party (other than any Non-Guarantor Subsidiary) may be obligated as a borrower, guarantor, counterparty or other party in excess of $35,000,000 in the aggregate, and such default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto) any

indebtedness or other obligation when due (whether at stated maturity, by acceleration or otherwise) or if such default or event of default permits or causes (or with the giving of notice would permit or cause) the acceleration of any indebtedness or other obligation or the termination of any commitment to lend in amount in excess of $35,000,000.

(ii) One or more surety, reclamation or similar bonds securing obligations of the Borrower or any Subsidiary of the Borrower (or any required guaranties thereof or required letters of credit with respect thereto) with an aggregate face amount of $50,000,000 or more shall be actually terminated, suspended or revoked prior to the full and complete satisfaction or discharge of such obligations by the Borrower or any Subsidiary of the Borrower and not replaced within 30 days of such termination, suspension or revocation; provided that the Borrower or any Subsidiary shall be permitted to replace such surety bonds with self-bonding obligations to the extent permitted by any Person to which satisfaction of the obligations secured by such bonds are owed prior to full satisfaction of the obligations secured by such bonds.

(g) *Judgments or Orders*. Any judgments or orders (including with respect to any Environmental Health and Safety Claims, Environmental Health and Safety Complaints, or Environmental Health and Safety Orders) (x) for the payment of money in excess of $35,000,000 in the aggregate shall be entered against any Loan Party or any Subsidiary of any Loan Party by a court having jurisdiction in the premises or (y) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change shall be entered against any Loan Party or Subsidiary thereof, which judgment, in either case, is not discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date of entry; provided, however, that any such judgment or order under subclause (x) of this clause (g) shall not be an Event of Default under this Section 9.01(g) if and for so long as the amount of such judgment or order in excess of $35,000,000 is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof (and such insurer has been notified of the potential claim and does not dispute coverage).

(h) *Loan Document Unenforceable*. Any of the Loan Documents shall cease to be legal, valid and binding agreements enforceable against any Loan Party executing the same or such party's successors and assigns (as permitted under the Loan Documents) in accordance with the respective terms thereof or shall in any way be terminated (except in accordance with its terms) or become or be declared ineffective or inoperative or shall in any way be challenged or contested or cease to give or provide the respective Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby;

(i) *Uninsured Losses; Proceedings Against Assets*. There shall occur any material uninsured damage to or loss, theft or destruction of any of the Collateral in excess of $35,000,000 (it being understood that the amount of deductibles payable in connection with such claim shall not be included in such threshold) or the Collateral or any other of the Loan Parties' or any of their Subsidiaries' assets in excess of $35,000,000 in the aggregate are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter;

(j) [Reserved];

(k) [Reserved];

(l) *Events Relating to Plans and Benefit Arrangements*. Any of the following occurs, in each case, which individually or in the aggregate, could reasonably be expected to have a Material Adverse Change: (i) any Reportable Event, which could reasonably be expected to constitute grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan or (iv) the Borrower or any member of the ERISA Group shall fail to make any contributions when due to a Plan or a Multiemployer Plan;

(m) [Reserved];

(n) *Change of Control*. (i) Any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) 35% or more of the voting capital stock of the Borrower; or (ii) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of the Borrower on the first day of such period, (2) were nominated for election by the Borrower, or (3) were approved for appointment by the Board shall cease to constitute a majority of the board of directors of the Borrower, provided that the appointment of any directors of the Borrower pursuant to the Plan of Reorganization shall not result in an Event of Default;

(o) *Involuntary Proceedings*. A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Loan Party or Material Subsidiary of a Loan Party in an involuntary case under any applicable Debtor Relief Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of such Loan Party or Subsidiary for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(p) *Voluntary Proceedings*. Any Loan Party or Material Subsidiary of a Loan Party shall commence a voluntary case under any applicable Debtor Relief Law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or other similar official) of itself or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing.

Section 9.02. *Consequences of Event of Default.* (a) *Events of Default Other than Bankruptcy, Insolvency or Reorganization Proceedings.* If an Event of Default shall occur and

be continuing, the Agent, at the written direction of the Required Lenders may, and upon the request of the Required Lenders, shall, by written notice to the Borrower, take one or more of the following actions: (i) declare the unpaid principal amount of the Term Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Debt of the Borrower to the Lenders hereunder and thereunder to be forthwith due and payable, and the same shall thereupon become and be immediately due and payable to the Agent for the benefit of each Lender without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, or (ii) exercise rights and remedies in respect of the Collateral in accordance with Section 11 of each Security Agreement and/or the comparable provisions of any other Collateral Document.

(b) *Bankruptcy, Insolvency or Reorganization Proceedings*. If an Event of Default specified under Section 9.01(o) or 9.01(p) shall occur, the unpaid principal amount of the Loans then outstanding and all interest accrued thereon, any unpaid fees and all other Debt of the Borrower to the Lenders under the Loan Documents shall be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.

(c) *Set-off*. If an Event of Default shall have occurred and be continuing, each Lender and its Affiliates which has agreed in writing to be bound by the provisions of Section 5.03 is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the Obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or Affiliate, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Debt. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

(d) *Suits, Actions, Proceedings*. If an Event of Default shall occur and be continuing and if the Agent or the Required Lenders shall have accelerated the maturity of the Term Loans pursuant to any of the foregoing provisions of this Section 9.02, then the Agent or any Lender, if owed any amount with respect to such Term Loans, may, to the extent permitted by Law, proceed to protect and enforce its rights by suit in equity, action at law and/or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement or the other Loan Documents, including as permitted by applicable Law the obtaining of the ex parte appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Agent or the Lenders; and

(e) *Application of Proceeds*. From and after the date on which the Agent has taken any action pursuant to this Section 9.02 and until all Obligations of the Loan Parties under the Loan Documents (other than indemnification or other contingent obligations for which no amount is due and owing) have been paid in full, any and all proceeds received by the Agent from the sale or other disposition of the Collateral, or any part thereof, or the exercise of any remedy by the Agent or any Lender from the exercise of any remedy by the Agent or any Lender shall be applied as follows:

(i) *first*, to ratably reimburse the Agent and the Lenders for all costs, expenses, indemnities and disbursements, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by the Agent or the Lenders in connection with realizing on the Collateral or collection of any Obligations of any of the Loan Parties under any of the Loan Documents, including advances made by the Lenders or any one of them or the Agent for the reasonable maintenance, preservation, protection or enforcement of, or realization upon, the Collateral, including advances for taxes, insurance, repairs and the like and reasonable expenses incurred to sell or otherwise realize on, or prepare for sale or other realization on, any of the Collateral;

(ii) *second*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent) payable to the Agent in its capacity as such;

(iii) *third*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders), ratably among them in proportion to the respective amounts described in this clause third payable to them;

(iv) *fourth*, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause fourth payable to them;

(v) *fifth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause fifth held by them; and

(vi) *sixth*, the balance, if any, to the Borrower or as required by Law.

(f) *Other Rights and Remedies*. In addition to all of the rights and remedies contained in this Agreement or in any of the other Loan Documents (including the Mortgages), the Agent shall have all of the rights and remedies of a secured party under the Uniform Commercial Code or other applicable Law, all of which rights and remedies shall be cumulative and non-exclusive, to the extent permitted by Law. The Agent may, and upon the request of the Required Lenders shall, exercise all post-default rights granted to the Agent and the Lenders under the Loan Documents or applicable Law.

(g) *Notice of Sale*. Any notice required to be given by the Agent of a sale, lease, or other disposition of the Collateral or any other intended action by the Agent, if given ten (10)

days prior to such proposed action, shall constitute commercially reasonable and fair notice thereof to the Borrower and each other Loan Party.

ARTICLE 10
THE AGENT

Section 10.01. *Appointment and Authority*. Each of the Lenders hereby irrevocably appoints the Agent to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent in such capacities to take such actions on its behalf and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Concurrently herewith, each Lender directs Agent, in each of its capacities, and Agent, in each if its capacities, is authorized to enter into the Loan Documents and any other related agreements, including the No Proceedings Letter, in the forms presented to the Agent. The provisions of this Article 10 are solely for the benefit of the Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other

implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.02. *Rights as a Lender*. If applicable, the Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

Section 10.03. *Exculpatory Provisions.*

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, covenants, functions, obligations, responsibilities or liabilities, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, including in each case, without limitation, any expression of approval or satisfaction, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed

in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and in the absence of such direction or consent may refrain from taking any such discretionary actions or exercising any such discretionary power, provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) at the direction, with the consent or at the request of (or non-objection by) the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 13.01 and 9.02), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

(c) The Agent and each of its officers, directors, employees, advisors, agents, attorneys-in-fact and affiliates shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report, statement or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the value, validity, enforceability, effectiveness, sufficiency or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or for the failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder, or (v) the satisfaction of any condition set forth in Article 7 or elsewhere herein.

(d) No provision of this Agreement or any related document shall require the Agent to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it shall have grounds to believe that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(e) In no event shall the Agent be responsible or liable for special, indirect, exemplary, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit).

(f) The Agent shall not be liable for failing to comply with its obligations under this Agreement in so far as the performance of such obligations is dependent upon the timely receipt

of instructions and/or other information from any other person which are not received or not received by the time required.

(g) The Agent shall not be required to take any action under this Agreement or any related document if taking such action (i) would subject the Agent to a tax in any jurisdiction where it is not then subject to a tax, or (ii) would require the Agent to qualify to do business in any jurisdiction where it is not then so qualified.

(h) The Agent shall not have any duty or responsibility in respect of (i) creating, monitoring or maintaining the perfection, continuation of perfection or the creating, sufficiency or validity of any security interest in or related to the Collateral, (ii) the acquisition or maintenance of any insurance or (iii) the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral. The Agent shall be authorized to file any financing or continuation statements or record any documents or instruments in any public office at any time or times or otherwise perfect or monitor or maintain any security interest in the Collateral.

(i) In no event shall the Agent be liable for any failure or delay in the performance of its obligations under this Agreement or any related documents because of circumstances beyond the Agent's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depositary, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Agent's control whether or not of the same class or kind as specified above.

(j) For the avoidance of doubt, the Agent's rights, protections, indemnities and immunities provided herein shall apply to Agent for any actions taken or omitted to be taken under any Loan Document and any other related agreements in any of its capacities.

Section 10.04. *Reliance by the Agent.* The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and

shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Without limiting the generality of the foregoing, the Agent: (i) makes no warranty or representation to any Lender or any other Person and shall not be responsible to any Lender or any Person for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement or the other Loan Documents; (ii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement, the other Loan Documents or any related documents on the part of the Borrower, the Loan Parties or any other Person or to inspect the property (including the books and records) of the Borrower and Loan Parties; and (iii) shall not be responsible to any Lender or any other Person for the due execution, legality, validity, enforceability, genuineness, sufficiency, ownership, transferability or value of any Collateral, this Agreement, the other Loan Documents, any related document or any other instrument or document furnished pursuant hereto or thereto. The Agent shall not have any liability to the Borrower, any Loan Party or any Lender or any other Person for the Borrower's, any Loan Party's or any Lender's, as the case may be, performance of, or failure to perform, any of their respective obligations and duties under this Agreement or any other Loan Document. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate and unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. For purposes of clarity, phrases such as "satisfactory to the Agent," "approved by the Agent," "acceptable to the Agent," "as determined by the Agent," "in the Agent's discretion," "selected by the Agent," "elected by the Agent," "requested by the Agent," "waived by the Agent," "consented to by the Agent," "agreed by the Agent" and phrases of similar import (including, without limitation, any actions required of the Agent in connection with the collection, adjustment or settlement under an insurance policy pursuant to any Loan Document, or any actions required of the Agent in connection with or arising from the Cases) that authorize and permit the Agent to approve, disapprove, determine, act or decline to act in its discretion may be subject to the Agent's receiving written direction or consent from (or non-objection by) the Required Lenders to take such action or to exercise such rights.

Section 10.05. *Delegation of Duties.* The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more agents or attorneys-in-fact selected by the Agent. The Agent and any such agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of Section 8.03 shall apply to any such agent or attorney-in-fact and to the Related Parties of the Agent and any such sub agent. The Agent shall not be responsible for the negligence or misconduct or for the supervision of any agents or attorneys-in-fact selected by it, except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such agents or attorneys-in-fact.

Section 10.06. *Resignation of the Agent.* The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Agent may (but shall not be obligated to) on behalf of the Lenders appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Borrower that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice on the Resignation Effective Date and the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed).

(a) If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(b) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Agent (other than as provided in Section 5.10 and other than any rights to indemnity payments or other amounts owed to the retiring or removed Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article 10 and Section 13.03 shall continue in effect for the benefit of such retiring or removed Agent, its agents, attorneys-in-fact and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

(c) Any successor Agent appointed pursuant to clause (a) or (b) above agrees to be bound by and shall enter into the No Proceedings Letter as a condition to such appointment.

Section 10.07. *Non-Reliance on Agent and Other Lenders.* Each Lender expressly acknowledges that neither the Agent nor any of its respective officers, directors, employees, agents, advisors, attorneys in fact or affiliates have made any representations or warranties to it and that no act by the Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by the Agent to any Lender. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or

thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Agent or any of its officers, directors, employees, agents, advisors, attorneys in fact or affiliates.

Section 10.08. *Notice of Default.* The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless a Responsible Officer of the Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Agent receives such a notice, the Agent shall give notice thereof to the Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders (or, if so specified by this Agreement, all Lenders).

Section 10.09. *The Agent May File Proofs of Claim.* In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts due the Lenders and the Agent under Sections 2.04 and 13.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.04 and 13.03.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding

Section 10.10. *Banking Law*. In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering ("**Banking Law**"), the Agent is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Agent. Accordingly, each of the parties hereto agrees to provide to the Agent upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Agent to comply with Banking Law.

ARTICLE 11
RESERVED

ARTICLE 12
RESERVED

ARTICLE 13
MISCELLANEOUS

Section 13.01. *Modifications, Amendments or Waivers.* The Required Lenders and the Borrower, on behalf of the Loan Parties, may from time to time enter into written agreements amending or changing any provision of this Agreement or any other Loan Document or the rights of the Lenders or the Loan Parties hereunder or thereunder, or may grant written waivers or consents hereunder or thereunder. Any such agreement, waiver or consent made with such written consent shall be effective to bind all the Lenders and the Loan Parties; provided that, except as otherwise expressly contemplated by this Agreement, no such agreement, waiver or consent may be made which will:

(a) [Reserved];

(b) *Extension of Payment; Reduction of Principal Interest or Fees; Modification of Terms of Payment*. Extend the Stated Maturity Date or the time for payment of principal or interest of any Loan, or any fee payable to any Lender, or reduce the principal amount of, or the

rate of interest borne by, any Loan or reduce any fee payable to any Lender, without the consent of each Lender directly affected thereby;

(c) *Release of Collateral or Guarantor*. Except for sales of assets permitted by Sections 8.02(c), 8.02(d) or other transactions expressly permitted hereunder, release all or substantially all of the Collateral or all or substantially all of the Guarantors from their Obligations under the Guaranty Agreement without the consent of all Lenders (other than Defaulting Lenders); or

(d) *Miscellaneous*. Amend Section 5.02, 5.03 or 10.03 or this Section 13.01, alter any provision regarding the pro rata treatment of the Lenders or requiring all Lenders to authorize the taking of any action or reduce any percentage specified in the definition of Required Lenders, in each case without the consent of all of the Lenders;

provided that no agreement, waiver or consent which would modify the interests, rights or obligations of the Agent may be made without the written consent of the Agent; provided, further that, if in connection with any proposed waiver, amendment or modification referred to in Sections 13.01(b) through 13.01(e) above, the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (each a "**Non-Consenting Lender**"), then the Borrower shall have the right to replace any such Non-Consenting Lender with one or more replacement Lenders pursuant to Section 5.06(c).

Section 13.02. *No Implied Waivers; Cumulative Remedies.* No course of dealing and no delay or failure of the Agent or any Lender in exercising any right, power, remedy or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further exercise thereof or of any other right, power, remedy or privilege. The rights and remedies of the Agent and the Lenders under this Agreement and any other Loan Documents are cumulative and not exclusive of any rights or remedies which they would otherwise have.

Section 13.03. *Expenses; Indemnity; Damage Waiver*. (a) *Costs and Expenses*. The Borrower shall pay (i) all reasonable expenses incurred by the Agent and its Affiliates or by any Lender (but limited, in the case of legal fees and expenses, to the reasonable and documented fees and expenses of one primary counsel to the Agent and of one primary counsel to the Required Lenders, taken as a whole, and, if reasonably necessary, of one local counsel in any relevant jurisdiction to the Agent and of one local counsel in any relevant jurisdiction to the Required Lenders, taken as a whole, unless in the reasonable judgment of the Required Lenders, a conflict exists which necessitates the engagement of separate local counsel), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan

Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable expenses (including, but not limited to, the fees and expenses of counsel) incurred by the Agent and its Affiliates or any Lender in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such expenses incurred during any workout, restructuring or negotiations in respect

of such Loans, and (iii) all reasonable expenses of the Agent and the Agent's regular employees and agents engaged periodically to perform audits of the Loan Parties' books, records and business properties during the continuation of an Event of Default.

(b) *Indemnification by the Borrower*. The Borrower shall defend, indemnify, release, and protect the Agent (and any agent and attorney-in-fact thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities (including strict liabilities), obligations, fines, penalties and related assessments, costs and expenses (including reasonable and documented fees and expenses of counsel) in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee, and shall indemnify and hold harmless each Indemnitee from all reasonable and documented fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or nonperformance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) breach of representations, warranties or covenants of the Borrower under the Loan Documents, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, including any such items or losses relating to or arising under Environmental Health and Safety Laws or pertaining to environmental matters, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for a material breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 13.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Without limiting the foregoing, matters subject to Section 13.03(b) include (A) Contamination at, on, in, under or affecting any Real Property; (B) the presence, use, handling, management, Release, threat of Release, storage, treatment, production, generation, processing, refining, extraction, distribution, sale, collection, reclamation, recycling, disposal or manufacture of any Regulated Substances on, in, under or affecting any real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party or which may or have migrated to any surrounding areas from such real property or Borrower or any of its Subsidiaries arranging for disposal of or transportation to or from such real property of Regulated Substances; (C) the imposition, attachment, filing or recording of any Lien (other than a Permitted Lien) or other encumbrance authorized by Environmental, Health and Safety Laws against the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party and the removal of any such lien or encumbrances; (D) an Environmental, Health and Safety Claim, Environmental, Health and Safety Complaint or Environmental, Health and Safety Order relating

or pertaining to the Real Property, the Borrower or any of its Subsidiaries; and (E) the failure to comply with or the violation of any Environmental, Health and Safety Law, Environmental, Health and Safety Permit or Environmental, Health and Safety Order with respect to the real property, whether owned or leased, of any Loan Party or any Subsidiary of a Loan Party or the operations of the Borrower or any of its Subsidiaries.

(c) *Reimbursement by Lenders.* To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Sections 13.03(a) or 13.03(b) to be paid by it to the Agent (or any agent or attorney-in-fact thereof) or any Related Party of any of the foregoing, each applicable Lender severally agrees to pay to the Agent (or any such agent or attorney-in-fact) or such Related Party, as the case may be, such Lender's Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such agent or attorney-in-fact) in its capacity as such, or against any Related Party acting for the Agent (or any such agent or attorney-in-fact) in connection with such capacity.

(d) *Waiver of Consequential Damages, Etc*. To the fullest extent permitted by applicable Law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in Section 13.03(b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent such damages are found to be a final, non-appealable judgment of a court to arise from the gross negligence or willful misconduct of such Indemnitee.

(e) *Payments*. All amounts due under this Section shall be payable not later than thirty (30) days after demand therefor.

Section 13.04. *Holidays*. Whenever payment of a Loan to be made or taken hereunder shall be due on a day which is not a Business Day such payment shall be due on the next Business Day (except as provided in Section 4.02) and such extension of time shall be included in computing interest and fees, except that the Loans shall be due on the Business Day preceding the Stated Maturity Date if the Stated Maturity Date is not a Business Day. Whenever any payment or action to be made or taken hereunder (other than payment of the Loans) shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall not be included in computing interest or fees, if any, in connection with such payment or action.

Section 13.05. *Notices; Effectiveness; Electronic Communication.* (a) *Notices Generally*. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 13.05(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or

overnight courier service, mailed by certified or registered mail or sent by telecopier (i) if to a Lender, to it at its address set forth in its administrative questionnaire, or (ii) if to any other Person, to it at its address set forth on Schedule 1.1(C).

Notices sent by hand shall be deemed to have been given when received, notices sent by overnight courier service shall be deemed to have been given one Business Day after deposit with a reputable overnight courier service, notices mailed by certified or registered mail shall be deemed to have been given three Business Days after being deposited in the mail, postage prepaid; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 13.05(b) shall be effective as provided in such Section.

(b) *Electronic Communications*. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent; provided that the foregoing shall not apply to notices to any Lender if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *Change of Address, Etc*. Any party hereto may change its address, e-mail address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

Section 13.06. *Severability*. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 13.07. Duration; Survival. All representations and warranties of the Loan Parties contained herein or made in connection herewith shall survive the execution and delivery of this Agreement, the completion of the transactions hereunder and Payment In Full. All covenants and

agreements of the Borrower contained herein relating to the payment of principal, interest, premiums, additional compensation or expenses and indemnification, including those set forth in the Notes, Article 5 and Section 13.03, shall survive Payment In Full. All other covenants and agreements of the Loan Parties shall continue in full force and effect from and after the date hereof and until Payment In Full.

Section 13.08. *Reserved*.

Section 13.09. *Successors and Assigns*.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations under the Facility without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 13.09(b) or (ii) by way of participation in accordance with the provisions of Section 13.09(d) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 13.09(d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Loan at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts*.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Term Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in Section 13.09(b)(i)(B) below in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 13.09(b)(i)(A) above, the principal outstanding balance of the Term Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Agent or, if "**Trade Date**" is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than $1,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) *Proportionate Amounts*. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans assigned;

(iii) *Required Consents*. No consent shall be required for any assignment except to the extent required by Section 13.09(b)(i)(B) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (i) an Event of Default has occurred and is continuing at the time of such assignment, or (ii) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten (10) Business Days after having received notice thereof; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(iv) *Assignment and Assumption*. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption Agreement, together with a processing and recordation fee in the amount of $3,500. The assignee, if it is not a Lender, shall deliver to the Agent an administrative questionnaire.

(v) *No Assignment to Certain Persons*. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to a Disqualified Institution or (D) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person); provided that notwithstanding anything to the contrary in this Agreement, the Borrower and the other Loan Parties and the Lenders acknowledge and agree that in no event shall the Agent (in its capacity as such) be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to any preclusions as to assignments to Disqualified Institutions. Without limiting the generality of the foregoing, the Agent shall not (x) be obligated to, in connection with its maintenance of the Register (or otherwise), ascertain, monitor or inquire as to whether any

Lender is a Disqualified Institution or (y) have any liability with respect to any assignment or participation of Loans or Commitments, or any disclosure of confidential information, to any Disqualified Institution.

(vi) *Certain Additional Payments*. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be

outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire its full pro rata share of all Loans in accordance with its Ratable Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to Section 13.09(c), from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.08, 5.09, 5.10, and 13.03 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 13.09(d) of this Section.

(c) *Register*. The Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at its Principal Office a copy of each Assignment and Assumption Agreement delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders and principal amounts (and stated interest) of the Term Loan owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) *Participations*. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural Person, a Defaulting Lender, a Disqualified Institution or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender

shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 13.03(b) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 13.01 that directly affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.08, 5.09 and 5.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.09(b) (it being understood that the documentation required under Section 5.09 shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 5.03 and 5.07 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 5.08 or 5.09, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.07 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.02(c) as though it were a Lender; provided that such Participant agrees to be subject to Section 5.03 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the Income Tax Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) *Certain Pledges*. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of

its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 13.10. *Confidentiality*. (a) *General*. Each of the Agent and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other

Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or, Participant or in, or any prospective assignee of, or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the Borrower or (viii) to the extent such Information (Y) becomes publicly available other than as a result of a breach of this Section or (Z) becomes available to the Agent, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or the other Loan Parties. In addition, the Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to rating agencies, credit insurers, CUSIP Service Bureau, Inc., market data collectors, similar services providers to the lending industry, and service providers to the Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) *Sharing Information With Affiliates of the Lenders*. Each Loan Party acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and each of the Loan Parties hereby authorizes each Lender to share any information delivered to such Lender by such Loan Party and its Subsidiaries pursuant to this Agreement to any such Subsidiary or Affiliate subject to the provisions of Section 13.10(a).

Section 13.11. *Counterparts; Integration.* (a) *Counterparts; Integration*. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof including any prior

confidentiality agreements and commitments. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) *Electronic Execution of Assignments and Certain Other Documents*. The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption Agreement or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 13.12. *CHOICE OF LAW; SUBMISSION TO JURISDICTION; WAIVER OF VENUE; SERVICE OF PROCESS; WAIVER OF JURY TRIAL*. (a) Governing Law. This Agreement shall be deemed to be a contract under the Law of the State of New York without regard to its conflict of laws principles that would require the application of any other Law.

(b) *SUBMISSION TO JURISDICTION*. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF (OTHER THAN WITH RESPECT TO ACTIONS BY THE AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO), IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *WAIVER OF VENUE*. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN THIS SECTION 13.12. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND AGREES NOT ASSERT ANY SUCH DEFENSE.

(d) *SERVICE OF PROCESS*. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 13.05. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) *WAIVER OF JURY TRIAL*. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, THE AGENT OR THE ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 13.13. *USA Patriot Act Notice.* Each Lender that is subject to the USA Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of Loan Parties and other information that will allow such Lender to identify the Loan Parties in accordance with the USA Patriot Act.

Section 13.14. *No Fiduciary Duty*. Each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. The Loan Parties acknowledge and agree that (a) the arranging and other services regarding this Agreement and the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Agent and the Lenders, on the one hand, and the Loan Parties, on the other, and (b) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect

to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents, (y) the Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agent or any Lender has any obligation to disclose any of such interests to the Borrower and its Affiliate, and (z) each Lender is acting solely as principal and not as an advisor, the agent or fiduciary of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate, that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto and is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 13.15. *The Platform.* THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Agent's transmission of Borrower Materials through the Internet.

Section 13.16. *Authorization to Release Collateral and Guarantors.* The Lenders authorize the Agent to (i) release any Collateral that becomes Excluded Property (or any assets no longer required to be Collateral pursuant to the terms hereof or of any other Loan Document) or any Collateral consisting of assets or equity interests sold or otherwise disposed of in a sale or other disposition or transfer permitted under Section 8.02(d) or 8.02(c), and (ii) release any Guarantor from its obligations under the Guaranty Agreement if such Guarantor becomes a Non-Guarantor Subsidiary or ceases to be a Subsidiary pursuant to any sale, transfer, lease, disposition, merger or other transaction permitted by this Agreement, including, without limitation, in the event the ownership interests in such Guarantor are sold or otherwise disposed of or transferred to persons other than Loan Parties or Subsidiaries of the Loan Parties in a transaction permitted under Section 8.02(d) or 8.02(c). Upon the written request of the Borrower

(accompanied by such certificates and other documentation as the Agent or any Lender may reasonably request) the Agent on behalf of the Lenders, (i) shall release, subordinate, enter into non-disturbance agreements or consent to the release by the Agent of any Collateral or Guarantor in connection with any event contemplated above or any easements, permits, licenses, rights of way, surface leases or other surface rights or interests permitted to be granted hereunder or any Payment in Full hereunder or termination hereof, and (ii) notwithstanding Section 13.01 or any other provision in any Loan Document to the contrary, the Agent may, on behalf of the Lenders, amend, modify, supplement, restate, terminate or release in whole or in part any of the Loan Documents from time to time or consent to such action by the Agent to (a) add Guarantors of the Obligations, (b) add property or other assets as Collateral, (c) approve of any correction or update to any Schedule hereto or to any other Loan Document to the extent such Schedule is being corrected in any manner that is not material or is being updated to reflect the consummation of any transaction or exercise of any rights of the Loan Parties permitted hereunder for which no consent is required or for which the required consent has been received, or (d) release from perfection any Lien created by any Loan Document that is no longer required by the terms hereof or such Loan Document to be perfected.

Section 13.17. *Right to Realize on Collateral and Enforce Guaranty.* Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Agent and each Lender hereby agree that no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Agent on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under Collateral Documents may be exercised solely by the Agent.

Section 13.18. *Acknowledgements and Consent to Bail-in of EEA Financial Institutions.* Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

ARCH COAL, INC., as the Borrower

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Senior Vice President – Law, General Counsel and Secretary

[Signature Page to Exit Credit Agreement]

WILMINGTON TRUST, NATIONAL ASSOCIATION, solely in its capacity as the Agent

By: /s/ Jeffery Rose
Name: Jeffery Rose
Title: Vice President

[Signature Page to Exit Credit Agreement]

Exhibit 10.2

EXECUTION VERSION

THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT

DATED AS OF OCTOBER 5, 2016

BY AND AMONG

ARCH RECEIVABLE COMPANY, LLC,
as Seller,

ARCH COAL SALES COMPANY, INC.,
as initial Servicer,

THE VARIOUS CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS AND PURCHASER AGENTS FROM TIME TO TIME PARTY HERETO,

AND

PNC BANK, NATIONAL ASSOCIATION,
as Administrator and as LC Bank

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS

This THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is entered into as of October 5, 2016, by and among ARCH RECEIVABLE COMPANY, LLC, a Delaware limited liability company, as seller (the "Seller"), ARCH COAL SALES COMPANY, INC., a Delaware corporation ("Arch Sales"), as initial servicer (in such capacity, together with its successors and permitted assigns in such capacity, the "Servicer"), the various CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS and PURCHASER AGENTS from time to time party hereto and PNC BANK, NATIONAL ASSOCIATION, a national banking association ("PNC"), as administrator (in such capacity, together with its successors and assigns in such capacity, the "Administrator") and as issuer of Letters of Credit (in such capacity, together with its successors and assigns in such capacity, the "LC Bank").

PRELIMINARY STATEMENTS. Certain terms that are capitalized and used throughout this Agreement are defined in Exhibit I. References in the Exhibits hereto to the "Agreement" refer to this Agreement, as amended, supplemented or otherwise modified from time to time.

This Agreement amends and restates in its entirety, as of the Closing Date, the Second Amended and Restated Receivables Purchase Agreement, dated as of January 13, 2016 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Prior Agreement"), among each of the parties hereto. Upon the effectiveness of this Agreement, the terms and provisions of the Prior Agreement shall, subject to this paragraph, be superseded hereby in their entirety. Notwithstanding the amendment and restatement of the Prior Agreement by this Agreement, (i) the Seller and Servicer shall continue to be liable to PNC, Regions and any other Indemnified Party or Affected Person (as such terms are defined in the Prior Agreement) for fees and expenses which are accrued and unpaid under the Prior Agreement on the date hereof (collectively, the "Prior Agreement Outstanding Amounts") and all agreements to indemnify such parties in connection with events or conditions arising or existing prior to the effective date of this Agreement and (ii) the security interest created under the Prior Agreement shall remain in full force and effect as security for such Prior Agreement Outstanding Amounts until such Prior Agreement Outstanding Amounts shall have been paid in full. Upon the effectiveness of this Agreement, each reference to the Prior Agreement in any other document, instrument or agreement shall mean and be a reference to this Agreement. Nothing contained herein, unless expressly herein stated to the contrary, is intended to amend, modify or otherwise affect any other instrument, document or agreement executed and/or delivered in connection with the Prior Agreement.

The Seller (i) desires to sell, transfer and assign an undivided percentage interest in a pool of receivables, and the Purchasers desire to acquire such undivided percentage interest, as such percentage interest shall be adjusted from time to time based upon, in part, reinvestment payments that are made by such Purchasers and (ii) may, subject to the terms and conditions hereof, request that the LC Bank issue or cause the issuance of one or more Letters of Credit.

In consideration of the mutual agreements, provisions and covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.
AMOUNTS AND TERMS OF THE PURCHASES

Section 1.1 Purchase Facility.

(a) On the terms and subject to the conditions hereof, the Seller may, from time to time before the Facility Termination Date, (i) ratably (based on the aggregate Commitments of the Related Committed Purchasers in their respective Purchaser Groups) request that the Conduit Purchasers, or, only if a Conduit Purchaser denies such request or is unable to fund, ratably request that the Related Committed Purchasers, make purchases of and reinvestments in undivided percentage ownership interests with regard to the Purchased Interest from the Seller pursuant to Section 1.1(b) and (ii) request that the LC Bank issue or cause the issuance of Letters of Credit, in each case subject to the terms hereof (each such purchase, reinvestment or issuance is referred to herein as a "Purchase"). Subject to Section 1.4(b) concerning reinvestments, at no time will a Conduit Purchaser have any obligation to make a Purchase. Each Related Committed Purchaser severally hereby agrees, on the terms and subject to the conditions hereof, to

make purchases of and reinvestments in undivided percentage ownership interests with regard to the Purchased Interest from the Seller from time to time from the date hereof to the Facility Termination Date, based on the applicable Purchaser Group's Ratable Share of each Purchase (and, in the case of each Related Committed Purchaser, its Commitment Percentage of its Purchaser Group's Ratable Share of such Purchase) and, on the terms of and subject to the conditions of this Agreement, the LC Bank hereby agrees to issue Letters of Credit in return for (and each LC Participant hereby severally agrees to make participation advances in connection with any draws under such Letters of Credit equal to such LC Participant's Pro Rata Share of such draws), undivided percentage ownership interests with regard to the Purchased Interest from the Seller from time to time from the date hereof to the Facility Termination Date. Notwithstanding anything set forth in this paragraph (a) or otherwise herein to the contrary, under no circumstances shall any Purchaser make any purchase or reinvestment (including, without limitation, any mandatory deemed Purchases pursuant to Section 1.1(b)) or issue any Letters of Credit hereunder, as applicable, if, after giving effect to such Purchase, the (i) aggregate outstanding amount of the Capital funded by such Purchaser, when added to all other Capital funded by all other Purchasers in such Purchaser's Purchaser Group would exceed (A) its Purchaser Group's Group Commitment (as the same may be reduced from time to time pursuant to Section 1.1(c)) minus (B) the related LC Participant's Pro Rata Share of the LC Participation Amount, (ii) the Aggregate Capital plus the LC Participation Amount would exceed the Purchase Limit or (iii) the LC Participation Amount would exceed the aggregate of the Commitments of the LC Participants.

The Seller may, subject to this paragraph (a) and the other requirements and conditions herein, use the proceeds of any purchase by the Purchasers hereunder to satisfy its Reimbursement Obligation to the LC Bank and the LC Participants (ratably, based on the outstanding amounts funded by the LC Bank and each such LC Participant) pursuant to Section 1.14 below.

Each of the parties hereto hereby acknowledges and agrees that from and after the Closing Date, the Purchaser Groups that includes PNC and Regions, as a Purchaser Agent and as

a Purchaser, shall not include a Conduit Purchaser, and each request by the Seller for ratable Purchases by the Conduit Purchasers pursuant to Section 1.1(a)(i) shall be deemed to be a request that the Related Committed Purchasers in PNC's and Regions' Purchaser Group make their ratable share of such Purchases.

(b) In the event the Seller fails to reimburse the LC Bank for the full amount of any drawing under any Letter of Credit on the applicable Drawing Date (out of its own funds available therefor) pursuant to Section 1.14, then the Seller shall, automatically (and without the requirement of any further action on the part of any Person hereunder), be deemed to have requested a new purchase from the Conduit Purchasers or Related Committed Purchasers, as applicable, on such date, on the terms and subject to the conditions hereof, in an amount equal to the amount of such Reimbursement Obligation at such time. Subject to the limitations on funding set forth in paragraph (a) above (and the other requirements and conditions herein), the Conduit Purchasers or Related Committed Purchasers, as applicable, shall fund such deemed purchase request and deliver the proceeds thereof directly to the Administrator to be immediately distributed (ratably) to the LC Bank and the applicable LC Participants in satisfaction of the Seller's Reimbursement Obligation pursuant to Section 1.14, below, to the extent of the amounts permitted to be funded by the Conduit Purchasers or Related Committed Purchasers, as applicable, at such time, hereunder.

(c) The Seller may, upon at least 15 days' written notice to the Administrator, terminate the Purchase Facility in whole or, upon at least 15 days' written notice to the Administrator, from time to time, irrevocably reduce in part the unused portion of the Purchase Limit (but not below the amount that would cause the Aggregate Capital plus the LC Participation Amount to exceed the Purchase Limit or would cause the Group Capital of any Purchaser Group to exceed its Group Commitment, in each case after giving effect to such reduction); provided, that each partial reduction shall be in the amount of at least $5,000,000, or an integral multiple of $1,000,000 in excess thereof, and that, unless terminated in whole, the Purchase Limit shall in no event be reduced below $50,000,000. Each reduction in the Commitments hereunder shall be made ratably among the Purchasers in accordance with their respective Commitment Percentages and their respective Commitments. The Administrator shall promptly advise the Purchaser Agents of any notice received by it pursuant to this Section 1.1(c); it being understood that (in addition to and without limiting any other requirements for termination, prepayment and/or the funding of the LC Collateral Account hereunder) no such termination or reduction shall be effective unless and until (i) in the case of a termination, the amount on deposit in the LC Collateral Account is at least equal to the then outstanding LC Participation Amount and (ii) in the case of a partial reduction, the amount on deposit in the LC Collateral Account is at least equal to the positive difference between the then outstanding LC Participation Amount and the Purchase Limit as so reduced by such partial reduction.

Section 1.2 Making Purchases; Assignment and Assumption.

(a) Each Funded Purchase (but not reinvestment) of undivided percentage ownership interests with regard to the Purchased Interest hereunder may be made on any day upon the Seller's irrevocable written notice in the form of Annex B-1 (each, a "Purchase Notice") delivered to the Administrator and each Purchaser Agent in accordance with Section 5.2 (which

notice must be received by the Administrator and each Purchaser Agent before 11:00 a.m., New York City time) at least two Business Days before the requested Purchase Date, which notice shall specify: (A) solely in the case of a Funded Purchase maintained by Capital (other than one made pursuant to Section 1.14(b)), the amount requested to be paid to the Seller (such amount, which shall not be less than $300,000 (or such lesser amount as agreed to by the Administrator and each Purchaser Agent) and shall be in integral multiples of $100,000 in excess thereof, being the Capital relating to the undivided percentage ownership interest then being purchased with respect to each Purchaser Group), (B) the date of such Funded Purchase (which shall be a Business Day), and (C) the pro forma calculation of the Purchased Interest after giving effect to the increase in the Aggregate Capital.

(b) Subject to the following paragraphs of this Section 1.2(b), on the date of each Funded Purchase (but not reinvestment, issuance of a Letter of Credit or a Funded Purchase pursuant to Section 1.2(e)) of undivided percentage ownership interests with regard to the Purchased Interest hereunder, each applicable Conduit Purchaser or Related Committed Purchaser, as the case may be, shall, upon satisfaction of the applicable conditions set forth in Exhibit II, make available to the Seller in same day funds, at such account as may from time to time be designated in writing by the Seller to the Administrator and each Purchaser Agent), an amount equal to the portion of Capital relating to the undivided percentage ownership interest then being purchased by such Purchaser.

(c) Effective on the date of each Funded Purchase or other Purchase pursuant to this Section 1.2 and each reinvestment pursuant to Section 1.4, other than as provided under Section 5.17(a), the Seller hereby sells and assigns to the Administrator for the benefit of the Purchasers (ratably, based on the sum of the Capital plus the LC Participation Amount outstanding at such time for each such Purchaser's Capital) an undivided percentage ownership interest in: (i) each Pool Receivable then existing, (ii) all Related Security with respect to such Pool Receivables, and (iii) all Collections with respect to, and other proceeds of, such Pool Receivables and Related Security.

(d) To secure all of the Seller's obligations (monetary or otherwise) under this Agreement and the other Transaction Documents to which it is a party, whether now or hereafter existing or arising, due or to become due, direct or indirect, absolute or contingent, the Seller hereby grants to the Administrator (for the benefit of the Secured Parties) a security interest in all of the Seller's right, title and interest (including any undivided interest of the Seller) in, to and under all of the following, whether now or hereafter owned, existing or arising: (i) all Pool Receivables, (ii) all Related Security with respect to such Pool Receivables, (iii) all Collections with respect to such Pool Receivables, (iv) the Lock-Box Accounts and all amounts on deposit therein, and all certificates and instruments, if any, from time to time evidencing such Lock-Box Accounts and amounts on deposit therein, (v) the LC Collateral Account and all amounts on deposit therein, and all certificates and instruments, if any, from time to time evidencing such LC Collateral Account and amounts on deposit therein, (vi) all rights (but none of the obligations) of the Seller under the Sale Agreements, (vii) all proceeds of, and all amounts received or receivable under any or all of, the foregoing and (viii) all of its other property (collectively, the "Pool Assets"). The Seller hereby authorizes the Administrator to file financing statements describing the collateral covered thereby as "all of the debtor's personal property or assets" or

words to that effect, notwithstanding that such wording may be broader in scope than the collateral described in this Agreement. The Administrator (on behalf of the Secured Parties) shall have, with respect to the Pool Assets, and in addition to all the other rights and remedies available to the Administrator and the Purchasers, all the rights and remedies of a secured party under any applicable UCC. The Seller hereby acknowledges and agrees that pursuant to the Prior Agreement, the Seller granted to the Administrator a security interest in all of the Seller's right, title and interest in, to and under the Pool Assets (as defined in the Prior Agreement). The Seller hereby confirms such security interest and acknowledges and agrees that such security interest is continuing and is supplemented and restated by the security interest granted by the Seller pursuant to this Section 1.2(d).

(e) Whenever the LC Bank issues a Letter of Credit pursuant to Section 1.12 hereof, each LC Participant shall, automatically and without further action of any kind upon the effective date of issuance of such Letter of Credit, have irrevocably been deemed to make a Funded Purchase hereunder in the event that such Letter of Credit is subsequently drawn and such drawn amount shall not have been reimbursed pursuant to Section 1.14 upon such draw in an amount equal to its Pro Rata Share of such unreimbursed draw. All such Funded Purchases shall be made ratably by the LC Participants according to their Pro Rata Shares and shall accrue Discount from the date of such draw. In the event that any Letter of Credit expires or is surrendered without being drawn (in whole or in part) then, in such event, the foregoing commitment to make Funded Purchases shall expire with respect to such Letter of Credit and the LC Participation Amount shall automatically reduce by the amount of the Letter of Credit which is no longer outstanding.

(f) The Seller may, with the prior written consent of the Administrator and each Purchaser Agent (and, in the case of a new related LC Participant, the LC Bank), which consent may be granted or withheld in their sole and absolute discretion, add additional Persons as Purchasers (either to an existing Purchaser Group or by creating new Purchaser Groups) or cause an existing Related Committed Purchaser or related LC Participant to increase its Commitment; provided, that the Commitment of any Related Committed Purchaser or related LC Participant may only be increased with the prior written consent of such Purchaser; provided, further, that neither the Commitment of any new Purchaser Group nor the aggregate increase in the Commitment of existing Related Committed Purchasers shall exceed $50,000,000 and in connection with any such increase or addition shall be a corresponding increase in the Purchase Limit. Each new Conduit Purchaser, Related Committed Purchaser or related LC Participant (or Purchaser Group) shall become a party hereto, by executing and delivering to the Administrator, each Purchaser Agent and the Seller, an Assumption Agreement in the form of Annex F hereto (which Assumption Agreement shall, in the case of any new Conduit Purchaser, Related Committed Purchaser or related LC Participant, be executed by each Person in such new Purchaser's Purchaser Group).

(g) Each Related Committed Purchaser's and related LC Participant's obligations hereunder shall be several, such that the failure of any Related Committed Purchaser or related LC Participant to make a payment in connection with any purchase hereunder, or drawing under a Letter of Credit hereunder, as the case may be, shall not relieve any other Related Committed Purchaser or related LC Participant of its obligation hereunder to make payment for any Funded

Purchase or such drawing. Further, in the event any Related Committed Purchaser or related LC Participant fails to satisfy its obligation to make a purchase or payment with respect to such drawing as required hereunder, upon receipt of notice of such failure from the Administrator (or any relevant Purchaser Agent), subject to the limitations set forth herein, the non-defaulting Related Committed Purchasers or related LC Participants in such defaulting Related Committed Purchaser's or related LC Participant's Purchaser Group shall fund the defaulting Related Committed Purchaser's or related LC Participant's Commitment Percentage of the related Purchase or drawing pro rata in proportion to their relative Commitment Percentages (determined without regard to the Commitment Percentage of the defaulting Related Committed Purchaser or related LC Participant; it being understood that a defaulting Related Committed Purchaser's or related LC Participant's Commitment Percentage of any Purchase or drawing shall be first funded by the Related Committed Purchasers or related LC Participants in such defaulting Related Committed Purchaser's or related LC Participant's Purchaser Group and thereafter if there are no other Related Committed Purchasers or related LC Participants in such Purchaser Group or if such other Related Committed Purchasers or related LC Participants are also defaulting Related Committed Purchasers or related LC Participants, then such defaulting Related Committed Purchaser's or related LC Participant's Commitment Percentage of such Purchase or drawing shall be funded by each other Purchaser Group ratably and applied in accordance with this paragraph (g)). Notwithstanding anything in this paragraph (g) to the contrary and for the avoidance of doubt, each Related Committed Purchaser's and LC Participant's obligation to make a Purchase or payment with respect to any drawing shall be subject in all respects to the limitations set forth in the last sentence of the first paragraph of Section 1.1(a).

Section 1.3 Purchased Interest Computation. The Purchased Interest shall be initially computed on the Closing Date. Thereafter, until the Facility Termination Date, such Purchased Interest shall be automatically recomputed (or deemed to be recomputed) on each Business Day other than a Termination Day. From and after the occurrence of any Termination Day, the Purchased Interest shall (until the event(s) giving rise to such Termination Day are satisfied or are waived by the Administrator in accordance with Section 5.1) be deemed to be 100%. The Purchased Interest shall become zero when (a) the Aggregate Capital thereof and Aggregate Discount thereon shall have been paid in full, (b) an amount equal to 100% of the LC Participation Amount and the LC Fee Expectation shall have been deposited in the LC Collateral Account, or all Letters of Credit shall have expired or otherwise been terminated and (c) all the amounts owed by the Seller and the Servicer hereunder to each Purchaser, the Administrator and any other Indemnified Party or Affected Person are paid in full (other than indemnification and other contingent obligations not yet due and owing), and the Servicer shall have received the accrued Servicing Fee thereon.

Section 1.4 Settlement Procedures.

(a) The collection of the Pool Receivables shall be administered by the Servicer in accordance with this Agreement. The Seller shall provide to the Servicer on a timely basis all information needed for such administration, including notice of the occurrence of any Termination Day and current computations of the Purchased Interest.

(b) The Servicer shall, on each day on which Collections of Pool Receivables are received (or deemed received) by the Seller or the Servicer in accordance with this Agreement, including Section 1.4(g):

(i) set aside and hold in trust (and shall, at the request of the Administrator, segregate in a separate account approved by the Administrator) for the benefit of the Secured Parties, out of such Collections, first, an amount equal to the Aggregate Discount accrued through such day for each Portion of Capital and not previously set aside, second, an amount equal to the fees set forth in each Fee Letter accrued and unpaid through such day, and third, to the extent funds are available therefor, an amount equal to the aggregate of the Purchasers' Share of the Servicing Fee accrued through such day and not previously set aside;

(ii) subject to Section 1.4(f), if such day is not a Termination Day, remit to the Seller, ratably, on behalf of the Purchasers, the remainder of such Collections. Such remainder shall, to the extent representing a return on the Aggregate Capital, be automatically reinvested, ratably, according to each Purchaser's Capital, in Pool Receivables and in the Related Security, Collections and other proceeds with respect thereto; provided, that if the Purchased Interest would exceed 100%, then the Servicer shall not remit such remainder to the Seller or reinvest, but shall set aside and hold in trust for the Administrator (for the benefit of the Secured Parties) (and shall, at the request of the Administrator, segregate in a separate account approved by the Administrator) a portion of such Collections that, together with the other Collections set aside pursuant to this paragraph, shall equal the amount necessary to reduce the Purchased Interest to 100% (determined as if such Collections set aside had been applied to reduce the Aggregate Capital or LC Participation Amount, as applicable, at such time), which amount shall either (x) be deposited ratably to each Purchaser Agent's account (for the benefit of its related Purchasers) or (y) be deposited in the LC Collateral Account, in each case, as applicable, on the next Settlement Date in accordance with Section 1.4(c); provided, further, that (x) in the case of any Purchaser that is a Conduit Purchaser, if such Purchaser has provided notice (a "Declining Notice") to its Purchaser Agent and the Administrator that such Purchaser (a "Declining Conduit Purchaser") no longer wishes Collections with

respect to any Portion of Capital funded or maintained by such Purchaser to be reinvested pursuant to this clause (ii) or (y) in the case of any Purchaser that has provided notice (an "Exiting Notice") to its Purchaser Agent and the Administrator of its refusal, following any request by the Seller to extend the then Facility Termination Date, to extend its Commitment hereunder (an "Exiting Purchaser"), then in either case set forth in clause (x) or (y) above, such Purchaser's ratable share (determined according to outstanding Capital) of Collections shall not be reinvested or remitted to the Seller and shall instead be held in trust for the benefit of such Purchaser and applied in accordance with clause (iii) below;

(iii) if such day is a Termination Day (or any day following the provision of a Declining Notice or an Exiting Notice), set aside, segregate and hold in trust for the benefit of the Purchasers (and shall, at the request of the Administrator, segregate in a separate account approved by the Administrator), the entire remainder of

such Collections (or in the case of a Declining Conduit Purchaser or an Exiting Purchaser, an amount equal to such Purchaser's ratable share of such Collections based on its Capital; provided, that solely for purposes of determining such Purchaser's ratable share of such Collections, such Purchaser's Capital shall be deemed to remain constant from the date of the provision of a Declining Notice or an Exiting Notice, as the case may be, until the date such Purchaser's Capital has been paid in full; it being understood that if such day is also a Termination Day, such Declining Conduit Purchaser's or Exiting Purchaser's Capital shall be recalculated taking into account amounts received by such Purchasers in respect of this parenthetical and thereafter Collections shall be set aside for such Purchaser ratably in respect of its Capital (as recalculated)); provided, further, that if amounts are set aside and held in trust on any Termination Day of the type described in clause (a) of the definition of "Termination Day" (or any day following the provision of a Declining Notice or an Exiting Notice) and, thereafter, the conditions set forth in Section 2 of Exhibit II are satisfied or waived by the Administrator and the Majority Purchaser Agents (or, in the case of a Declining Notice or an Exiting Notice, such Declining Notice or Exiting Notice, as the case may be, has been revoked by the related Declining Conduit Purchaser or Exiting Purchaser, respectively, and written notice thereof has been provided to the Administrator, the related Purchaser Agent and the Servicer), such previously set-aside amounts shall, to the extent representing a return on the Aggregate Capital (or the Capital of the Declining Conduit Purchaser or Exiting Purchaser, as the case may be) and ratably in accordance with each Purchaser's Capital, be reinvested in accordance with clause (ii) on the day of such subsequent satisfaction or waiver of conditions or revocation of Declining Notice or Exiting Notice, as the case may be; and

(iv) release to the Seller (subject to Section 1.4(f)) for its own account any Collections in excess of: (w) amounts required to be reinvested in accordance with clause (ii) or the proviso to clause (iii) plus (x) the amounts that are required to be set aside pursuant to clause (i), the provisos to clause (ii) and clause (iii) plus (y) the Seller's Share of the Servicing Fee accrued and unpaid through such day and all reasonable and appropriate out-of-pocket costs and expenses of the Servicer for servicing, collecting and administering the Pool Receivables plus (z) all other amounts then due and payable by the Seller under this Agreement to the Purchasers, the Purchaser Agents, the Administrator, and any other Indemnified Party or Affected Person.

(c) The Servicer shall, in accordance with the priorities set forth in Section 1.4(d), deposit into each Purchaser Agent's account, on each Settlement Date, Collections held for such Purchaser Agent (for the benefit of its related Purchasers) pursuant to clause (b)(i) or (f) plus the amount of Collections then held for such Purchaser Agent (for the benefit of its related Purchasers) pursuant to clauses (b)(ii) and (iii) of Section 1.4; provided, that if Arch Sales or an Affiliate thereof is the Servicer, such day is not a Termination Day and the Administrator has not notified Arch Sales (or such Affiliate) that such right is revoked, Arch Sales (or such Affiliate) may retain the portion of the Collections set aside pursuant to clause (b)(i) that represents the aggregate of each Purchasers' Share of the Servicing Fee. On or prior to the last day of each Settlement Period, each Purchaser Agent will notify the Servicer by facsimile of the amount of

Discount accrued with respect to each Portion of Capital during such Settlement Period or portion thereof.

(d) The Servicer shall distribute the amounts described (and at the times set forth) in clause (c) above as follows:

(i) if such distribution occurs on a day that is not a Termination Day and the Purchased Interest does not exceed 100%, first to each Purchaser Agent ratably according to the Discount accrued during such Yield Period (for the benefit of the relevant Purchasers within such Purchaser Agent's Purchaser Group) in payment in full of all accrued Discount with respect to each Portion of Capital maintained by such Purchasers and all accrued Fees; it being understood that each Purchaser Agent shall distribute such amounts to the Purchasers within such Purchaser Agent's Purchaser Group ratably according to Discount and Fees, respectively, and second, if the Servicer has set aside amounts in respect of the Servicing Fee pursuant to clause (b)(i) and has not retained such amounts pursuant to clause (c), to the Servicer (payable in arrears on each Settlement Date) in payment in full of the aggregate of the Purchasers' Share of accrued Servicing Fees so set aside, and

(ii) if such distribution occurs on a Termination Day or on a day when the Purchased Interest exceeds 100%, first, if Arch Sales or an Affiliate thereof is not the Servicer, to the Servicer in payment in full of the Purchasers' Share of all accrued Servicing Fees, second, to each Purchaser Agent ratably (based on the aggregate accrued and unpaid Discount and Fees payable to all Purchasers at such time) (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group) in payment in full of all accrued Discount with respect to each Portion of Capital funded or maintained by the Purchasers within such Purchaser Agent's Purchaser Group and all accrued Fees, third, to each Purchaser Agent ratably according to the aggregate of the Capital of each Purchaser in each such Purchaser Agent's Purchaser Group (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group) in payment in full of each Purchaser's Capital (or, if such day is not a Termination Day, the amount necessary to reduce the Purchased Interest to 100%) (determined as if such Collections had been applied to reduce the Aggregate Capital); it being understood that each Purchaser Agent shall distribute the amounts described in the first, second and third clauses of this Section 1.4(d)(ii) to the Purchasers within such Purchaser Agent's Purchaser Group ratably according to Discount, Fees and Capital, respectively, fourth, to the LC Collateral Account for the benefit of the LC Bank and the LC Participants (x) the amount necessary to cash collateralize the LC Participation Amount until the amount of cash collateral held in such LC Collateral Account (other than amount representing LC Fee Expectation) equals 100% of the LC Participation Amount (or, if such day is not a Termination Day, the amount necessary to reduce the Purchased Interest to 100%) (determined as if such Collections had been applied to reduce the aggregate outstanding amount of the LC Participation Amount) and (y) if such day is a Termination Day of the type described in clause (b) of the definition thereof or a Termination Event is continuing, an amount equal to the LC Fee Expectation at such time (or such portion thereof not currently on deposit in the LC Collateral Account), fifth, if the Aggregate Capital and accrued Aggregate

Discount with respect to each Portion of Capital for all Purchaser Groups have been reduced to zero, and the aggregate of the Purchasers' Share of all accrued Servicing Fees payable to the Servicer (if other than Arch Sales or an Affiliate thereof) have been paid in full, to each Purchaser Agent ratably, based on the amounts payable to each Purchaser in such Purchaser Agent's Purchaser Group (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group), the Administrator and any other Secured Party in payment in full of any other amounts owed thereto by the Seller or the Servicer hereunder, and sixth, to the Servicer (if the Servicer is Arch Sales or an Affiliate thereof) in payment in full of the aggregate of the Purchasers' Share of all accrued Servicing Fees.

After the Aggregate Capital, Aggregate Discount, fees payable pursuant to the Fee Letters and Servicing Fees with respect to the Purchased Interest, and any other amounts payable by the Seller and the Servicer to each Purchaser Group, the Administrator or any other Indemnified Party or Affected Person hereunder, have been paid in full, and (on

and after a Termination Day) after an amount equal to 100% of the LC Participation Amount and the LC Fee Expectation has been deposited in the LC Collateral Account, all additional Collections with respect to the Purchased Interest shall be paid to the Seller for its own account.

(e) For the purposes of this Section 1.4:

(i) if on any day the Outstanding Balance of any Pool Receivable is reduced or adjusted as a result of any defective, rejected, returned, repossessed or foreclosed goods or services, or any revision, cancellation, allowance, rebate, discount or other adjustment made by the Seller, any Affiliate of the Seller, any Originator, the Transferor, the Servicer or any Affiliate of the Servicer, or any setoff, netting of obligations or dispute between the Seller, any Affiliate of the Seller, any Originator, the Transferor, the Servicer or any Affiliate of the Servicer and an Obligor, the Seller shall be deemed to have received on such day a Collection of such Pool Receivable in the amount of such reduction or adjustment and shall immediately pay any and all such amounts in respect thereof to a Lock-Box Account for the benefit of the Secured Parties pursuant to Section 1.4;

(ii) if on any day any of the representations or warranties in Sections l(j) or 3(a) of Exhibit III is not true with respect to any Pool Receivable, the Seller shall be deemed to have received on such day a Collection of such Pool Receivable in full and shall immediately pay any and all such amounts in respect thereof to a Lock-Box Account (or as otherwise directed by the Administrator at such time) for the benefit of the Secured Parties and for application pursuant to Section 1.4;

(iii) except as provided in clause (i) or (ii), or as otherwise required by Applicable Law or the relevant Contract, all Collections received from an Obligor of any Receivable shall be applied to the Receivables of such Obligor in the order of the age of such Receivables, starting with the oldest such Receivable, unless such Obligor designates in writing its payment for application to specific Receivables; and

(iv) if and to the extent the Administrator, any Purchaser Agent or any Purchaser shall be required for any reason to pay over to an Obligor (or any trustee, receiver, custodian or similar official in any Insolvency Proceeding) any amount received by it hereunder, such amount shall be deemed not to have been so received by such Person but rather to have been retained by the Seller and, accordingly, such Person shall have a claim against the Seller for such amount, payable when and to the extent that any distribution from or on behalf of such Obligor is made in respect thereof.

(f) If at any time the Seller shall wish to cause the reduction of Aggregate Capital (but not to commence the liquidation, or reduction to zero, of the entire Aggregate Capital), the Seller may do so as follows:

(i) the Seller shall give the Administrator, each Purchaser Agent and the Servicer written notice in substantially the form of Annex C (each, a "Paydown Notice") (A) at least two Business Days prior to the date of such reduction for any reduction of the Aggregate Capital less than or equal to $20,000,000 and (B) at least five Business Days prior to the date of such reduction for any reduction of the Aggregate Capital greater than $20,000,000, in each case such Paydown Notice shall include, among other things, the amount of such proposed reduction and the proposed date on which such reduction will commence;

(ii) (A) on the proposed date of the commencement of such reduction and on each day thereafter, the Servicer shall cause Collections not to be reinvested until the amount thereof not so reinvested shall equal the desired amount of reduction or (B) the Seller shall remit to each Purchaser Agent's account (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group), in immediately available funds, an amount equal to the desired amount of such reduction together with accrued and unpaid Aggregate Discount, and Aggregate Discount to accrue through the next Settlement Date, with respect to such Aggregate Capital, ratably (based on such Purchaser Agent's Purchasers' portion of the Aggregate Capital reduced thereby and portion of the related Aggregate Discount); and

(iii) the Servicer shall hold such Collections in trust for the benefit of the Purchasers ratably (based on their respective Portions of Capital funded thereby) for payment to each such Purchaser Agent (for the benefit of the relevant Purchasers in such Purchaser Agent's Purchaser Group) on the next Settlement Date immediately following the current Settlement Period or such other date approved by the Administrator and each such Purchaser Agent, and the Aggregate Capital (together with the Capital of any related Purchaser) shall be deemed reduced in the amount to be paid to each such Purchaser Agent (on behalf of its related Purchasers) only when in fact finally so paid;

provided, that the amount of any such reduction shall be not less than $300,000 and shall be an integral multiple of $100,000 in excess thereof.

(g) The Servicer may, in its sole discretion, and shall at the direction of the Administrator or any Purchaser Agent (which direction may be given no more than once per

week unless a Termination Event has occurred and is continuing), deliver an Interim Report to the Administrator on any Business Day during a Minimum Liquidity Period. Upon receipt of such Interim Report, the Administrator shall promptly review such Interim Report to determine if such Interim Report constitutes a Qualifying Interim Report. In the event that the Administrator reasonably determines that such Interim Report constitutes a Qualifying Interim Report, so long as no Termination Event or Unmatured Termination Event has occurred and is continuing and the Administrator is then exercising exclusive dominion and control over the Lock-Box Accounts, the Administrator shall promptly remit to the Servicer from the Lock-Box Accounts (or the LC Collateral Account, if applicable) the lesser of (i) the amount identified on such Qualifying Interim Report as Collections on deposit in the Lock-Box Accounts and/or LC Collateral Account in excess of the amount necessary to ensure that the Purchased Interest does not exceed 100% and (ii) the aggregate amount of available Collections then on deposit in the Lock-Box Accounts and the LC Collateral Account. For purposes of this clause (g), "Qualifying Interim Report" shall mean any Interim Report that satisfies each of the following conditions: (A) the Purchased Interest as set forth in such Interim Report shall not exceed 100%; (B) such Interim Report is calculated as of the immediately prior Business Day and (C) the Administrator does not in good faith reasonably believe that any of the information or calculations set forth in such Interim Report are false or incorrect in any material respect (and notice of any such determination shall be provided promptly to the Servicer).

Section 1.5 Fees.

The Seller shall pay to the Administrator, the Purchaser Agents and the Purchasers certain fees in the amounts and on the dates set forth in one or more fee letter agreements for each Purchaser Group, in each case entered into from time to time by and among the Servicer, the Seller and the applicable Purchaser Agent and/or the Administrator (as any such fee letter agreement may be amended, restated, supplemented or otherwise modified from time to time, each, a "Fee Letter").

Section 1.6 Payments and Computations, Etc.

(a) All amounts to be paid or deposited by the Seller or the Servicer hereunder or under any other Transaction Document shall be made without reduction for offset or counterclaim and shall be paid or deposited no later than 2:00 p.m. (New York City time) on the day when due in same day funds to each account designated by the Purchaser Agents (for the benefit of the Purchasers in such Purchaser Agent's Purchaser Group) and/or the Administration Account, as applicable. All amounts received after 2:00 p.m.(New York City time) will be deemed to have been received on the next Business Day. Amounts payable hereunder to or for the benefit of the Administrator, the Purchasers or the Purchaser Agents (or their related Affected Persons or Indemnified Parties) shall be distributed as follows:

(i) Any amounts to be distributed by or on behalf of the Administrator hereunder to any Purchaser Agent, Purchaser or Purchaser Group shall be distributed to the account specified in writing from time to time by the applicable Purchaser Agent to the Administrator, and the Administrator shall have no obligation to distribute any such amounts unless and until it actually receives payment of such amounts by the Seller or

the Servicer, as applicable, in the Administration Account. Except as expressly set forth herein (including, without limitation, as set forth in Section 1.4(b)(iii) with respect to Collections held in trust for Declining Conduit Purchasers and Exiting Purchasers), the Administrator shall distribute (or cause to be distributed) such amounts to the Purchaser Agents for the Purchasers within their respective Purchaser Groups ratably (x) in the case of such amounts paid in respect of Discount and Fees, according to the Discount and Fees payable to the Purchasers and (y) in the case of such amounts paid in respect of Capital (or in respect of any other obligations other than Discount and Fees), according to the outstanding Capital funded by the Purchasers.

(ii) Except as expressly set forth herein (including, without limitation, as set forth in Section 1.4(b)(iii) with respect to Collections held in trust for Declining Conduit Purchasers and Exiting Purchasers), each Purchaser Agent shall distribute the amounts paid to it hereunder for the benefit of the Purchasers in its Purchaser Group to the Purchasers within its Purchaser Group ratably (x) in the case of such amounts paid in respect of Discount and Fees, according to the Discount and Fees payable to such Purchasers and (y) in the case of such amounts paid in respect of Capital (or in respect of any other obligations other than Discount and Fees), according to the outstanding Capital funded by such Purchasers.

(b) The Seller or the Servicer, as the case may be, shall, to the extent permitted by law, pay interest on any amount not paid or deposited by the Seller or the Servicer, as the case may be, when due hereunder, at an interest rate equal to 2.0% per annum above the Base Rate, payable on demand.

(c) All computations of interest under clause (b) and all computations of Discount, fees and other amounts hereunder shall be made on the basis of a year of 360 (or 365 or 366, as applicable, with respect to Discount or other amounts calculated by reference to the Base Rate) days for the actual number of days elapsed. Whenever any payment or deposit to be made hereunder shall be due on a day other than a Business Day, such payment or deposit shall be made on the next Business Day and such extension of time shall be included in the computation of such payment or deposit.

Section 1.7 Increased Costs.

(a) If the Administrator, any Purchaser Agent, any Purchaser, any Liquidity Provider or any other Program Support Provider or any of their respective Affiliates (each an "Affected Person") reasonably determines that the existence of or compliance with: (i) any law, rule, regulation or generally accepted accounting principle or any change therein or in the interpretation or application thereof, or (ii) any request, guideline or directive from Financial Accounting Standards Board ("FASB") (including, without limitation, FAS 166/167), or any central bank or other Governmental Authority (whether or not having the force of law), affects or would affect the amount of capital required or expected to be maintained by such Affected Person, and such Affected Person determines that the amount of such capital is increased by or based upon the existence of any commitment to make purchases of (or otherwise to maintain the investment in) Pool Receivables or issue any Letter of Credit related to this Agreement or any

related liquidity facility, credit enhancement facility and other commitments of the same type, then, upon demand by such Affected Person (with a copy to the Administrator), the Seller shall promptly pay to the Administrator, for the account of such Affected Person, from time to time as specified by such Affected Person, additional amounts sufficient to compensate such Affected Person for increased costs in the light of such circumstances, to the extent that such Affected Person reasonably determines such increase in capital to be allocable to the existence of any of such commitments. A certificate as to such amounts submitted to the Seller and the Administrator by such Affected Person shall be conclusive and binding for all purposes, absent manifest error.

(b) If, due to either: (i) the introduction of or any change in or in the interpretation of any law, rule, regulation or generally accepted accounting principle or (ii) compliance with any request, guideline or directive from FASB (including, without limitation, FAS 166/167) or any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to any Affected Person of agreeing to purchase or purchasing, or maintaining the ownership of, the Purchased Interest (or its portion thereof) in respect of which Discount is computed by reference to the Euro-Rate or LMIR, then, upon demand by such Affected Person, the Seller shall promptly pay to such Affected Person, from time to time as specified by such Affected Person, additional amounts sufficient to compensate such Affected Person for increased costs. A certificate as to such amounts submitted to the Seller and the Administrator by such Affected Person shall be conclusive and binding for all purposes, absent manifest error.

(c) For the avoidance of doubt, and not in limitation of the foregoing, any increase in cost and/or reduction in yield caused by regulatory capital allocation adjustments due to Statements of Financial Accounting Standards Nos. 166 and 167 (or any future statements or interpretations issued by FASB or any successor thereto) (collectively, "FAS 166/167") shall be covered by this Section 1.7.

(d) Notwithstanding anything to the contrary, for purposes of this Section 1.7, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any Governmental Authority, any central bank of any jurisdiction, comparable agency or other Person, in each case pursuant to, or implementing, the accord known as Basel III, are, in the case of each of clause (i) and clause (ii) above, deemed to have been introduced or adopted after the date hereof, regardless of the date enacted, adopted, issued, promulgated or implemented.

Section 1.8 Requirements of Law; Funding Losses.

(I) If any Affected Person reasonably determines that the existence of or compliance with: (a) any law, rule or regulation or any change therein or in the interpretation or application thereof, or (b) any guideline, request or directive from any central bank or other Governmental Authority (whether or not having the force of law), in either case, adopted, issued or occurring after the date hereof:

(i) does or shall subject such Affected Person to any tax of any kind whatsoever with respect to this Agreement, any increase in the Purchased Interest (or its portion thereof) or in the amount of Capital relating thereto, or does or shall change the basis of taxation of payments to such Affected Person on account of Collections, Discount or any other amounts payable hereunder (excluding taxes imposed on the overall income of such Affected Person, and franchise taxes imposed on such Affected Person, by the jurisdiction under the laws of which such Affected Person is organized or a political subdivision thereof), or

(ii) does or shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, purchases, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Affected Person that are not otherwise included in the determination of the Euro-Rate or LMIR or the Base Rate hereunder, or

(iii) does or shall impose on such Affected Person any other condition,

and the result of any of the foregoing is: (A) to increase the cost to such Affected Person of acting as Administrator, or of agreeing to purchase or purchasing or maintaining the ownership of undivided percentage ownership interests with regard to, or issuing any Letter of Credit in respect of, the Purchased Interest (or interests therein) or any Portion of Capital, or (B) to reduce any amount receivable hereunder (whether directly or indirectly), then, in any such case, upon demand by such Affected Person, the Seller shall promptly pay to such Affected Person additional amounts necessary to compensate such Affected Person for such additional cost or reduced amount receivable. All such amounts shall be payable as incurred. A certificate as to such amounts from such Affected Person to the Seller and the Administrator shall be conclusive and binding for all purposes, absent manifest error; provided, however, that notwithstanding anything to the contrary, for purposes of this Section 1.8, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any Governmental Authority, any central bank of any jurisdiction, comparable agency or other Person, in each case pursuant to, or implementing, the accord known as Basel III, are, in the case of each of clause (i) and clause (ii) above, deemed to have been introduced or adopted after the date hereof, regardless of the date enacted, adopted, issued, promulgated or implemented.

(II) The Seller shall compensate each Affected Person, upon written request by such Person for all losses, expenses and liabilities (including any interest paid by such Affected Person to lenders of funds borrowed by it to fund or maintain any Portion of Capital hereunder at an interest rate determined by reference to the Euro-Rate or LMIR and any loss sustained by such Person in connection with the re-employment of such funds), which such Affected Person may sustain with respect to funding or maintaining such Portion of Capital at the Euro-Rate or LMIR if, for any reason, funding or maintaining such Portion of Capital at an interest rate determined by reference to the Euro-Rate or LMIR does not occur on a date specified therefor.

Section 1.9 Inability to Determine Euro-Rate.

(a) If the Administrator (or any Purchaser Agent) determines before the first day of any Settlement Period (or solely with respect to LMIR, on any day) (which determination shall be final and conclusive) that, by reason of circumstances affecting the interbank eurodollar market generally, (i) deposits in dollars (in the relevant amounts for such Settlement Period) are not being offered to banks in the interbank eurodollar market for such Settlement Period, (ii) adequate means do not exist for ascertaining the Euro-Rate or LMIR for such Settlement Period (or portion thereof) or (iii) the Euro-Rate or LMIR does not accurately reflect the cost to any Purchaser (as determined by such Purchaser or such Purchaser's Purchaser Agent) of maintaining any Portion of Capital during such Settlement Period (or portion thereof), then the Administrator shall give notice thereof to the Seller. Thereafter, until the Administrator or such Purchaser Agent notifies the Seller that the circumstances giving rise to such suspension no longer exist, (a) no Portion of Capital shall be funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR and (b) the Discount for any outstanding Portions of Capital then funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR shall, on the last day of the then current Settlement Period (or solely with respect to LMIR, immediately), be converted to the Alternate Rate determined by reference to the Base Rate.

(b) If, on or before the first day of any Settlement Period (or solely with respect to LMIR, on any day), the Administrator shall have been notified by any Affected Person that such Affected Person has determined (which determination shall be final and conclusive) that, any enactment, promulgation or adoption of or any change in any Applicable Law, or any change in the interpretation or administration thereof by a governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Affected Person with any guideline, request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for such Affected Person to fund or maintain any Portion of Capital at the Alternate Rate and based upon the Euro-Rate or LMIR, the Administrator shall notify the Seller thereof. Upon receipt of such notice, until the Administrator notifies the Seller that the circumstances giving rise to such determination no longer apply, (a) no Portion of Capital shall be funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR and (b) the Discount for any outstanding Portions of Capital then funded at the Alternate Rate determined by reference to the Euro-Rate or LMIR shall be converted to the Alternate Rate determined by reference to the Base Rate either (i) on the last day of the then current Settlement Period (or solely with respect to LMIR, immediately) if such Affected Person may lawfully continue to maintain such Portion of Capital at the Alternate Rate determined by reference to the Euro-Rate or LMIR to such day, or (ii) immediately, if such Affected Person may not lawfully continue to maintain such Portion of Capital at the Alternate Rate determined by reference to the Euro-Rate or LMIR to such day.

Section 1.10 Taxes.

The Seller agrees that any and all payments by the Seller under this Agreement shall be made free and clear of and without deduction for any and all current or future taxes, stamp or other taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding overall income or franchise taxes, in either case, imposed on the

Person receiving such payment by the Seller hereunder by the jurisdiction under whose laws such Person is organized, operates or where its principal executive office is located or any political subdivision thereof (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Seller shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Purchaser, Purchaser Agent, Liquidity Provider, Program Support Provider or the Administrator, then the sum payable shall be increased by the amount necessary to yield to such Person (after payment of all Taxes) an amount equal to the sum it would have received had no such deductions been made. Whenever any Taxes are payable by the Seller, the Seller agrees that, as promptly as possible thereafter, the Seller shall send to the Administrator for its own account or for the account of any Purchaser, Purchaser Agent, Liquidity Provider or other Program Support Provider, as the case may be, a certified copy of an original official receipt showing payment thereof or such other evidence of such payment as may be available to the Seller and acceptable to the taxing authorities having jurisdiction over such Person. If the Seller fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrator the required receipts or other required documentary evidence, the Seller shall indemnify the Administrator and/or any other Affected Person, as applicable, for any incremental taxes, interest or penalties that may become payable by such party as a result of any such failure.

Section 1.11 Letters of Credit.

Subject to the terms and conditions hereof and the satisfaction of the applicable conditions set forth in Exhibit II, the LC Bank shall issue or cause the issuance of Letters of Credit ("Letters of Credit") on behalf of Seller (and, if applicable, on behalf of, or for the account of, the Transferor or any Subsidiary thereof) in favor of such beneficiaries as the Seller or the Transferor, as applicable may elect. All amounts drawn upon Letters of Credit shall accrue Discount. Letters of Credit that have not been drawn upon shall not accrue Discount.

Section 1.12 Issuance of Letters of Credit.

(a) The Seller may request the LC Bank, upon two (2) Business Days' prior written notice submitted on or before 11:00 a.m., New York time, to issue a Letter of Credit by delivering to the Administrator, the LC Bank's form of Letter of Credit Application (the "Letter of Credit Application"), substantially in the form of Annex E attached hereto and an Issuance Notice, substantially in the form of Annex B-2 (each, an "Issuance Notice"), in each case completed to the satisfaction of the Administrator and the LC Bank; and, such other certificates, documents and other papers and information as the Administrator may reasonably request. The Seller also has the right to give instructions and make agreements with respect to any Letter of Credit Application and the disposition of documents, and to agree with the Administrator upon any amendment, extension or renewal of any Letter of Credit.

(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts or other written demands for payment when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date not later than twelve (12) months after such Letter of Credit's date of issuance, extension or renewal, as the case may be, and in no event later than twelve (12) months

after the Facility Termination Date. For the avoidance of doubt, no Letter of Credit may be extended or renewed to a date that is later than twelve (12) months after the Facility Termination Date. Each Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and any amendments or revisions thereof adhered to by the LC Bank or the International Standby Practices (ISP98-International Chamber of Commerce Publication Number 590), and any amendments or revisions thereof adhered to by the LC Bank, as determined by the LC Bank.

(c) The Administrator shall promptly notify the LC Bank and each LC Participant, at such Person's address for notices hereunder, of the request by the Seller for a Letter of Credit hereunder, and shall provide the LC Bank and LC Participants with the Letter of Credit Application and Issuance Notice delivered to the Administrator by the Seller pursuant to paragraph (a) above, by the close of business on the day received or if received on a day that is not a Business Day or on any Business Day after 11:00 a.m., New York time, on such day, on the next Business Day.

Section 1.13 Requirements For Issuance of Letters of Credit.

The Seller shall authorize and direct the LC Bank to name the Seller or the Transferor as the "Applicant" or "Account Party" of each Letter of Credit.

Section 1.14 Disbursements, Reimbursement.

(a) Immediately upon the issuance of each Letter of Credit, each LC Participant shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the LC Bank a participation in such Letter of Credit and each drawing thereunder in an amount equal to such LC Participant's Pro Rata Share of the face amount of such Letter of Credit and the amount of such drawing, respectively.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the LC Bank will promptly notify the Administrator and the Seller of such request. Provided that it shall have received such notice prior to 10:00 a.m., New York time, the Seller shall reimburse (such obligation to reimburse the LC Bank shall sometimes be referred to as a "Reimbursement Obligation" and the required date of reimbursement, the "Reimbursement Date") the LC Bank prior to 12:00 p.m., New York time, on each Business Day that an amount is paid by the LC Bank under any Letter of Credit (each such date, a "Drawing Date") (or, otherwise, by 12:00 p.m., New York time, on the Business Day immediately following such notice) in an amount equal to the amount so paid by the LC Bank. Such Reimbursement Obligation shall be satisfied by the Seller (i) first, by the remittance by the Administrator to the LC Bank of any available amounts then on deposit in the LC Collateral Account and (ii) second, by the remittance by or on behalf of the Seller to the LC Bank of any other funds of the Seller then available for disbursement. In the event the Seller fails to reimburse the LC Bank for the full amount of any drawing under any Letter of Credit by the applicable time on the Reimbursement Date, the LC Bank will promptly notify each LC Participant thereof, and the Seller shall be deemed to have requested that a Funded Purchase be made by the Purchasers in the Purchaser Groups for the LC Bank and the LC Participants to be

disbursed on the Drawing Date under such Letter of Credit, subject to the amount of the unutilized portion of the Purchase Limit. Any notice given by the LC Bank pursuant to this Section may be oral if immediately confirmed in writing; provided that the lack of such an immediate written confirmation shall not affect the conclusiveness or binding effect of such oral notice.

(c) Each LC Participant shall upon any notice pursuant to subclause (b) above make available to the LC Bank an amount in immediately available funds equal to its Pro Rata Share of the amount of the drawing, whereupon the LC Participants shall each be deemed to have made a Funded Purchase in that amount. If any LC Participant so notified fails to make available to the LC Bank the amount of such LC Participant's Pro Rata Share of such amount by no later than 2:00 p.m., New York time on the Drawing Date, then interest shall accrue on such LC Participant's obligation to make such payment, from the Drawing Date to the date on which such LC Participant makes such payment (i) at a rate per annum equal to the Federal Funds Rate during the first three days following the Drawing Date and (ii) at a rate per annum equal to the rate applicable to Capital on and after the fourth day following the Drawing Date. The LC Bank will promptly give notice of the occurrence of the Drawing Date, but failure of the LC Bank to give any such notice on the Drawing Date or in sufficient time to enable any LC Participant to effect such payment on such date shall not relieve such LC Participant from its obligation under this subclause (c), provided that such LC Participant shall not be obligated to pay interest as provided in subclauses (i) and (ii) above until and commencing from the date of receipt of notice from the LC Bank or the Administrator of a drawing. Each LC Participant's Commitment shall continue until the last to occur of any of the following events: (A) the LC Bank ceases to be obligated to issue or cause to be issued Letters of Credit hereunder; (B) no Letter of Credit issued hereunder remains outstanding and uncancelled or (C) all Persons (other than the Seller) have been fully reimbursed for all payments made under or relating to Letters of Credit.

Section 1.15 Repayment of Participation Advances.

(a) Upon (and only upon) receipt by the LC Bank for its account of immediately available funds from or for the account of the Seller (i) in reimbursement of any payment made by the LC Bank under a Letter of Credit with respect to which any LC Participant has made a participation advance to the LC Bank, or (ii) in payment of Discount on the Funded Purchases made or deemed to have been made in connection with any such draw, the LC Bank will pay to each LC Participant, ratably (based on the outstanding drawn amounts funded by each such LC Participant in respect of such Letter of Credit), in the same funds as those received by the LC Bank; it being understood, that the LC Bank shall retain a ratable amount of such funds that were not the subject of any payment in respect of such Letter of Credit by any LC Participant.

(b) If the LC Bank is required at any time to return to the Seller, or to a trustee, receiver, liquidator, custodian, or any official in any insolvency proceeding, any portion of the payments made by the Seller to the LC Bank pursuant to this Agreement in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each LC Participant shall, on demand of the LC Bank, forthwith return to the LC Bank the amount of its Pro Rata Share of any amounts so returned by the LC Bank plus interest at the Federal Funds Rate, from the date the

payment was first made to such LC Participant through, but not including, the date the payment is returned by such LC Participant.

(c) If any Letters of Credit are outstanding and undrawn on the Facility Termination Date, the LC Collateral Account shall be funded from Collections (or, in the Seller's sole discretion, by other cash available to the Seller) in an amount equal to the aggregate undrawn face amount of such Letters of Credit plus all applicable fees to accrue through the stated expiration dates thereof (such fees to accrue, as reasonably estimated by the LC Bank, the "LC Fee Expectation").

Section 1.16 Documentation.

The Seller agrees to be bound by the terms of the Letter of Credit Application and by the LC Bank's interpretations of any Letter of Credit issued for the Seller and by the LC Bank's written regulations and customary practices relating to letters of credit, though the LC Bank's interpretation of such regulations and practices may be different from the Seller's own. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct by the LC Bank, the LC Bank shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following the Seller's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

Section 1.17 Determination to Honor Drawing Request.

In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, the LC Bank shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

Section 1.18 Nature of Participation and Reimbursement Obligations.

Each LC Participant's obligation in accordance with this Agreement to make participation advances as a result of a drawing under a Letter of Credit, and the obligations of the Seller to reimburse the LC Bank upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Article I under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such LC Participant may have against the LC Bank, the Administrator, the Purchaser Agents, the Purchasers, the Seller or any other Person for any reason whatsoever;

(ii) the failure of the Seller or any other Person to comply with the conditions set forth in this Agreement for the making of a purchase, reinvestments,

requests for Letters of Credit or otherwise, it being acknowledged that such conditions are not required for the making of participation advances hereunder;

(iii) any lack of validity or enforceability of any Letter of Credit or any set-off, counterclaim, recoupment, defense or other right which Seller, an Originator, the Transferor or any Affiliate thereof on behalf of which a Letter of Credit has been issued may have against the LC Bank, the Administrator, any Purchaser, any Purchaser Agent or any other Person for any reason whatsoever;

(iv) any claim of breach of warranty that might be made by the Seller, the Transferor, an Originator or an Affiliate thereof, the LC Bank or any LC Participant against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, defense or other right which the Seller, the LC Bank or any LC Participant may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), the LC Bank, any LC Participant, the Administrator, any Purchaser or any Purchaser Agent or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Seller or any Subsidiaries of the Seller or any Affiliates of the Seller and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of, or lack of validity, sufficiency, accuracy, enforceability or genuineness of, any draft, demand, instrument, certificate or other document presented under any Letter of Credit, or any such draft, demand, instrument, certificate or other document proving to be forged, fraudulent, invalid, defective or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, even if the Administrator or the LC Bank has been notified thereof;

(vi) payment by the LC Bank under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit other than as a result of the gross negligence or willful misconduct of the LC Bank;

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by the LC Bank or any of the LC Bank's Affiliates to issue any Letter of Credit in the form requested by the Seller, unless the LC Bank has received written notice from the Seller of such failure within three Business Days after the LC Bank shall have furnished the Seller a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(ix) any Material Adverse Effect on the Seller, the Transferor, any Originator or any Affiliates thereof;

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

(xi) the occurrence or continuance of an Insolvency Proceeding with respect to the Seller, the Transferor, any Originator or any Affiliate thereof;

(xii) the fact that a Termination Event or an Unmatured Termination Event shall have occurred and be continuing;

(xiii) the fact that this Agreement or the obligations of Seller or Servicer hereunder shall have been terminated; and

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

Section 1.19 Indemnity.

In addition to other amounts payable hereunder, the Seller hereby agrees to protect, indemnify, pay and save harmless the Administrator, the LC Bank, each LC Participant and any of the LC Bank's Affiliates that have issued a Letter of Credit from and against any and all claims, demands, liabilities, damages, taxes, penalties, interest, judgments, losses, costs, charges and expenses (including Attorney Costs) which the Administrator, the LC Bank, any LC Participant or any of their respective Affiliates may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit, except to the extent resulting from (a) the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction or (b) the wrongful dishonor by the LC Bank of a proper demand for payment made under any Letter of Credit, except if such dishonor resulted from any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority (all such acts or omissions herein called "Governmental Acts").

Section 1.20 Liability for Acts and Omissions.

As between the Seller, on the one hand, and the Administrator, the LC Bank, the LC Participants, the Purchaser Agents and the Purchasers, on the other, the Seller assumes all risks of the acts and omissions of, or misuse of any Letter of Credit by, the respective beneficiaries of such Letter of Credit. In furtherance and not in limitation of the respective foregoing, none of the Administrator, the LC Bank, the LC Participants, the Purchaser Agents or the Purchasers shall be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if the LC Bank or any LC Participant shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits

thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of the Seller against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among the Seller and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, electronic mail, cable, telegraph, telex, facsimile or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Administrator, the LC Bank, the LC Participants, the Purchaser Agents and the Purchasers, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of the LC Bank's rights or powers hereunder. Nothing in the preceding sentence shall relieve the LC Bank from liability for its gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction, in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall the Administrator, the LC Bank, the LC Participants, the Purchaser Agents or the Purchasers or their respective Affiliates, be liable to the Seller or any other Person for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

Without limiting the generality of the foregoing, the Administrator, the LC Bank, the LC Participants, the Purchaser Agents and the Purchasers and each of its Affiliates (i) may rely on any written communication believed in good faith by such Person to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by the LC Bank or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on the Administrator, the LC Bank, the LC Participants, the Purchaser Agents or the Purchasers or their respective Affiliates, in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a carrier or any similar document (each an "Order") and may honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by the LC Bank under or in connection with any Letter of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction, shall not put the LC Bank under any resulting liability to the Seller, any LC Participant or any other Person.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES; COVENANTS; TERMINATION EVENTS

Section 2.1 Representations and Warranties; Covenants.

Each of the Seller and the Servicer hereby makes the representations and warranties, and hereby agrees to perform and observe the covenants, applicable to it as set forth in Exhibits III and IV, respectively.

Section 2.2 Termination Events.

If any of the Termination Events set forth in Exhibit V shall occur, the Administrator may (with the consent of the Majority Purchaser Agents) and shall (at the direction of the Majority Purchaser Agents), by notice to the Seller, declare the Facility Termination Date to have occurred (in which case the Facility Termination Date shall be deemed to have occurred); provided, that automatically upon the occurrence of any event (without any requirement for the passage of time or the giving of notice) described in paragraph (f) of Exhibit V, the Facility Termination Date shall occur. Upon any such declaration, occurrence or deemed occurrence of the Facility Termination Date, the Purchasers, the Purchaser Agents and the Administrator shall have, in addition to the rights and remedies that they may have under this Agreement, all other rights and remedies provided after default under the UCC and under other Applicable Law, which rights and remedies shall be cumulative.

ARTICLE III.
INDEMNIFICATION

Section 3.1 Indemnities by the Seller.

Without limiting any other rights that the Administrator, the Purchasers, the Purchaser Agents, the Liquidity Providers, any Program Support Provider or any of their respective Affiliates, employees, officers, directors, agents, counsel, successors, transferees or permitted assigns (each, an "Indemnified Party") may have hereunder or under Applicable Law, the Seller hereby agrees to indemnify each Indemnified Party from and against any and all claims, damages, expenses, costs, losses, liabilities, penalties and taxes (including Attorney Costs) (all of the foregoing being collectively referred to as "Indemnified Amounts") at any time imposed on or incurred by any Indemnified Party arising out of or otherwise relating to any Transaction Document, the transactions contemplated thereby or the acquisition of any portion of the Purchased Interest, or any action taken or omitted by any of the Indemnified Parties (including any action taken by the Administrator as attorney-in-fact for the Seller, the Transferor

or any Originator hereunder or under any other Transaction Document) whether arising by reason of the acts to be performed by the Seller hereunder or otherwise, excluding only Indemnified Amounts to the extent: (a) a final judgment of a court of competent jurisdiction holds that such Indemnified Amounts resulted from gross negligence or willful misconduct of the Indemnified Party seeking indemnification, (b) due to the credit risk of the Obligor and for which reimbursement would constitute recourse to the

Transferor, any Originator or the Servicer for uncollectible Receivables or (c) other than in the case of clause (xiii) below, such Indemnified Amounts include taxes imposed or based on, or measured by, the gross or net income or receipts of such Indemnified Party by the jurisdiction under the laws of which such Indemnified Party is organized, operates or where its principal executive office is located (or any political subdivision thereof); provided, however, that nothing contained in this sentence shall limit the liability of the Seller or the Servicer or limit the recourse of any Indemnified Party to the Seller or the Servicer for any amounts otherwise specifically provided to be paid by the Seller or the Servicer hereunder. Without limiting the foregoing indemnification, and subject to the exclusions in the preceding sentence, the Seller shall indemnify each Indemnified Party for Indemnified Amounts (including losses in respect of uncollectible Receivables regardless for purposes of these specific matters whether reimbursement therefor would constitute recourse to the Seller or the Servicer, except as set forth in subclause (viii) below) relating to or resulting from any of the following:

(i) the failure of any Receivable included in the calculation of the Net Receivables Pool Balance as an Eligible Receivable to be an Eligible Receivable, the failure of any information contained in any Information Package or any Interim Report to be true and correct, or the failure of any other information provided in writing to any Purchaser or the Administrator with respect to the Receivables or this Agreement to be true and correct;

(ii) the failure of any representation, warranty or statement made or deemed made by the Seller (or any employee, officer or agent of the Seller) under or in connection with this Agreement, any other Transaction Document, any Information Package, any Interim Report or any other information or report delivered by or on behalf of the Seller pursuant hereto to have been true and correct as of the date made or deemed made when made;

(iii) the failure by the Seller to comply with any Applicable Law related to any Receivable or the related Contract or the non-conformity of any Receivable or the related Contract with any such Applicable Law;

(iv) the failure of the Seller to vest and maintain vested in the Administrator (on behalf of the Secured Parties) a first priority perfected ownership interest or security interest in the Purchased Interest and the property conveyed hereunder, free and clear of any Lien;

(v) any commingling of funds to which the Administrator, any Purchaser Agent or any Purchaser is entitled hereunder with any other funds;

(vi) the failure to have filed, in accordance with the requirements of this Agreement or any other Transaction Document, financing statements (including as-extracted collateral filings) or other similar instruments or documents under the UCC of each applicable jurisdiction or other Applicable Laws with respect to any Receivables in, or purporting to be in, the Receivables Pool and the other Pool Assets, whether at the time of any Purchase or at any subsequent time;

(vii) any failure of a Lock-Box Bank to comply with the terms of the applicable Lock-Box Agreement;

(viii) any dispute, claim, offset or defense (other than discharge in bankruptcy of the Obligor) of the Obligor to the payment of any Receivable (including without limitation a defense based on such Receivable or the related Contract not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the sale or lease of goods or the rendering of services related to such Receivable or the furnishing or failure to furnish any such goods or services or other similar claim or defense not arising from the financial inability of any Obligor to pay undisputed indebtedness;

(ix) any failure of the Seller to perform its duties or obligations in accordance with the provisions of this Agreement or any other Transaction Document to which it is a party;

(x) any action taken by the Administrator as attorney-in-fact for the Seller, the Transferor or any Originator pursuant to this Agreement or any other Transaction Document;

(xi) any environmental liability claim or products liability claim or other claim, investigation, litigation or proceeding, arising out of or in connection with merchandise, insurance or services that are the subject of any Contract;

(xii) the failure by the Seller to pay when due any taxes, including, without limitation, sales, excise or personal property taxes;

(xiii) any taxes arising because a Purchase or the Purchased Interest is not treated for U.S. federal, state and local income and franchise tax purposes as intended under Section 5.17(a);

(xiv) the use of proceeds of purchases or reinvestments or the issuance of any Letter of Credit; or

(xv) any reduction in Capital as a result of the distribution of Collections pursuant to Section 1.4(d), if all or a portion of such distributions shall thereafter be rescinded or otherwise must be returned for any reason.

Section 3.2 Indemnities by the Servicer.

Without limiting any other rights that any Indemnified Party may have hereunder or under Applicable Law, the Servicer hereby agrees to indemnify each Indemnified Party from and against any and all Indemnified Amounts arising out of or resulting from (whether directly or indirectly): (a) the failure of any information contained in an Information Package or any Interim Report to be true and correct, or the failure of any other information provided to any such Indemnified Party by, or on behalf of, the Servicer to be true and correct, (b) the failure of any representation, warranty or statement made or deemed made by the Servicer (or any of its officers) under or in connection with this Agreement or any other Transaction Document to which it is a party to have been true and correct as of the date made or deemed made when made, (c) the failure by the Servicer to comply with any Applicable Law with respect to any Pool Receivable or the related Contract, (d) any dispute, claim, offset or defense of the Obligor (other than as a result of discharge in bankruptcy with respect to such Obligor) to the payment of any Receivable in, or purporting to be in, the Receivables Pool resulting from or related to the collection activities with respect to such Receivable, (e) any commingling (other than as a result of actions taken by the Administrator, any Purchaser Agent or any Purchaser) of funds to which the Administrator, any Purchaser Agent or any Purchaser is entitled hereunder with any other funds or (f) any failure of the Servicer to perform its duties or obligations in accordance with the provisions hereof or any other Transaction Document to which it is a party.

ARTICLE IV.
ADMINISTRATION AND COLLECTIONS

Section 4.1 Appointment of the Servicer.

(a) The servicing, administering and collection of the Pool Receivables shall be conducted by the Person so designated from time to time as the Servicer in accordance with this Section. Until the Administrator gives notice to Arch Sales (in accordance with this Section) of the designation of a new Servicer, Arch Sales is hereby designated as, and hereby agrees to perform the duties and obligations of, the Servicer pursuant to the terms hereof. Upon the occurrence of a Termination Event, the Administrator may (with the consent of the Majority Purchaser Agents) and shall (at the direction of the Majority Purchaser Agents) designate as Servicer any Person (including

itself) to succeed Arch Sales or any successor Servicer, on the condition in each case that any such Person so designated shall agree to perform the duties and obligations of the Servicer pursuant to the terms hereof.

(b) Upon the designation of a successor Servicer as set forth in clause (a), Arch Sales agrees that it will terminate its activities as Servicer hereunder in a manner that the Administrator determines will facilitate the transition of the performance of such activities to the new Servicer, and Arch Sales shall cooperate with and assist such new Servicer. Such cooperation shall include access to and transfer of related records (including all Contracts) and use by the new Servicer of all licenses, hardware or software necessary or desirable to collect the Pool Receivables and the Related Security.

(c) Arch Sales acknowledges that, in making their decision to execute and deliver this Agreement, the Administrator, the Purchaser Agents and the Purchasers have relied on Arch Sales' agreement to act as Servicer hereunder. Accordingly, Arch Sales agrees that it will not

voluntarily resign as Servicer without the prior written consent of the Administrator and the Purchasers.

(d) The Servicer may delegate its duties and obligations hereunder to any subservicer (each a "Sub-Servicer"); provided, that, in each such delegation: (i) each such Sub-Servicer shall agree in writing to perform the delegated duties and obligations of the Servicer pursuant to the terms hereof, (ii) the Servicer shall remain liable for the performance of the duties and obligations so delegated, (iii) the Seller, the Administrator, the Purchaser Agents and the Purchasers shall have the right to look solely to the Servicer for performance, and (iv) the terms of any agreement with any Sub-Servicer shall provide that the Administrator may terminate such agreement upon the termination of the Servicer hereunder by giving notice of its desire to terminate such agreement to the Servicer (and the Servicer shall provide appropriate notice to each such Sub-Servicer); provided, however, that if any such delegation is to any Person other than an Originator or the Transferor, the Administrator and the Majority Purchaser Agents shall have consented in writing in advance to such delegation.

Section 4.2 Duties of the Servicer.

(a) The Servicer shall take or cause to be taken all such action as may be necessary or advisable to service, administer and collect each Pool Receivable from time to time, all in accordance with this Agreement and all Applicable Law, with reasonable care and diligence, and in accordance with the Credit and Collection Policies. The Servicer shall set aside, for the accounts of the Seller and the Purchasers, the amount of the Collections to which each is entitled in accordance with Article I. The Servicer may, in accordance with the applicable Credit and Collection Policy, take such action, including modifications, waivers or restructurings of Pool Receivables and the related Contracts as the Servicer may determine to be appropriate to maximize Collections thereof or reflect adjustments permitted under the Credit and Collection Policy or required under Applicable Laws or the applicable Contract; provided, however, that for the purposes of this Agreement (i) such action shall not change the number of days such Pool Receivable has remained unpaid from the date of the original due date related to such Pool Receivable, (ii) such action shall not alter the status of such Pool Receivable as a Delinquent Receivable or a Defaulted Receivable under this Agreement or limit the rights of any of the Purchasers, Purchaser Agents or the Administrator under this Agreement or any other Transaction Document and (iii) if a Termination Event has occurred and is continuing and Arch Sales or an Affiliate thereof is serving as the Servicer, Arch Sales or such Affiliate may take such action only upon the prior written approval of the Administrator. The Seller shall deliver to the Servicer and the Servicer shall hold for the benefit of the Seller and the Administrator (individually and for the benefit of the Purchasers), in accordance with their respective interests, all records and documents (including computer tapes or disks) with respect to each Pool Receivable. Notwithstanding anything to the contrary contained herein, if a Termination Event has occurred and is continuing, the Administrator may direct the Servicer (whether the Servicer is Arch Sales or any other Person) to commence or settle any legal action to enforce collection of any Pool Receivable or to foreclose upon or repossess any Related Security.

(b) The Servicer shall, as soon as practicable following actual receipt of collected funds, turn over to the Seller the collections of any indebtedness that is not a Pool Receivable,

less, if Arch Sales or an Affiliate thereof is not the Servicer, all reasonable and appropriate out-of-pocket costs and expenses of such Servicer of servicing, collecting and administering such collections. The Servicer, if other than Arch Sales or an Affiliate thereof, shall, as soon as practicable upon demand, deliver to the Seller all records in its possession that evidence or relate to any indebtedness that is not a Pool Receivable, and copies of records in its possession that evidence or relate to any indebtedness that is a Pool Receivable.

(c) The Servicer's obligations hereunder shall terminate on the Final Payout Date. After such termination, if Arch Sales or an Affiliate thereof was not the Servicer on the date of such termination, the Servicer shall promptly deliver to the Seller all books, records and related materials that the Seller previously provided to the Servicer, or that have been obtained by the Servicer, in connection with this Agreement.

Section 4.3 Lock-Box Account and LC Collateral Account Arrangements.

Prior to the Closing Date, the Seller shall have entered into Lock-Box Agreements with all of the Lock-Box Banks and delivered original counterparts thereof to the Administrator. During the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, the Administrator may (and shall, at the direction of the Majority Purchaser Agents), at any time give notice to each Lock-Box Bank that the Administrator is exercising its rights under the Lock-Box Agreements to do any or all of the following: (a) to exercise exclusive dominion and control (for the benefit of the Secured Parties) over each of the Lock-Box Accounts and all funds on deposit therein and (b) to take any or all other actions permitted under the applicable Lock-Box Agreement. The Seller and the Servicer each hereby agree that if the Administrator at any time takes any action set forth in the preceding sentence, the Administrator shall have exclusive control (for the benefit of the Secured Parties) of the proceeds (including Collections) of all Pool Receivables and the Seller and the Servicer hereby further agree to take any other action that the Administrator may reasonably request to transfer such control or to ensure that the Administrator maintains such control. Any proceeds of Pool Receivables received by the Seller or the Servicer thereafter shall be sent immediately to, or as otherwise instructed by, the Administrator. The Seller and the Servicer hereby irrevocably instruct the Administrator on each Business Day during the Minimum Liquidity Period, so long as the Administrator has taken exclusive dominion and control over each of the Lock-Box Accounts and no Termination Event or Unmatured Termination Event exists, to transfer all available amounts on deposit in the Lock-Box Accounts as of the end of each Business Day and after giving effect to any distributions to the Servicer on such day pursuant to Section 1.4(g), to the LC Collateral Account. The parties hereto hereby acknowledge that if it at any time takes control of any Lock-Box Accounts, the Administrator shall not have any rights to the funds therein in excess of the unpaid amounts due to the Administrator, the Purchaser Agents, the Purchasers, any Indemnified Party, any Affected Person or any other Person hereunder or under any other Transaction Document, and the Administrator shall distribute or cause to be distributed such funds in accordance with Section 4.2(b) and Article I (in each case as if such funds were held by the Servicer thereunder).

The Administrator shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Seller hereby grants the

Administrator a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrator and at the Seller's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrator to reimburse the LC Bank for each drawing under a Letter of Credit and for repayment of amounts owing by the Seller hereunder and under each of the other Transaction Documents to each of the other Secured Parties, it being understood and agreed that certain amounts on deposit in the LC Collateral Account may, from time to time, be remitted to the Servicer pursuant to Section 1.4(g). Amounts, if any, on deposit in the LC Collateral Account on the Final Payout Date shall be remitted by the Administrator to the Seller.

The Administrator shall, on each Settlement Date (if such date occurs on a Termination Day), remove any available amounts then on deposit in the LC Collateral Account and deposit such amounts into each Purchaser Agent's account in accordance with the priorities set forth in Section 1.4(d), to the extent that any amounts are then due and owing under clauses first through third of Section 1.4(d)(ii) after giving effect to the distribution, if any, by the Servicer on such date in accordance with Section 1.4(d).

Section 4.4 Enforcement Rights.

(a) At any time following the occurrence and during the continuation of a Termination Event:

(i) the Administrator (at the Seller's expense) may direct the Obligors that payment of all amounts payable under any Pool Receivable is to be made directly to the Administrator or its designee;

(ii) the Administrator may instruct the Seller or the Servicer to give notice of the Purchasers' interest in Pool Receivables to each Obligor, which notice shall direct that payments be made directly to the Administrator or its designee (on behalf of the Secured Parties), and the Seller or the Servicer, as the case may be, shall give such notice at the expense of the Seller or the Servicer, as the case may be; provided, that if the Seller or the Servicer, as the case may be, fails to so notify each Obligor within two (2) Business Days following instruction by the Administrator, the Administrator (at the Seller's or the Servicer's, as the case may be, expense) may so notify the Obligors;

(iii) the Administrator may request the Servicer to, and upon such request the Servicer shall: (A) assemble all of the records necessary or desirable to collect the Pool Receivables and the Related Security, and transfer or license to a successor Servicer the use of all software necessary or desirable to collect the Pool Receivables and the Related Security, and make the same available to the Administrator or its designee (for the benefit of the Purchasers) at a place selected by the Administrator, and (B) segregate all cash, checks and other instruments received by it from time to time constituting Collections in a manner acceptable to the Administrator and, promptly upon

receipt, remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to the Administrator or its designee; and

(iv) the Administrator may replace the Person then acting as Servicer.

(b) The Seller hereby authorizes the Administrator (on behalf of each Purchaser Group), and irrevocably appoints the Administrator as its attorney-in-fact with full power of substitution and with full authority in the place and stead of the Seller, which appointment is coupled with an interest, to take any and all steps in the name of the Seller and on behalf of the Seller necessary or desirable, in the determination of the Administrator, following the occurrence and during the continuation of a Termination Event, to collect any and all amounts or portions thereof due under any and all Pool Assets, including endorsing the name of the Seller on checks and other instruments representing Collections and enforcing such Pool Assets. Notwithstanding anything to the contrary contained in this subsection, none of the powers conferred upon such attorney-in-fact pursuant to the preceding sentence shall subject such attorney-in-fact to any liability if any action taken by it shall prove to be inadequate or invalid, nor shall they confer any obligations upon such attorney-in-fact in any manner whatsoever.

Section 4.5 Responsibilities of the Seller.

(a) Anything herein to the contrary notwithstanding, the Seller shall: (i) perform all of its obligations, if any, under the Contracts related to the Pool Receivables to the same extent as if interests in such Pool Receivables had not been transferred hereunder, and the exercise by the Administrator, any Purchaser Agent or any Purchaser of their respective rights hereunder shall not relieve the Seller from such obligations, and (ii) pay when due any taxes, including any sales taxes payable in connection with the Pool Receivables and their creation and satisfaction. None of the Administrator, the Purchaser Agents and the Purchasers shall have any obligation or liability with respect to any Pool Asset, nor shall any of them be obligated to perform any of the obligations of the Seller, the Transferor, ACI or any Originator thereunder.

(b) Arch Sales hereby irrevocably agrees that if at any time it shall cease to be the Servicer hereunder, it shall act (if the then-current Servicer so requests) as the data-processing agent of the Servicer and, in such capacity, Arch Sales shall conduct the data-processing functions of the administration of the Receivables and the Collections thereon in substantially the same way that Arch Sales conducted such data-processing functions while it acted as the Servicer.

Section 4.6 Servicing Fee.

(a) Subject to clause (b), the Servicer shall be paid a fee (the "Servicing Fee") equal to 1.00% per annum (the "Servicing Fee Rate") of the daily average aggregate Outstanding Balance of the Pool Receivables. The Purchasers' Share of such fee shall be paid through the distributions contemplated by Section 1.4(d), and the Seller's Share of such fee shall be paid by the Seller on each Settlement Date.

(b) If the Servicer ceases to be Arch Sales or an Affiliate thereof, the servicing fee shall be the greater of: (i) the amount calculated pursuant to clause (a), and (ii) an alternative

amount specified by the successor Servicer not to exceed 110% of the aggregate reasonable costs and expenses incurred by such successor Servicer in connection with the performance of its obligations as Servicer hereunder.

Section 4.7 Authorization and Action of the Administrator and Purchaser Agents.

(a) Each Purchaser and Purchaser Agent hereby accepts the appointment of and irrevocably authorizes the Administrator to take such actions as agent on its behalf and to exercise such powers as are delegated to the Administrator hereby and to exercise such other powers as are reasonably incidental thereto. The Administrator shall hold, in its name, for the benefit of each Purchaser, ratably, the Purchased Interest. The Administrator shall not have any duties other than those expressly set forth herein or any fiduciary relationship with any Purchaser or Purchaser Agent, and no implied obligations or liabilities shall be read into this Agreement, or otherwise exist, against the Administrator. The Administrator does not assume, nor shall it be deemed to have assumed, any obligation to, or relationship of trust or agency with, the Seller or Servicer. Notwithstanding any provision of this Agreement or any other Transaction Document to the contrary, in no event shall the Administrator ever be required to take any action

which exposes the Administrator to personal liability or which is contrary to the provisions of this Agreement, any other Transaction Document or Applicable Law. The appointment and authority of the Administrator hereunder shall terminate on the Final Payout Date.

(b) Each Purchaser hereby accepts the appointment of the respective institution identified as the Purchaser Agent for such Purchaser's Purchaser Group on Schedule IV hereto or in the Assumption Agreement or Transfer Supplement pursuant to which such Purchaser becomes a party hereto, and irrevocably authorizes such Purchaser Agent to take such action on its behalf under the provisions of this Agreement and to exercise such powers and perform such duties as are expressly delegated to such Purchaser Agent by the terms of this Agreement, if any, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Purchaser Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Purchaser or other Purchaser Agent or the Administrator, and no implied obligations or liabilities shall be read into this Agreement, or otherwise exist, against any Purchaser Agent.

(c) Except as otherwise specifically provided in this Agreement, the provisions of this Section 4.7 are solely for the benefit of the Administrator, the Purchaser Agents and the Purchasers, and none of the Seller or the Servicer shall have any rights as a third party beneficiary or otherwise under any of the provisions of this Section 4.7, except that this Section 4.7 shall not affect any obligations which the Administrator, any Purchaser Agent or any Purchaser may have to the Seller or the Servicer under the other provisions of this Agreement. Furthermore, no Purchaser shall have any rights as a third-party beneficiary or otherwise under any of the provisions hereof in respect of a Purchaser Agent that is not the Purchaser Agent for such Purchaser.

(d) In performing its functions and duties hereunder, the Administrator shall act solely as the agent of the Purchasers and the Purchaser Agents and does not assume nor shall be

deemed to have assumed any obligation or relationship of trust or agency with or for the Seller or Servicer or any of their successors and assigns. In performing its functions and duties hereunder, each Purchaser Agent shall act solely as the agent of its respective Purchasers and does not assume nor shall be deemed to have assumed any obligation or relationship of trust or agency with or for the Seller, the Servicer, any Purchaser not in such Purchaser Agent's Purchaser Group, any other Purchaser Agent or the Administrator, or any of their respective successors and assigns.

Section 4.8 Nature of Administrator's Duties; Delegation of Administrator's Duties; Exculpatory Duties.

(a) The Administrator shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Transaction Documents. The duties of the Administrator shall be mechanical and administrative in nature. The Administrator shall not have, by reason of this Agreement, a fiduciary relationship in respect of any Purchaser. Nothing in this Agreement or any of the Transaction Documents, express or implied, is intended to or shall be construed to impose upon the Administrator any obligations in respect of this Agreement or any of the Transaction Documents except as expressly set forth herein or therein. The Administrator shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Purchaser or Purchaser Agent with any credit or other information with respect to the Seller, any Originator, the Transferor, any Sub-Servicer or the Servicer, whether coming into its possession before the date hereof or at any time or times thereafter. If the Administrator seeks the consent or approval of the Purchasers or the Purchaser Agents to the taking or refraining from taking any action hereunder, the Administrator shall send notice thereof to each Purchaser (or such Purchaser's Purchaser Agent, on its behalf) or each Purchaser Agent, as applicable. The Administrator shall promptly notify each Purchaser Agent any time that the Purchasers and/or Purchaser Agents, as the case may be, have instructed the Administrator to act or refrain from acting pursuant hereto.

(b) The Administrator may execute any of its duties through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrator shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) None of the Administrator and the Purchaser Agent, nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted (i) with the consent or at the direction of the Majority Purchaser Agents (or, in the case of any Purchaser Agent, the Purchasers within such Purchaser Agent's Purchaser Group that have a majority of the aggregate Commitments of such Purchaser Group) or (ii) in the absence of such Person's gross negligence or willful misconduct. The Administrator shall not be responsible to any Purchaser, Purchaser Agent or other Person for (i) any recitals, representations, warranties or other statements made by the Seller, any Sub-Servicer, the Servicer, the Transferor, any Originator or any of their Affiliates, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Transaction Document, (iii) any failure of the Seller, any Sub-Servicer, the Servicer, the Transferor, any Originator or any of their Affiliates to perform any obligation hereunder or under the other Transaction Documents to which it is a party (or

under any Contract), or (iv) the satisfaction of any condition specified in Exhibit II. The Administrator shall not have any obligation to any Purchaser Agent or Purchaser to ascertain or inquire about the observance or performance of any agreement contained in any Transaction Document or to inspect the properties, books or records of the Seller, the Servicer, the Transferor, any Originator or any of their respective Affiliates.

Section 4.9 UCC Filings.

Each of the Seller and the Purchasers expressly recognizes and agrees that the Administrator may be listed as the assignee or secured party of record on the various UCC filings required to be made hereunder in order to perfect the transfer of the Purchased Interest from the Seller to the Purchasers, that such listing shall be for administrative convenience only in creating a record or nominee owner to take certain actions hereunder on behalf of the Purchasers and that such listing will not affect in any way the status of the Purchasers as the beneficial owners of the Purchased Interest. In addition, such listing shall impose no duties on the Administrator other than those expressly and specifically undertaken in accordance with this Section 4.9.

Section 4.10 Agent's Reliance, Etc.

None of the Administrator and the Purchaser Agents, nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it as Administrator or as Purchaser Agent, as the case may be, under or in connection with this Agreement except for such Person's own gross negligence or willful misconduct. Each of the Administrator and each Purchaser Agent: (i) may consult with legal counsel (including counsel for the Seller), independent public accountants and other experts selected by the Administrator and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Purchaser or Purchaser Agent and shall not be responsible to any Purchaser or Purchaser Agent for any statements, warranties or representations made in or in connection with this Agreement; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Seller, the Servicer, any Sub-Servicer, the Transferor or any Originator or to inspect the property (including the books and records) of the Seller, the Servicer, any Sub-Servicer, the Transferor or any Originator; (iv) shall not be responsible to any Purchaser or Purchaser Agent for the due execution, legality, validity, enforceability, genuineness, sufficiency, or value of this Agreement, or any other instrument or document furnished pursuant hereto; and (v) shall incur no liability under or in respect of this Agreement or any other Transaction Document by acting upon any notice (including notice by telephone), consent, certificate or other instrument or writing (which may be by telex) believed by it to be genuine and signed or sent by the proper party or parties. The Administrator may at any time request instructions from the Purchasers and/or Purchaser Agents, and the Purchaser Agents may at any time request instructions from the Purchasers in their Purchaser Groups, with respect to any actions or approvals which by the terms of this Agreement or of any of the other Transaction Documents the Administrator or such Purchaser Agent is permitted or required to take or to grant, and if such instructions are promptly requested, the Administrator and/or such Purchaser Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any

Person for refraining from any action or withholding any approval under any of the Transaction Documents until it shall have received such instructions from the Majority Purchaser Agents, in the case of the Administrator or Purchasers holding the majority of the aggregate of the Commitments in such Purchaser Agent's Purchaser Group, in the case of any Purchaser Agent (or, in either case, where expressly required hereunder, from the Majority LC Participants, the LC Bank, all of the Purchasers and/or all of the LC Participants). Without limiting the foregoing, (x) none of the Purchasers and the Purchaser Agents shall have any right of action whatsoever against the Administrator as a result of the Administrator acting or refraining from acting under this Agreement or any of the other Transaction Documents in accordance with the instructions of the Majority Purchaser Agents and (y) none of the Purchasers in a Purchaser Agent's Purchaser Group shall have any right of action whatsoever against such Purchaser Agent as a result of such Purchaser Agent acting or refraining from acting under this Agreement or any of the other Transaction Documents in accordance with the instructions of the Purchasers within such Purchaser Agent's Purchaser Group with a majority of the Commitments of such Purchaser Group. The Administrator shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the required Purchasers or required Purchaser Agents, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Purchasers, all Purchaser Agents and the Administrator. Each Purchaser Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Purchasers in such Purchaser Agent's Purchaser Group with a majority of the Commitments of such Purchaser Group, and any such request and any action taken or failure to act pursuant thereto shall be binding upon all the Purchasers in such Purchaser Agent's Purchaser Group and such Purchaser Agent.

Section 4.11 Administrator and Affiliates.

To the extent that the Administrator or any of its Affiliates is or shall become an LC Participant hereunder, the Administrator or such Affiliate, in such capacity, shall have the same rights and powers under this Agreement as would any other LC Participant hereunder and may exercise the same as though it were not the Administrator. The Administrator and its Affiliates may generally engage in any kind of business with the Seller, the Transferor, any Originator, ACI, any Sub-Servicer or the Servicer, any of their respective Affiliates and any Person who may do business with or own securities of the Seller, the Transferor, any Originator, ACI, any Sub-Servicer or the Servicer or any of their respective Affiliates, all as if it were not the Administrator hereunder and without any duty to account therefor to any Purchaser Agent, or Purchaser.

Section 4.12 Notice of Termination Events.

Neither the Administrator nor any Purchaser Agent shall be deemed to have knowledge or notice of the occurrence of any Termination Event or Unmatured Termination Event unless it has received notice from, in the case of the Administrator, any Purchaser Agent, any Purchaser, the Servicer or the Seller and, in the case of any Purchaser Agent, the Administrator, any other Purchaser Agent, any Purchaser, the Servicer or the Seller, in each case stating that a Termination Event or an Unmatured Termination Event has occurred hereunder and describing such Termination Event or Unmatured Termination Event. In the event that the

Administrator receives such a notice, it shall promptly give notice thereof to each Purchaser Agent. In the event that a Purchaser Agent receives such a notice, it shall promptly give notice thereof to the Administrator (unless such Purchaser Agent first received notice of such Termination Event or Unmatured Termination Event from the Administrator) and to each of its related Purchasers. The Administrator shall take such action concerning a Termination Event or an Unmatured Termination Event as may be directed by the Majority Purchaser Agents (unless such action otherwise requires the consent of the required Purchasers, all Purchaser Agents or the LC Bank), but until the Administrator receives such directions, the Administrator may (but shall not be obligated to) take such action, or refrain from taking such action, as the Administrator deems advisable and in the best interests of the Purchasers and Purchaser Agents.

Section 4.13 Non-Reliance on Administrator, Purchaser Agents and other Purchasers; Administrators and Affiliates.

(a) Each Purchaser and Purchaser Agent expressly acknowledges that none of the Administrator and the Purchaser Agents, in the case of such Purchaser, and none of the Administrator or any other Purchaser Agent, in the case of such Purchaser Agent, nor in either case any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrator or any Purchaser Agent hereafter taken, including any review of the affairs of the Seller, the Transferor, ACI, the Servicer or any Originator, shall be deemed to constitute any representation or warranty by the Administrator or such Purchaser Agent. Each Purchaser and Purchaser Agent represents and warrants to the Administrator and such Purchaser's Purchaser Agent, in the case of such Purchaser, and Administrator, in the case of such Purchaser Agent, that it has, independently and without reliance upon the Administrator, the LC Bank, any Purchaser Agent or any Purchaser and based on such documents and information as it has deemed appropriate, made and will continue to make its own appraisal of any investigation into the business, operations, property, prospects, financial and other conditions and creditworthiness of the Seller, the Transferor, ACI, the Servicer or the Originators, and made its own evaluation and decision to enter into this Agreement. Except for terms specifically required to be delivered hereunder, the Administrator shall not have any duty or responsibility to provide any Purchaser or Purchaser Agent, and no Purchaser Agent have any duty or responsibility to provide any Purchaser, with any information concerning the Seller, the Transferor, ACI, the Servicer or the Originators or any of their Affiliates that comes into the possession of the Administrator or such Purchaser Agent, respectively, or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates.

(b) Each of the Purchasers, the Purchaser Agents and the Administrator and any of their respective Affiliates may extend credit to, accept deposits from and generally engage in any kind of banking, trust, debt, entity or other business with the Seller, the Transferor, ACI, the Servicer or any Originator or any of their Affiliates. With respect to the acquisition of the Eligible Receivables pursuant to this Agreement, each of the Purchaser Agents and the Administrator shall have the same rights and powers under this Agreement as any Purchaser and may exercise the same as though it were not such an agent, and the terms "Purchaser" and "Purchasers" shall include, to the extent applicable, each of the Purchaser Agents and the Administrator in their individual capacities.

Section 4.14 Indemnification.

Each LC Participant and Related Committed Purchaser agrees to indemnify and hold harmless the Administrator and its officers, directors, employees, representatives and agents and the LC Bank (to the extent not reimbursed by the Seller, the Transferor, the Servicer or any Originator and without limiting the obligation of the Seller, the Transferor, the Servicer, or any Originator to do so), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, settlements, costs, expenses and, or disbursements of any kind or nature whatsoever (including, in connection with any investigative or threatened proceeding, whether or not the Administrator, the LC Bank or such Person shall be designated a party thereto) that may at any time be imposed on, incurred by, or asserted against the Administrator, LC Bank or such Person as a result of, or related to, any of the transactions contemplated by the Transaction Documents or the execution, delivery or performance of the Transaction Documents or any other document furnished in connection therewith; provided, however, that no LC Participant or Related Committed Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements resulting from the Administrator's or the LC Bank's gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, each LC Participant agrees to reimburse the Administrator and the LC Bank, ratably according to their Pro Rata Shares, promptly upon demand, for any out-of-pocket expenses (including reasonable counsel fees) incurred by the Administrator or the LC Bank in connection with the administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement.

Section 4.15 Successor Administrator.

The Administrator may, upon at least thirty (30) days' notice to the Seller, the Purchaser Agents and the Servicer, resign as Administrator. Such resignation shall not become effective until a successor Administrator is appointed by the Majority Purchaser Agents and the LC Bank (subject to the consent of the Seller, so long as no Termination Event exists, such consent not to be unreasonably withheld, conditioned or delayed) and has accepted such appointment. If no successor Administrator shall have been so appointed by the Majority Purchaser Agents and the LC Bank within sixty (60) days after the resigning Administrator's giving of notice of resignation, the resigning Administrator may, on behalf of the Secured Parties, petition a court of competent jurisdiction to appoint a successor Administrator. Upon such acceptance of its appointment as Administrator hereunder by a successor Administrator, such successor Administrator shall succeed to and become vested with all the rights and duties of the resigning Administrator, and the resigning Administrator shall be discharged from its duties and obligations under the Transaction Documents. After any resigning Administrator's resignation hereunder, the provisions of Sections 3.1 and 3.2 and this Article IV shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrator.

ARTICLE V.
MISCELLANEOUS

Section 5.1 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Transaction Document, or consent to any departure by the Seller or the Servicer therefrom, shall be effective unless in a writing signed by the Administrator, the Majority Purchaser Agents and the LC Bank and, in the case of an amendment, by the other parties thereto (other than the Secured Parties); provided, however, that no such amendment shall, (a) without the consent of each affected Purchaser, (i) extend the date of any payment or deposit of Collections by the Seller or the Servicer or decrease the outstanding amount of or rate of Discount or extend the repayment of or any scheduled payment date for the payment of any Discount in respect of any Portion of Capital or any fees owed to a Purchaser; (ii) reduce any fees payable pursuant to the applicable Fee Letter, (iii) forgive or waive or otherwise excuse any repayment of Capital or change either the amount of Capital of any Purchaser or any Purchaser's pro rata share of the Purchased Interest; (iii) increase the Commitment of any Purchaser; (iv) amend or modify the Pro Rata Share of any LC Participant; (v) amend or modify the provisions of this Section 5.1 or of Section 4.3, Exhibit V or the definition of "Eligible Receivables", "Net Receivables Pool Balance", "Majority LC Participants", "Majority Purchaser Agents", "Minimum Liquidity", "Minimum Liquidity Period", "Purchased Interest", "Scheduled Commitment Termination Date", "Termination Day", "Termination Event" or "Total Reserves" or (vi) amend or modify any defined term (or any term used directly or indirectly in such defined term) used in clauses (i) through (v) above in a manner that would circumvent the intention of the restrictions set forth in such clauses and (b) without the consent of the Majority Purchaser Agents and/or Majority LC Participants, as applicable, amend, waive or modify any provision expressly requiring the consent of such Majority Purchaser Agents and/or Majority LC Participant. Each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. The Administrator hereby agrees to provide executed copies of any material amendment or waiver of any provision of this Agreement or any other Transaction Document to the Rating Agencies if requested by any party hereto. No failure on the part of any Purchaser Agent, any Purchaser or the Administrator to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 5.2 Notices, Etc.

All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including facsimile or electronic mail communication) and shall be personally delivered or sent by facsimile, electronic mail or by overnight mail, to the intended party at the mailing address or electronic mail address or facsimile number of such party set forth under its name on the signature pages hereof (or in any other document or agreement pursuant to which it is or became a party hereto), or at such other address or facsimile number as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective (i) if delivered by overnight mail, when received, and (ii) if transmitted by facsimile or electronic mail, when sent, receipt confirmed by telephone or electronic means.

Section 5.3 Successors and Assigns; Assignability; Participations.

(a) Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; all covenants, promises and agreements by or on behalf of any parties hereto that are contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise provided in Section 4.1(d) or Section 4.4(a)(iv), neither the Seller nor the Servicer may assign or transfer any of its rights or delegate any of its duties hereunder or under any Transaction Document without the prior written consent of the Administrator, each Purchaser Agent and the LC Bank.

(b) Participations. (i) Except as otherwise specifically provided herein, any Purchaser may sell to one or more Persons (each a "Participant") participating interests in the interests of such Purchaser hereunder; provided, that no Purchaser shall grant any participation under which the Participant shall have rights to approve any amendment to or waiver of this Agreement or any other Transaction Document. Such Purchaser shall remain solely responsible for performing its obligations hereunder, and the Seller, the Servicer, each Purchaser Agent and the Administrator shall continue to deal solely and directly with such Purchaser in connection with such Purchaser's rights and obligations hereunder. A Purchaser shall not agree with a Participant to restrict such Purchaser's right to agree to any amendment, waiver or modification hereto, except amendments, waivers or modifications that require the consent of all Purchasers. (ii) Notwithstanding anything contained in paragraph (a) or clause (i) of paragraph (b) of this Section 5.3, each of the LC Bank and each LC Participant may sell participations in all or any part of any Funded Purchase made by such LC Participant to another bank or other entity so long as (x) no such grant of a participation shall, without the consent of the Seller, require the Seller to file a registration statement with the SEC and (y) no holder of any such participation shall be entitled to require such LC Participant to take or omit to take any action hereunder except that such LC Participant may agree with such participant that, without such Participant's consent, such LC Participant will not consent to an amendment, modification or waiver that requires the consent of all LC Participants. Any such Participant shall not have any rights hereunder or under the Transaction Documents. (iii) Each Purchaser that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Seller, maintain a register on which it enters the name and address of each Participant and the interest in a Purchased Interest (and Discount, fees and other similar amounts under this Agreement) of each Participant's interest in a Purchased Interest or other obligations under the Transaction Documents (the "Participant Register"); provided that no Purchaser shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in a Purchased Interest) to any Person except to the extent that such disclosure is necessary to establish that a Purchased Interest is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Purchaser shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrator (in its capacity as Administrator) shall have no responsibility for maintaining a Participant Register.

(c) Assignments by Related Committed Purchasers. Any Related Committed Purchaser may assign to one or more Persons (each a "Purchasing Related Committed Purchaser"), reasonably acceptable to each of the Administrator, the LC Bank and the related

Purchaser Agent in each such Person's sole and absolute discretion, its rights and obligations herein (including its Commitment (which shall be inclusive of its Commitment as an LC Participant)) in whole or in part, pursuant to a supplement hereto, substantially in the form of Annex G with any changes as have been approved by the parties thereto (each, a "Transfer Supplement"), executed by each such Purchasing Related Committed Purchaser, such selling Related Committed Purchaser, such related Purchaser Agent and the Administrator and with the consent of the Seller (provided, that the consent of the Seller shall not be unreasonably withheld, conditioned or delayed and that no such consent shall be required if (i) a Termination Event or Unmatured Termination Event has occurred and is continuing or (ii) such assignment is made by any Related Committed Purchaser to (A) the Administrator, (B) any other Related Committed Purchaser, (C) any Affiliate of the Administrator or any Related Committed Purchaser, (D) any commercial paper conduit or similar financing vehicle sponsored or administered by such Purchaser and for whom such Purchaser acts as a program support provider or through which (directly or indirectly) such Purchaser does or may fund Purchases hereunder (each, a "Conduit"), (E) any Liquidity Provider, (F) any Program Support Provider or (G) any Person that (1) is in the business of issuing commercial paper notes and (2) is associated with or administered by the Administrator or such Related Committed Purchaser or any Affiliate of the Administrator or such Related Committed Purchaser). Upon (i) the execution of the Transfer Supplement, (ii) delivery of an executed copy thereof to the Seller, the Servicer, such related Purchaser Agent and the Administrator and (iii) payment by the Purchasing Related Committed Purchaser to the selling Related Committed Purchaser of the agreed purchase price, if any, such selling Related Committed Purchaser shall be released from its obligations hereunder to the extent of such assignment and such Purchasing Related Committed Purchaser shall for all purposes be a Related Committed Purchaser party hereto and shall have all the rights and obligations of a Related Committed Purchaser hereunder to the same extent as if it were an original party hereto. The amount of the Commitment of the selling Related Committed Purchaser allocable to such Purchasing Related Committed Purchaser shall be equal to the amount of the Commitment of the selling Related Committed Purchaser transferred regardless of the purchase price, if any, paid therefor. The Transfer Supplement shall be an amendment hereof only to the extent necessary to reflect the addition of such Purchasing Related Committed Purchaser as a "Related Committed Purchaser" and a related "LC Participant" and any resulting adjustment of the selling Related Committed Purchaser's Commitment and, if applicable, selling related LC Participant's Pro Rata Share of the LC Participation Amount.

(d) Assignments to Liquidity Providers and other Program Support Providers. Any Conduit Purchaser may at any time grant to one or more of its Liquidity Providers or other Program Support Providers participating interests in its portion of the Purchased Interest. In the event of any such grant by such Conduit Purchaser of a participating interest to a Liquidity Provider or other Program Support Provider, such Conduit Purchaser shall remain responsible for the performance of its obligations hereunder. The Seller agrees that each Liquidity Provider and Program Support Provider shall be entitled to the benefits of Sections 1.7 and 1.8.

(e) Other Assignment by Conduit Purchasers. Each party hereto agrees and consents (i) to any Conduit Purchaser's assignment, participation, grant of security interests in or other transfers of any portion of, or any of its beneficial interest in, the Purchased Interest (or portion thereof), including without limitation to any collateral agent in connection with its commercial

paper program and (ii) to the complete assignment by any Conduit Purchaser of all of its rights and obligations hereunder to any other Person, and upon such assignment such Conduit Purchaser shall be released from all obligations and duties, if any, hereunder; provided, that such Conduit Purchaser may not, without the prior consent of its Related Committed Purchasers, make any such transfer of its rights hereunder unless the assignee (x) is a Conduit or (y) (i) is principally engaged in the purchase of assets similar to the assets being purchased hereunder, (ii) has as its Purchaser Agent the Purchaser Agent of the assigning Conduit Purchaser and (iii) issues commercial paper or other Notes with credit ratings substantially comparable to the ratings of the assigning Conduit Purchaser. Any assigning Conduit Purchaser shall deliver to any assignee a Transfer Supplement with any changes as have been approved by the parties thereto, duly executed by such Conduit Purchaser, assigning any portion of its interest in the Purchased Interest to its assignee. Such Conduit Purchaser shall promptly (i) notify each of the other parties hereto of such assignment and (ii) take all further action that the assignee reasonably requests in order to evidence the assignee's right, title and interest in such interest in the Purchased Interest and to enable the assignee to exercise or enforce any rights of such Conduit Purchaser hereunder. Upon the assignment of any portion of its interest in the Purchased Interest, the assignee shall have all of the rights hereunder with respect to such interest (except that the Discount therefor shall thereafter accrue at the rate, determined with respect to the assigning Conduit Purchaser unless the Seller, the related Purchaser Agent and the assignee shall have agreed upon a different Discount).

(f) Certain Pledges. Without limiting the right of any Purchaser to sell or grant interests, security interests or participations to any Person as otherwise described in this Article V, above, any Purchaser may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure its obligations as a Purchaser hereunder, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Purchaser from any of its obligations hereunder or substitute any such pledge or assignee for such Purchaser as a party hereto.

(g) Assignment by Administrator. Subject to Section 4.15 (if applicable), this Agreement and the rights and obligations of the Administrator hereunder shall be assignable, in whole or in part, by the Administrator and its successors and assigns; provided, that unless: (i) such assignment is to an Affiliate of PNC, (ii) it becomes unlawful for PNC to serve as the Administrator or (iii) a Termination Event exists, the Seller has consented to such assignment, which consent shall not be unreasonably withheld, conditioned or delayed.

(h) Agents. Without limiting any other rights that may be available under Applicable Law, the rights of the Purchasers and each Liquidity Provider may be enforced through it or by its agents.

(i) Disclosure; Notice. Each assignor may, in connection with an assignment permitted hereunder, disclose to the applicable assignee (that shall have agreed to be bound by Section 5.6) any information relating to the Servicer, the Seller or the Pool Receivables furnished to such assignor by or on behalf of the Servicer, the Seller, any Purchaser, any Purchaser Agent or the Administrator. Such assignor shall give prior written notice to Seller of any assignment of

such assignor's rights and obligations (including ownership of the Purchased Interest) to any Person other than a Program Support Provider.

(j) Opinions of Counsel. If required by the Administrator or the applicable Purchaser Agent or to maintain the ratings of the Notes of any Conduit Purchaser, each Transfer Supplement or other assignment and acceptance agreement must be accompanied by an opinion of counsel of the assignee as to matters as the Administrator or such Purchaser Agent may reasonably request.

Section 5.4 Costs, Expenses and Taxes.

(a) By way of clarification, and not of limitation, of Sections 1.7, 1.19 or 3.1, the Seller shall pay to the Administrator, any Purchaser Agent and/or any Purchaser on demand all costs and expenses in connection with (i) the preparation, execution, delivery and administration (including amendments or waivers of any provision) of this Agreement and the other Transaction Documents along with all related documents and agreements (including the Confirmation Order and any other court filings in connection therewith), (ii) the sale of the Purchased Interest (or any portion thereof), (iii) the perfection (and continuation) of the Administrator's rights (on behalf of the Secured Parties) in the Receivables, Collections and other Pool Assets, (iv) the enforcement by the Administrator, the Purchaser Agents or the Purchasers of the obligations of the Seller, the Transferor, the Servicer or the Originators under the Transaction Documents or of any Obligor under a Receivable and (v) the maintenance by the Administrator of the Lock-Box Accounts (and any related lock-box or post office box), including Attorney Costs relating to any of the foregoing or to advising the Administrator, any Purchaser Agent, any Purchaser, any Liquidity Provider or any other Program Support Provider about its rights and remedies under any Transaction Document and all costs and expenses (including Attorney Costs) of the Administrator, the Purchaser Agents, the Purchasers, any Liquidity Provider or Program Support Provider in connection with the enforcement

of the Transaction Documents and in connection with the administration of the Transaction Documents. Subject to Section 1(e) of Exhibit IV of this Agreement, the Seller shall reimburse the Administrator, each Purchaser Agent and each Purchaser for the cost of such Person's auditors (which may be employees of such Person) auditing the books, records and procedures of the Seller or the Servicer. The Seller shall reimburse each Conduit Purchaser for any amounts such Conduit Purchaser must pay to any Liquidity Provider or other Program Support Provider on account of any Tax. The Seller shall reimburse each Conduit Purchaser on demand for all reasonable costs and expenses incurred by such Conduit Purchaser or any holder of membership interests of such Conduit Purchaser in connection with the Transaction Documents or the transactions contemplated thereby, including costs related to the auditing of the Conduit Purchaser's books by certified public accountants, Rating Agency fees and fees and out of pocket expenses of counsel of the Administrator, any Purchaser Agent and any Purchaser, or any membership interest holder, or administrator, of such for advice relating to such Conduit Purchaser's operation.

(b) All payments made by the Seller to the Administrator, any Purchaser Agent, any Purchaser, Liquidity Provider or other Program Support Provider hereunder shall be made without withholding for or on account of any present or future taxes (other than those imposed or based on the gross or net income or receipts of the recipient by the jurisdiction under the laws of

which such Person is organized, operates or where its principal executive office is located or any political subdivision thereof). If any such withholding is so required, the Seller shall make the withholding, pay the amount withheld to the appropriate authority before penalties attach thereto or interest accrues thereon and pay such additional amount as may be necessary to ensure that the net amount actually received by such Person free and clear of such taxes (including such taxes on such additional amount) is equal to the amount that such Person would have received had such withholding not been made. If any such Person pays any such taxes, penalties or interest the Seller shall reimburse such Person for that payment on demand. If the Seller pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to such Person on whose account such withholding was made on or before the thirtieth day after payment.

(c) In addition, the Seller shall pay on demand any and all stamp and other taxes and fees payable in connection with the execution, delivery, filing and recording of this Agreement, the other Transaction Documents or the other documents or agreements to be delivered hereunder or thereunder, and agrees to save each Indemnified Party and Affected Person harmless from and against any liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 5.5 No Proceedings; Limitation on Payments.

(a) Each of the Seller, ACI, the Servicer, the Administrator, the LC Bank, the Purchaser Agents and the Purchasers and each assignee of the Purchased Interest or any interest therein, and each Person that enters into a commitment to purchase the Purchased Interest or interests therein, hereby covenants and agrees that it will not institute against, or join any other Person in instituting against, any Conduit Purchaser any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding under any federal or state bankruptcy or similar law, for one year and one day after the latest maturing Note issued by such Conduit Purchaser is paid in full. The provisions of this paragraph shall survive any termination of this Agreement.

(b) Each of the Seller, ACI, the Servicer, the Administrator, the LC Bank, the Purchaser Agents and the Purchasers and each assignee of the Purchased Interest or any interest therein, and each Person that enters into a commitment to purchase the Purchased Interest or interests therein, hereby covenants and agrees that it will not institute against, or join any other Person in instituting against, the Seller any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding under any federal or state bankruptcy or similar law, for one year and one day after the Final Payout Date; provided, that the Administrator may take any such action with the prior written consent of the Majority Purchaser Agents and the LC Bank. The provisions of this paragraph shall survive any termination of this Agreement.

(c) Notwithstanding any provisions contained in this Agreement to the contrary, no Conduit Purchaser shall, or shall be obligated to, pay any amount, if any, payable by it pursuant to this Agreement or any other Transaction Document unless (i) such Conduit Purchaser has received funds which may be used to make such payment and which funds are not required to repay such Conduit Purchaser's Notes when due and (ii) after giving effect to such payment,

either (x) such Conduit Purchaser could issue Notes to refinance all of its outstanding Notes (assuming such outstanding Notes matured at such time) in accordance with the program documents governing such Conduit Purchaser's securitization program or (y) all such Conduit Purchaser's Notes are paid in full. Any amount which a Conduit Purchaser does not pay pursuant to the operation of the preceding sentence shall not constitute a claim (as defined in §101 of the Bankruptcy Code) against or company obligation of such Conduit Purchaser for any such insufficiency unless and until such Conduit Purchaser satisfies the provisions of clauses (i) and (ii) above. The provisions of this paragraph shall survive any termination of this Agreement.

Section 5.6 Confidentiality.

Unless otherwise required by Applicable Law, each of the Seller and the Servicer agrees to maintain the confidentiality of this Agreement and the other Transaction Documents (and all drafts thereof) in communications with third parties and otherwise; provided, that this Agreement may be disclosed: (a) to third parties to the extent such disclosure is made pursuant to a written agreement of confidentiality in form and substance reasonably satisfactory to the Administrator and each Purchaser Agent, (b) to the Seller's legal counsel and auditors if they agree to hold it confidential, subject to Applicable Law, (c) in connection with any legal proceeding arising out of or in connection with this Agreement or any other Transaction Document or the preservation or maintenance of that party's rights hereunder or thereunder, (d) if required to do so by a court of competent jurisdiction whether in pursuance of any procedure for discovering documents or otherwise, (e) pursuant to any law in accordance with which that party is required or accustomed to act (including applicable SEC requirements), (f) to any Governmental Authority, and (g) to any Person in connection with any credit agreement or other financing transaction. The restrictions in the preceding sentence shall not apply to disclosures to any party to this Agreement by any other party hereto, information already known to a recipient otherwise than in breach of this Section, information also received from another source on terms not requiring it to be kept confidential, or information that is or becomes publicly available otherwise than in breach of this Section. Unless otherwise required by Applicable Law, each of the Administrator, the Purchaser Agents and the Purchasers agrees to maintain the confidentiality of non-public financial information regarding ACI, the Seller, the Transferor, the Servicer and the Originators; provided, that such information may be disclosed to: (i) third parties to the extent such disclosure is made pursuant to a written agreement of confidentiality in form and substance reasonably satisfactory to ACI, (ii) legal counsel and auditors of the Purchasers, the Purchaser Agents or the Administrator if they agree to hold it confidential, (iii) any nationally recognized statistical rating organization or if applicable, the Rating Agencies rating the Notes of any Conduit Purchaser, (iv) any Program Support Provider or potential Program Support Provider (if they agree to hold it confidential), (v) any placement agency placing the Notes and (vi) any regulatory authorities or Governmental Authority having jurisdiction over the Administrator, any Purchaser Agent, any Purchaser, any Program Support Provider or any Liquidity Provider.

Section 5.7 GOVERNING LAW AND JURISDICTION.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK

(INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK; AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. EACH OF THE PARTIES HERETO WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH SERVICE MAY BE MADE BY ANY OTHER MEANS PERMITTED BY NEW YORK LAW.

Section 5.8 Execution in Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same agreement. Delivery of an executed counterpart hereof by facsimile or other electronic means shall be equally effective as delivery of an originally executed counterpart.

Section 5.9 Survival of Termination; Non-Waiver.

The provisions of Sections 1.7, 1.8, 1.18, 1.19, 3.1, 3.2, 5.4, 5.5, 5.6, 5.7, 5.10 and 5.14 shall survive any termination of this Agreement.

Section 5.10 WAIVER OF JURY TRIAL.

EACH OF THE PARTIES HERETO WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. EACH OF THE PARTIES HERETO AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES HERETO FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY

OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

Section 5.11 Entire Agreement.

This Agreement and the other Transaction Documents embody the entire agreement and understanding between the parties hereto, and supersede all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

Section 5.12 Headings.

The captions and headings of this Agreement and any Exhibit, Schedule or Annex hereto are for convenience of reference only and shall not affect the interpretation hereof or thereof.

Section 5.13 Right of Setoff.

Each Secured Party is hereby authorized (in addition to any other rights it may have) to setoff, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any deposits and any other indebtedness held or owing by such Secured Party (including by any branches or agencies of such Secured Party) to, or for the account of, (i) the Seller against amounts owing by the Seller hereunder (even if contingent or unmatured) and (ii) the Servicer against amounts owing by the Servicer hereunder (even if contingent or unmatured); provided that such Secured Party shall notify the Seller or the Servicer, as applicable, promptly following such setoff; provided further, that no Secured Party shall exercise any setoff against the Servicer pursuant to this Agreement with respect to any deposits of the Servicer held by such Secured Party, if such exercise is in contravention of any deposit account control agreement or other similar agreement with the Servicer that is then in effect and to which such Secured Party is a party in the capacity of the bank maintaining the Servicer's relevant account.

Section 5.14 Purchaser Groups' Liabilities.

The obligations of each Purchaser Agent and each Purchaser under the Transaction Documents are solely the corporate obligations of such Person. No recourse shall be had for any obligation or claim arising out of or based upon any Transaction Document against any member, employee, officer, director or incorporator of any such Person; provided, however, that this Section shall not relieve any such Person of any liability it might otherwise have for its own gross negligence or willful misconduct.

Section 5.15 Sharing of Recoveries.

Each Purchaser agrees that if it receives any recovery, through set-off, judicial action or otherwise, on any amount payable or recoverable hereunder in a greater proportion than should have been received hereunder or otherwise inconsistent with the provisions hereof, then the recipient of such recovery shall purchase for cash an interest in amounts owing to the other Purchasers (as return of Capital or otherwise), without representation or warranty except for the representation and warranty that such interest is being sold by each such other Purchaser free and clear of any Adverse Claim created or granted by such other Purchaser, in the amount necessary to create proportional participation by the Purchaser in such recovery. If all or any portion of such amount is thereafter recovered from the recipient, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

Section 5.16 USA Patriot Act.

Each of the Administrator and each of the other Secured Parties hereby notifies the Seller and the Servicer that pursuant to the requirements of the USA Patriot Act, the Administrator and the other Secured Parties may be required to obtain, verify and record information that identifies the Seller, the Originators, the Transferor, the Servicer and the Performance Guarantor, which information includes the name, address, tax identification number and other information regarding the Seller, the Originators, the Transferor, the Servicer and the Performance Guarantor that will allow the Administrator and the other Secured Parties to identify the Seller, the Originators, the Transferor, the Servicer

and the Performance Guarantor in accordance with the USA Patriot Act. This notice is given in accordance with the requirements of the USA Patriot Act. Each of the Seller and the Servicer agrees to provide the Administrator and each other Secured Parties, from time to time, with all documentation and other information required by bank regulatory authorities under "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA Patriot Act.

Section 5.17 Tax Matters.

(a) It is the intention of the parties hereto that for U.S. federal, state and local income and franchise tax purposes, each Purchase is not treated as a sale of the Purchased Interest or otherwise.

(b) The Administrator, on Seller's behalf, shall maintain a register for the recordation of the names and addresses of the Purchasers, and the Purchases (and Discount, fees and other similar amounts under this Agreement) pursuant to the terms hereof from time to time (the "Register"), including any assignee. The entries in the Register shall be conclusive absent manifest error, and to the extent applicable, the parties hereto shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a lender solely for U.S. federal income tax purposes. The Register shall be available for inspection by each Purchaser, at any reasonable time and from time to time upon reasonable prior notice.

Section 5.18 Severability.

Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 5.19 Mutual Negotiations.

This Agreement and the other Transaction Documents are the product of mutual negotiations by the parties thereto and their counsel, and no party shall be deemed the draftsperson of this Agreement or any other Transaction Document or any provision hereof or thereof or to have provided the same. Accordingly, in the event of any inconsistency or ambiguity of any provision of this Agreement or any other Transaction Document, such inconsistency or ambiguity shall not be interpreted against any party because of such party's involvement in the drafting thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ARCH RECEIVABLE COMPANY, LLC,
as Seller

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, MO 63141

Attention: Robert G. Jones
Telephone: 314-994-2716
Facsimile: 314-994-2736
Email: bjones@archcoal.com

ARCH COAL SALES COMPANY, INC.,
as initial Servicer

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, MO 63141

Attention: Robert G. Jones
Telephone: 314-994-2716
Facsimile: 314-994-2736
Email: bjones@archcoal.com

PNC BANK, NATIONAL ASSOCIATION,
as Administrator

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

PNC BANK, NATIONAL ASSOCIATION,
as a Related Committed Purchaser

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

PNC BANK, NATIONAL ASSOCIATION,
as the LC Bank and as an LC Participant

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor
Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

PNC BANK, NATIONAL ASSOCIATION,
as a Purchaser Agent

By: /s/ Michael Brown
Name: Michael Brown
Title: Senior Vice President

Address: PNC Bank, National Association
300 Fifth Avenue
11th Floor

Pittsburgh, Pennsylvania 15222

Attention: Brian Stanley
Telephone: 412-768-2001
Facsimile: 412-768-5151

REGIONS BANK,
as a Purchaser Agent

By: /s/ Mark A. Kassis
Name: Mark A. Kassis
Title: Senior Vice President

Address: Regions Bank
1180 West Peachtree Street NW
Suite 1000
Atlanta, GA 30309

Attention: Mark Kassis or Linda Harris
Telephone: 404-221-4366 or 404-221-4354
Facsimile: 404-805-0841

REGIONS BANK,
as a Related Committed Purchaser

By: /s/ Mark A. Kassis
Name: Mark A. Kassis
Title: Senior Vice President

Address: Regions Bank
1180 West Peachtree Street NW
Suite 1000
Atlanta, GA 30309

Attention: Mark Kassis or Linda Harris
Telephone: 404-221-4366 or 404-221-4354
Facsimile: 404-805-0841

REGIONS BANK,
as an LC Participant

By: /s/ Mark A. Kassis
Name: Mark A. Kassis
Title: Senior Vice President

Address: Regions Bank
1180 West Peachtree Street NW
Suite 1000
Atlanta, GA 30309

Attention: Mark Kassis or Linda Harris
Telephone: 404-221-4366 or 404-221-4354
Facsimile: 404-805-0841

EXHIBIT I
DEFINITIONS

As used in the Agreement (including its Exhibits, Schedules and Annexes), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined). Unless otherwise indicated, all Section, Annex, Exhibit and Schedule references in this Exhibit are to

Sections of and Annexes, Exhibits and Schedules to the Agreement.

"ACI" means Arch Coal, Inc., a Delaware corporation.

"Adjusted LC Participation Amount" means, at any time, the greater of (i) LC Participation Amount less the amount of cash collateral held in the LC Collateral Account at such time and (ii) zero ($0).

"Administration Account" means the account number 1002422076 of the Administrator maintained at the office of PNC at 300 Fifth Avenue, Pittsburgh, Pennsylvania 15222, or such other account as may be so designated in writing by the Administrator to the Servicer.

"Administrator" has the meaning set forth in the preamble to the Agreement.

"Adverse Claim" means any Lien other than a Permitted Lien; it being understood that any Lien in favor of, or assigned to, the Administrator (for the benefit of the Secured Parties) shall not constitute an Adverse Claim.

"Affected Person" has the meaning set forth in Section 1.7 of the Agreement.

"Affiliate" means, as to any Person: (a) any Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person, or (b) who is a director or officer: (i) of such Person or (ii) of any Person described in clause (a), except that, in the case of each Conduit Purchaser, Affiliate shall mean the holder(s) of its capital stock or membership interests, as the case may be. For purposes of this definition, control of a Person shall mean the power, direct or indirect: (x) to vote 25% or more of the securities having ordinary voting power for the election of directors or managers of such Person, or (y) to direct or cause the direction of the management and policies of such Person, in either case whether by ownership of securities, contract, proxy or otherwise.

"Aggregate Capital" means at any time the aggregate outstanding Capital of all Purchasers at such time.

"Aggregate Discount" means, at any time, the sum of the aggregate for each Purchaser of the accrued and unpaid Discount with respect to each such Purchaser's Capital at such time.

"Agreement" has the meaning set forth in the preamble to the Agreement.

"Alternate Rate" for any Settlement Period for any Capital (or portion thereof) funded by any Purchaser other than through the issuance of Notes means an interest rate per annum equal to: (a) solely with respect to PNC and Regions, as Purchasers, (i) the daily average LMIR for

such Settlement Period, or (ii) if LMIR is unavailable pursuant to Section 1.9, the Base Rate for such Settlement Period or (b) with respect to any Purchaser other than PNC or Regions, the Euro-Rate for such Settlement Period, or, in the sole and absolute discretion of the applicable Purchaser Agent, the Base Rate for such Settlement Period; provided, however, that the "Alternate Rate" for any day while a Termination Event exists shall be an interest rate equal to the greater of (i) 3.0% per annum above the Base Rate as in effect on such day and (ii) the "Alternate Rate" as calculated in clause (a) or (b) above, as applicable.

"Anti-Terrorism Laws" means any applicable laws or regulation relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such applicable laws or regulations, all as amended, supplemented or replaced from time to time.

"Applicable Law" means, with respect to any Person, (x) all provisions of law, statute, treaty, constitution, ordinance, rule, regulation, ordinance, requirement, restriction, permit, executive order, certificate, decision, directive or order of any Governmental Authority applicable to such Person or any of its property and (y) all judgments, injunctions, orders, writs, decrees and awards of all courts and arbitrators in proceedings or actions in which such Person is a party or by which any of its property is bound.

"Arch Group" has the meaning set forth in paragraph 3(c) of Exhibit IV to the Agreement.

"Arch Sales" has the meaning set forth in the preamble to the Agreement.

"Assumption Agreement" means an agreement substantially in the form set forth in Annex F to this Agreement.

"Attorney Costs" means and includes all reasonable fees, costs, expenses and disbursements of (i) prior to the occurrence of a Termination Event, one law firm for the Administrator, the Indemnified Parties and the Secured Parties (and one local law firm in each applicable jurisdiction), taken as a whole, and, in the case of any actual conflict of interest, one additional law firm to the affected parties similarly situated (and one local law firm in each applicable jurisdiction), taken as a whole and (ii) on and after the occurrence of any Termination Event, any law firm or other external counsel and all reasonable disbursements of internal counsel.

"Bankruptcy Code" means the United States Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.), as amended from time to time.

"Bankruptcy Court" means the United States Bankruptcy Court for the Eastern District of Missouri or such other court as shall have jurisdiction over the Chapter 11 Cases.

"Base Rate" means, with respect to any Purchaser, for any day, a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall be at all times equal to the higher of:

(a) the rate of interest in effect for such day as publicly announced from time to time by the applicable Purchaser Agent (or applicable Related Committed Purchaser or, in the case of determining the Base Rate for purposes of calculating the Yield Reserve, the Administrator) as its "reference rate" or "prime rate", as applicable. Such "reference rate" or "prime rate" is set by the applicable Purchaser Agent (or the applicable Related Committed Purchaser or the Administrator) based upon various factors, including such Person's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate), and

(b) 0.50% per annum above the latest Federal Funds Rate.

"Benefit Plan" means any employee benefit pension plan as defined in Section 3(2) of ERISA in respect of which the Seller, the Transferor, any Originator, ACI or any ERISA Affiliate is, or at any time during the immediately preceding six years was, an "employer" as defined in Section 3(5) of ERISA.

"Business Day" means any day (other than a Saturday or Sunday) on which: (a) banks are not authorized or required to close in New York City, New York, or Pittsburgh, Pennsylvania; and (b) if this definition of "Business Day" is utilized in connection with the Euro-Rate or LMIR, dealings are carried out in the London interbank market.

"Capital" means, with respect to any Purchaser, the aggregate amounts paid to the Seller in connection with Funded Purchases in respect of the Purchased Interest by such Purchaser pursuant to Section 1.2 of the Agreement (including such Purchaser's Pro Rata Share of the aggregate amount of all unreimbursed draws deemed to be Funded Purchases pursuant to Section 1.2(e)), as reduced from time to time by Collections distributed and applied on account of such Capital pursuant to Section 1.4(d) of the Agreement; provided, that if such Capital shall have been reduced by any distribution and thereafter all or a portion of such distribution is rescinded or must otherwise be returned for any reason, such Capital shall be increased by the amount of such rescinded or returned distribution as though it had not been made.

"Cash Flow Forecast" has the meaning set forth in Section 1(a)(iii) of Exhibit IV.

"Change in Control" means (a) ACI ceases to own, directly or indirectly, (1) 100% of the issued and outstanding capital stock of Arch Sales free and clear of all Adverse Claims (other than any Adverse Claim in favor of the Term Loan Agent), (2) 100% of the issued and outstanding capital stock or other equity interests of each Originator (it being understood that the foregoing clause (2) shall not prohibit the disposition of equity interests in any Originator to the extent (x) after giving effect to such disposition, the Person so sold is no longer party to the Purchase and Sale Agreement and (y) such disposition is not otherwise prohibited by the Transaction Documents), (3) 100% of each Company Note free and clear of all Adverse Claims (other than any Adverse Claim in favor of the Term Loan Agent (so long as such Person is then party to the No Proceedings Agreement) or (4) 100% of the membership interests of the Seller free and clear of all Adverse Claims (other than any Adverse Claim in favor of the Term Loan Agent (so long as such Person is then party to the No Proceedings Agreement); or (b) any person or group of persons (within the meaning of Sections 13(d) or 14(a) of the Securities Exchange

Act of 1934, as amended) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) 35% or more of the voting capital stock of ACI; or (c) within a period of twelve (12) consecutive calendar months, individuals who (1) were directors of ACI on the first day of such period, (2) were nominated for election by the ACI, or (3) were approved for appointment by the board shall cease to constitute a majority of the board of directors of ACI; provided that the appointment of any directors of ACI pursuant to the Plan of Reorganization shall not result in a Change of Control.

"Chapter 11 Cases" means the Chapter 11 cases of ACI and all of its Subsidiaries jointly administered under Case No. 16-40120-705 in the U.S. Bankruptcy Court for the Eastern District of Missouri.

"Chapter 11 Debtors" means ACI and certain of its Subsidiaries that are debtors in any of the Chapter 11 Cases.

"Closing Date" means October 5, 2016.

"Collections" means, with respect to any Pool Receivable: (a) all funds that are received by any Originator, the Transferor, ACI, the Seller or the Servicer in payment of any amounts owed in respect of such Receivable (including purchase price, finance charges, interest and all other charges), or applied to amounts owed in respect of such Receivable (including insurance payments and net proceeds of the sale or other disposition of repossessed goods or other collateral or property of the related Obligor or any other Person directly or indirectly liable for the payment of such Pool Receivable and available to be applied thereon), (b) all amounts deemed to have been received pursuant to Section 1.4(e) of the Agreement and (c) all other proceeds of such Pool Receivable.

"Commitment" means, with respect to any Related Committed Purchaser, LC Participant or LC Bank, as applicable, the maximum aggregate amount which such Purchaser is obligated to pay hereunder on account of all Funded Purchases and all drawings under all Letters of Credit, on a combined basis, as set forth on Schedule IV or in the Assumption Agreement or other agreement pursuant to which it became a Purchaser, as such amount may be modified in connection with any subsequent assignment pursuant to Section 5.3 or in connection with a change in the Purchase Limit pursuant to Section 1.1(b) of the Agreement). For the avoidance of doubt, in no event shall the sum of the aggregate Commitments of all Purchasers in a Purchaser Group exceed such Purchaser Group's Group Commitment.

"Commitment Percentage" means, for each Related Committed Purchaser or related LC Participant in a Purchaser Group, the Commitment of such Related Committed Purchaser or related LC Participant, as the case may be, divided by the total of all Commitments of all Related Committed Purchasers or related LC Participants, as the case may be, in such Purchaser Group.

"Commodity Hedge" means a price protection agreement: (i) related to crude oil, diesel fuel, heating oil, coal, SO2 allowances or other commodities used in the ordinary course of business of ACI and its Affiliates and (ii) entered into by ACI and its Affiliates for hedging purposes in the ordinary course of the operations of their business.

"Company Note" has the meaning set forth in Section 3.1 of the Sale and Contribution Agreement.

"Concentration Percentage" means: (a) for any Group A Obligor, 16%, (b) for any Group B Obligor, 16%, (c) for any Group C Obligor, 8% and (d) for any Group D Obligor, 4%.

"Concentration Reserve" means at any time, the product of (a) the Aggregate Capital plus the Adjusted LC Participation Amount, and (b)(i) the Concentration Reserve Percentage divided by (ii) 1 minus the Concentration Reserve Percentage.

"Concentration Reserve Percentage" means, at any time, the largest of the following: (i) the sum of the five (5) largest Obligor Percentages of Group D Obligors, (ii) the sum of the three (3) largest Obligor Percentages of Group C Obligors, (iii) the sum of the two (2) largest Obligor Percentages of Group B Obligors and (iv) the largest Obligor Percentage of Group A Obligors.

"Conduit" has the meaning set forth in Section 5.3(c) of the Agreement.

"Conduit Purchaser" means each commercial paper conduit that is a party to this Agreement, as a purchaser, or that becomes a party to this Agreement as a purchaser pursuant to an Assumption Agreement or otherwise.

"Confirmation Order" means the final order confirming the Plan of Reorganization entered by the Bankruptcy Court on September 13, 2016, which, among other things, approves the transactions described in this Agreement and the other Transaction Documents.

"Contract" means, with respect to any Receivable, any and all contracts, instruments, agreements, leases, invoices, notes or other writings pursuant to which such Receivable arises or that evidence such Receivable or under which an Obligor becomes or is obligated to make payment in respect of such Receivable.

"Covered Entity" means (a) the Seller, the Servicer, the Performance Guarantor, the Transferor and each Originator and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

"CP Rate" means, for any Conduit Purchaser and for any Settlement Period for any Portion of Capital (a) the per annum rate equivalent to the weighted average cost (as determined by the applicable Purchaser Agent and which shall include commissions of placement agents and dealers, incremental carrying costs incurred with respect to Notes of such Person maturing on dates other than those on which corresponding funds are received by such Conduit Purchaser, other borrowings by such Conduit Purchaser (other than under any Program Support Agreement) and any other costs associated with the issuance of Notes) of or related to the issuance of Notes that are allocated, in whole or in part, by the applicable Conduit Purchaser to fund or maintain such Portion of Capital (and which may be also allocated in part to the funding of other assets of

such Conduit Purchaser); provided, however, that if any component of such rate is a discount rate, in calculating the "CP Rate" for such Portion of Capital for such Settlement Period, the applicable Purchaser Agent shall for such component use the rate resulting from converting such discount rate to an interest bearing equivalent rate per annum; provided, further, that notwithstanding anything in this Agreement or the other Transaction Documents to the contrary, the Seller agrees that any amounts payable to Conduit Purchasers in respect of Discount for any Settlement Period with respect to any Portion of Capital funded by such Conduit Purchasers at the CP Rate shall include an amount equal to the portion of the face amount of the outstanding Notes issued to fund or maintain such Portion of Capital that corresponds to the portion of the proceeds of such Notes that was used to pay the interest component of maturing Notes issued to fund or maintain such Portion of Capital, to the extent that such Conduit Purchaser had not received payments of interest in respect of such interest component prior to the maturity date of such maturing Notes (for purposes of the foregoing, the "interest component" of Notes equals the excess of the face amount thereof over the net proceeds received by such Conduit Purchaser from the issuance of Notes, except that if such Notes are issued on an interest-bearing basis its "interest component" will equal the amount of interest accruing on such Notes through maturity) or (b) any other rate designated as the "CP Rate" for such Conduit Purchaser in an Assumption Agreement or Transfer Supplement or other document pursuant to which such Person becomes a party as a Conduit Purchaser to this Agreement, or any other writing or agreement provided by such Conduit Purchaser to the Seller, the Servicer and the applicable Purchaser Agent from time to time. The "CP Rate" for any day while a Termination Event or an Unmatured Termination Event exists shall be an interest rate equal to the greater of (a) 3.0% per annum above the Base Rate as in effect on such day and (b) the Alternate Rate as calculated in the definition thereof.

"Credit Agreement" means (i) that certain Credit Agreement, dated as of October 5, 2016 (as extended, renewed, amended, amended and restated, supplemented or otherwise modified, the "Original Credit Agreement"), by and among ACI, the lenders party thereto, and Wilmington Trust, National Association, as administrative agent and collateral agent (in such capacites, together with its successors, the "Original Term Loan Agent" and, together with the administrative agent or collateral agent under any other agreement referred to in clause (ii) below, the "Term Loan Agent") or (ii) any other loan agreement, credit agreement, indenture or other agreement from time to time entered into by ACI, any Originator and/or any Affiliate thereof in connection with the incurrence or issuance of Debt (or commitments in respect thereof) in exchange or replacement for or to refinance the Original Credit Agreement, in whole or in part, whether or not with the same or different lenders, arrangers, agents or other investors and whether with a larger or smaller aggregate principal amount and/or a longer or shorter maturity, that provides for or is secured by, in whole or in part, among other things, a mortgage, security interest or other Adverse Claim on any interest in real property or as-extracted collateral (or any proceeds thereof) of any Originator related to such Originator's mining operations or a minehead.

"Credit and Collection Policy" means, as the context may require, those receivables credit and collection policies and practices of the Originators and the Transferor in effect on the Closing Date and described in Schedule I to the Agreement, as modified in compliance with the Agreement.

"Cut-off Date" has the meaning set forth in the Sale Agreements.

"Daily Report" has the meaning set forth in Section 1(a)(ii) of Exhibit IV to this Agreement.

"Days' Sales Outstanding" means, for any calendar month, an amount computed as of the last day of such calendar month equal to: (a) the average of the Outstanding Balance of all Pool Receivables as of the last day of each of the three most recent calendar months ended on the last day of such calendar month divided by (b) (i) the aggregate credit sales made by the Originators and the Transferor during the three calendar months ended on the last day of such calendar month, divided by (ii) 90.

"Debt" means, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (i) borrowed money, (ii) amounts raised under or liabilities in respect of any bonds, debentures, notes, note purchase, acceptance or credit facility, or other similar instruments or facilities, (iii) reimbursement obligations (contingent or otherwise) under any letter of credit, (iv) any other transaction (including production payments (excluding royalties), installment purchase agreements, forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business which are not represented by a promissory note or other evidence of indebtedness), or (v) any Guaranty of any such Debt. It is understood that obligations in respect of any Hedging Transaction shall not be deemed to be Debt.

"Declining Conduit Purchaser" has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

"Declining Notice" has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

"Default Ratio" means the ratio (expressed as a percentage and rounded to the nearest 1/100 of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of each calendar month by dividing: (a) the aggregate Outstanding Balance of all Pool Receivables that became Defaulted Receivables during such month, by (b) the aggregate credit sales made by the Originators and the Transferor during the month that is seven calendar months before such month.

"Defaulted Receivable" means a Receivable:

(a) as to which any payment, or part thereof, remains unpaid for more than 150 days from the original due date for such payment, or

(b) without duplication (i) as to which an Insolvency Proceeding shall have occurred with respect to the Obligor thereof or any other Person obligated thereon or owning any Related Security with respect thereto, (ii) that has been written off the applicable Originator's, the Seller's or the Transferor's books as uncollectible or (iii) that, consistent with the Credit and Collection Policy, should be written off the applicable Originator's, the Seller's or the Transferor's books as uncollectible;

provided, however, that for purposes of calculating the Default Ratio, no Receivable will be deemed to have become a Defaulted Receivable more than once.

"Delinquency Ratio" means the ratio (expressed as a percentage and rounded to the nearest 1/100 of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of each calendar month by dividing: (a) the aggregate Outstanding Balance of all Pool Receivables that were Delinquent Receivables on such day by (b) the aggregate Outstanding Balance of all Pool Receivables on such day.

"Delinquent Receivable" means a Receivable as to which any payment, or part thereof, remains unpaid for more than 60 days from the original due date for such payment.

"Dilution Horizon" means, for any calendar month, the ratio (expressed as a percentage and rounded to the nearest 1/100th of 1%, with 5/1000th of 1% rounded upward) computed as of the last day of such calendar month of: (a) the aggregate credit sales made by the Originators and the Transferor during the two most recent calendar months to (b) the Net Receivables Pool Balance at the last day of the most recent calendar month.

"Dilution Ratio" means the ratio (expressed as a percentage and rounded to the nearest 1/100th of 1%, with 5/1000th of 1% rounded upward), computed as of the last day of each calendar month by dividing: (a) the aggregate amount of payments made or owed by the Seller pursuant to Section 1.4(e)(i) of the Agreement during such calendar month by (b) the aggregate credit sales made by the Originators and the Transferor during the calendar month that is one month prior to such calendar month.

"Dilution Reserve" means, on any day, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such day multiplied by (b) (i) the Dilution Reserve Percentage on such day, divided by (ii) 100% minus the Dilution Reserve Percentage on such day.

"Dilution Reserve Percentage" means, on any day, the product of (a) the Dilution Horizon multiplied by (b) the sum of (i) 2.5 times the average of the Dilution Ratios for the twelve most recent calendar months and (ii) the Spike Factor.

"Discount" means, with respect to any Purchaser:

(a) for any Portion of Capital for any Settlement Period with respect to any Purchaser to the extent such Portion of Capital will be funded by such Purchaser during such Settlement Period through the issuance of Notes:

CPR x C x ED/360

(b) for any Portion of Capital for any Settlement Period with respect to any Purchaser to the extent such Portion of Capital will not be funded by such Purchaser during such Settlement Period through the issuance of Notes or, if the LC Bank and/or any LC Participant has made, or has deemed to have made, a Funded Purchase in

connection with any drawing under a Letter of Credit which accrues Discount pursuant to Section 1.2(e) of the Agreement:

AR x C x ED/Year + TF

where:

AR	=	the Alternate Rate for such Portion of Capital for such Settlement Period with respect to such Purchaser,
C	=	the Portion of Capital during such Settlement Period with respect to such Purchaser,
CPR	=	the CP Rate for the Portion of Capital for such Settlement Period with respect to such Purchaser,
ED	=	the actual number of days during such Settlement Period,
Year	=	if such Portion of Capital is funded based upon: (i) the Euro-Rate or LMIR, 360 days, and (ii) the Base Rate, 365 or 366 days, as applicable, and
TF	=	the Termination Fee, if any, for the Portion of Capital for such Settlement Period with respect to such Purchaser;

provided, that no provision of the Agreement shall require the payment or permit the collection of Discount in excess of the maximum permitted by Applicable Law; and provided further, that Discount for any Portion of Capital shall not be considered paid by any distribution to the extent that at any time all or a portion of such distribution is rescinded or must otherwise be returned for any reason.

"Drawing Date" has the meaning set forth in Section 1.14 of the Agreement.

"Eligible Assignee" means any bank or financial institution acceptable to the LC Bank and the Administrator.

"Eligible Foreign Obligor" means an Obligor which is a resident of any country (other than the United States of America) that has a short-term foreign currency rating (or, if such country does not have such a short-term foreign currency rating, a long-term foreign currency rating) of at least "A2" (or "A") by Standard & Poor's and "P-1" (or "A2") by Moody's.

"Eligible Receivable" means, at any time, a Pool Receivable:

(a) the Obligor of which is: (i) (A) United States resident or (B) an Eligible Foreign Obligor; (ii) not (A) a United States Federal Government Authority or (B) a governmental entity within the State of Ohio; provided that TVA shall not be subject to the restriction set forth in clause (ii)(A) above; (iii) not subject to any Insolvency Proceeding; (iv) not an Affiliate of ACI, the Transferor, the Servicer or any other

Originator; and (v) not a natural person (in each case, unless consented to in writing by the Administrator and the Majority Purchaser Agents);

(b) that is denominated and payable only in U.S. dollars in the United States, and the Obligor with respect to which has been instructed to remit Collections in respect thereof to a Lock-Box Account in the United States of America;

(c) the Obligor of which is not a Sanctioned Person;

(d) that arises under a duly authorized Contract for the sale and delivery of goods or services in the ordinary course of the applicable Originator's or the Transferor's business;

(e) that arises under a duly authorized Contract that is in full force and effect and that is a legal, valid and binding obligation of the related Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of creditors' rights generally or limiting the right of specific performance;

(f) that, together with the Contract related thereto, conforms in all material respects with all Applicable Laws;

(g) that is not the subject of any asserted dispute, offset, hold back, defense, Adverse Claim or other claim, provided that, with respect to any Pool Receivable which is subject to any such claim, the amount of such Pool Receivable which shall be treated as an Eligible Receivable shall equal the excess of the amount of such Pool Receivable over the amount of such claim asserted by or available to the related Obligor;

(h) that satisfies all applicable requirements of the applicable Credit and Collection Policy;

(i) that, together with the Contract related thereto, has not been modified, waived or restructured since its creation, except as permitted pursuant to Section 4.2 of the Agreement;

(j) in which the Seller owns good and marketable title, free and clear of any Adverse Claims, and that is freely assignable by the Seller (including without any consent of the related Obligor or any Governmental Authority);

(k) for which the Administrator (on behalf of the Secured Parties) shall have a valid and enforceable undivided percentage ownership or security interest, to the extent of the Purchased Interest, and a valid and enforceable first priority perfected security interest therein and in the Related Security and Collections with respect thereto, in each case free and clear of any Adverse Claim;

(l) that constitutes an account as defined in the UCC, and that is not evidenced by instruments or chattel paper;

(m) that is neither a Defaulted Receivable nor a Delinquent Receivable;

(n) for which neither the Originator thereof, the Transferor, the Seller nor the Servicer has established any offset or netting arrangements with the related Obligor;

(o) for which the sum of the Outstanding Balances of all Receivables of the related Obligor with respect to which any payment, or part thereof, remains unpaid for more than 90 days from the original due date for such payment do not exceed 35.00% of the Outstanding Balance of all such Obligor's Receivables;

(p) that represents amounts earned and payable by the Obligor that are not subject to the performance of additional services by the Originator thereof or the Transferor;

(q) that (i) does not arise from a sale of accounts made as part of a sale of a business or constitute an assignment for the purpose of collection only, (ii) is not a transfer of a single account made in whole or partial satisfaction of a preexisting indebtedness or an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract and (iii) is not a transfer of an interest in or an assignment of a claim under a policy of insurance;

(r) that if such Receivable has not yet been billed, the related coal has been shipped within the last 60 days;

(s) that does not have a due date which is more than 90 days after the original invoice date of such Receivable; and

(t) that if such Receivable is a Rio Tinto Receivable, a Rio Tinto Trigger Event has not occurred with respect to any Rio Tinto Receivable (it being understood that upon the occurrence of a Rio Tinto Trigger Event with respect to any Receivable, then on and after such time, no Rio Tinto Receivables, whether or not then in the Receivables Pool prior to such Rio Tinto Trigger Event, shall be an Eligible Receivable).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute of similar import, together with the rulings and regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

"ERISA Affiliate" means: (a) any corporation that is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Internal Revenue Code) as the Seller, the Transferor, any Originator or ACI, (b) a trade or business (whether or not incorporated) under common control (within the meaning of Section 414(c) of the Internal Revenue Code) with the Seller, the Transferor, any Originator or ACI, or (c) a member of the same affiliated service group (within the meaning of Section 414(m) of the Internal Revenue Code) as the Seller, the Transferor, any Originator, ACI, any corporation described in clause (a) or any trade or business described in clause (b).

"Euro-Rate" means with respect to any Settlement Period, the greater of (a) 0.00% and (b) the interest rate per annum determined by the applicable Purchaser Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (i) the rate of interest determined by such Purchaser Agent in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the rate per annum for deposits in U.S. dollars as reported by Bloomberg Finance L.P. and shown on US0001M Screen as the composite offered rate for London interbank deposits for such period (or on any successor or substitute page of such service, or any successor or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by such Purchase Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market at or about 11:00 a.m. (London time) on the Business Day which is two (2) Business Days prior to the first day of such Settlement Period for an amount comparable to the Portion of Capital to be funded at the Alternate Rate and based upon the Euro-Rate during such Settlement Period by (ii) a number equal to 1.00 minus the Euro-Rate Reserve Percentage. The Euro-Rate may also be expressed by the following formula:

$$\text{Euro-Rate} = \frac{\text{Composite of London interbank offered rates shown on Bloomberg Finance L.P. Screen US0001M or appropriate successor}}{1.00 - \text{Euro-Rate Reserve Percentage}}$$

where "Euro-Rate Reserve Percentage" means the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including without limitation, supplemental, marginal, and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities"). The Euro-Rate shall be adjusted with respect to any Portion of Capital funded at the Alternate Rate

and based upon the Euro-Rate that is outstanding on the effective date of any change in the Euro-Rate Reserve Percentage as of such effective date. The applicable Purchaser Agent shall give prompt notice to the Seller of the Euro-Rate as determined or adjusted in accordance herewith (which determination shall be conclusive absent manifest error).

"Excess Concentration" means the sum, without duplication, of the following amounts:

(i) the amount by which the Outstanding Balance of Eligible Receivables of each Obligor then in the Receivables Pool exceeds an amount equal to the Concentration Percentage for such Obligor multiplied by the Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(ii) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool that have a stated maturity which is more than 45 days after the original invoice date of such Eligible Receivables exceeds 10% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(iii) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool the Obligor of which is an Eligible Foreign Obligor exceeds 20% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(iv) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool the coal with respect to which has been shipped but not yet billed for more than 30 days but not more than 60 days from shipment exceeds 10% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool; plus

(v) the amount by which the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool the coal with respect to which has been shipped but not yet billed exceeds 50% of the aggregate Outstanding Balance of all Eligible Receivables then in the Receivables Pool.

"Exiting Notice" has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

"Exiting Purchaser" has the meaning set forth in Section 1.4(b)(ii) of this Agreement.

"Facility Termination Date" means the earliest to occur of: (a) the date determined pursuant to Section 2.2 of this Agreement, (b) the date the Purchase Limit reduces to zero pursuant to Section 1.1(b) of this Agreement, (c) with respect to each Purchaser Group, the earliest to occur of (i) the date that the commitments of the related Liquidity Providers, if any, terminate under the Liquidity Agreement and (ii) the date that the Commitments of all Related Committed Purchasers in such Purchaser Group terminate hereunder, (d) the date which is 15 days after the date on which the Administrator has received written notice from the Seller of its election to terminate the Purchase Facility, (e) with respect to the LC Bank, any LC Participant or any Related Committed Purchaser, the LC Bank's, such LC Participant's or such Related Committed Purchaser's Scheduled Commitment Termination Date, and (f) the date, if any, that is 364 days following the first day that Liquidity is less than $175,000,000 for a period of 60 consecutive days.

"FAS 166/167" has the meaning set forth in Section 1.7(c) of the Agreement.

"FASB" has the meaning set forth in Section 1.7(a) of the Agreement.

"Federal Funds Rate" means, for any day, the per annum rate set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Board (including any such successor, "H.15(519)") for such day opposite the caption "Federal Funds (Effective)." If on any relevant day such rate is not yet published in H. 15(519), the rate for such day will be the rate set forth in the daily statistical release designated as the Composite 3:30 p.m. Quotations for U.S. Government Securities, or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, the "Composite 3:30 p.m. Quotations") for such day under the caption "Federal Funds Effective Rate." If on any relevant day the appropriate rate is not yet published in either H.15(519) or the Composite 3:30 p.m. Quotations, the rate for such day will be the arithmetic mean as determined by the Administrator of the rates for the last transaction in overnight Federal funds arranged before 9:00 a.m. (New York time) on that day by each of three leading brokers of Federal funds transactions in New York City selected by the Administrator.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

"Fee Letters" has the meaning set forth in Section 1.5 of the Agreement.

"Fees" means the fees payable by the Seller pursuant to the applicable Fee Letter.

"Final Payout Date" means the latest of (i) the Facility Termination Date, (ii) the date on which no Capital of or Discount in respect of the Purchased Interest shall be outstanding, (iii) the LC Participation Amount has been reduced to zero ($0) and no Letters of Credit issued hereunder remain outstanding and undrawn (unless backstopped in a manner agreed to in writing by the LC Bank and the Majority LC Participants in their sole and absolute discretion), (iv) the date all other amounts owing to the Purchaser Agents, the Purchasers, the Administrator and the other Indemnified Parties and Affected Person under this Agreement and each of the other Transaction Documents have been paid in full (other than indemnification or other contingent obligations not yet due and owing) and (v) all accrued Servicing Fees have been paid in full.

"Fresh Start Reporting" means the preparation of consolidated financial statements of ACI in accordance with the American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Plan of Reorganization on a presumed effective date of October 5, 2016.

"Funded Purchase" means a purchase or deemed purchase of undivided percentage ownership interests in the Purchased Interest under the Agreement which (i) is paid for in cash, including pursuant to Section 1.1(b) (other than through reinvestment of Collections pursuant to Section 1.4(b) of the Agreement) or (ii) is treated as a Funded Purchase pursuant to Section 1.2(e) of the Agreement and/or any of the provisions set forth in Sections 1.11 through 1.20 of the Agreement.

"Governmental Acts" has the meaning set forth in Section 1.19 of the Agreement.

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

"Group A Obligor" means any Obligor with a short-term rating of at least: (a) "A1" by Standard & Poor's, or if such Obligor does not have a short-term rating from Standard & Poor's, a rating of "A+" or better by Standard & Poor's on its long-term senior unsecured and uncredit-enhanced debt securities, and (b) "P-1" by Moody's, or if such Obligor does not have a short-term rating from Moody's, "Al" or better by Moody's on its long-term senior unsecured and uncredit-enhanced debt securities.

"Group B Obligor" means an Obligor, not a Group A Obligor, with a short-term rating of at least: (a) "A-2" by Standard & Poor's, or if such Obligor does not have a short-term rating from Standard & Poor's, a rating of "BBB+" to "A" by Standard & Poor's on its long-term senior unsecured and uncredit-enhanced debt securities, and (b) "P-

2" by Moody's, or if such

Obligor does not have a short-term rating from Moody's, "Baal" to "A2" by Moody's on its long-term senior unsecured and uncredit-enhanced debt securities.

"Group Capital" means, with respect to any Purchaser Group, an amount equal to the aggregate outstanding Capital of all Purchasers within such Purchaser Group.

"Group C Obligor" means an Obligor, not a Group A Obligor or a Group B Obligor, with a short-term rating of at least: (a) "A-3" by Standard & Poor's, or if such Obligor does not have a short-term rating from Standard & Poor's, a rating of "BBB-" to "BBB" by Standard & Poor's on its long-term senior unsecured and uncredit-enhanced debt securities, and (b) "P-3" by Moody's, or if such Obligor does not have a short-term rating from Moody's, "Baa3" to "Baa2" by Moody's on its long-term senior unsecured and uncredit-enhanced debt securities.

"Group Commitment" means, with respect to any Purchaser Group, the aggregate of the Commitments of each Related Committed Purchaser within such Purchaser Group, which amount is set forth on Schedule IV hereto.

"Group D Obligor" means any Obligor that is not a Group A Obligor, Group B Obligor or Group C Obligor.

"Guaranty" of any Person means any obligation of such Person guarantying or in effect guarantying any liability or obligation of any other Person in any manner, whether directly or indirectly, including any such liability arising by virtue of partnership agreements, including any agreement to indemnify or hold harmless any other Person, any performance bond or other suretyship arrangement and any other form of assurance against loss, except endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business.

"Hedging Transaction" means any of the following transactions by ACI or any of its Subsidiaries: any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction or any combination of the foregoing transactions, including, without limitation, any Interest Rate Hedge or any Commodity Hedge.

"Indemnified Amounts" has the meaning set forth in Section 3.1 of the Agreement.

"Indemnified Party" has the meaning set forth in Section 3.1 of the Agreement.

"Independent Director" has the meaning set forth in paragraph 3(c) of Exhibit IV to the Agreement.

"Information Package" means a report, in substantially the form of Annex A to the Agreement, furnished to the Administrator pursuant to the Agreement.

"Insolvency Proceeding" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the

benefit of creditors of a Person, composition, marshaling of assets for creditors of a Person, or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in each of cases (a) and (b) undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"Interest Rate Hedge" means an interest rate exchange, collar, cap, swap, adjustable strike cap, adjustable strike corridor or similar agreements entered into by ACI or any of its Affiliates in the ordinary course operations of their business.

"Interim Report" means each Daily Report and Weekly Report.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of the Internal Revenue Code also refer to any successor sections.

"Issuance Notice" has the meaning set forth in Section 1.12(a) of the Agreement.

"LC Bank" has the meaning set forth in the preamble to the Agreement.

"LC Collateral Account" means the account designated as the LC Collateral Account established and maintained by the Administrator (for the benefit of the LC Bank and the LC Participants), or such other account as may be so designated as such by the Administrator.

"LC Fee Expectation" has the meaning set forth in Section 1.15(c) of the Agreement.

"LC Participant" means each Person listed as such (and its respective Commitment) for each Purchaser Group as set forth on the signature pages of this Agreement or in any Assumption Agreement or Transfer Supplement.

"LC Participation Amount" means, at any time, the then sum of the undrawn amounts of all outstanding Letters of Credit.

"Letter of Credit" means any stand-by letter of credit issued by the LC Bank for the account of the Seller (or for the account of the Transferor or any Subsidiary thereof, as applicable) pursuant to the Agreement.

"Letter of Credit Application" has the meaning set forth in Section 1.12 of the Agreement.

"Lien" means any ownership interest or claim, mortgage, deed of trust, pledge, lien, security interest, hypothecation, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including, but not limited to, any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing) or any hypothetical lien that would give a trustee superior rights to the Administrator or any of the Secured Parties.

"Liquidity" means the sum of (i) unrestricted cash or Permitted Investments of ACI and its Domestic Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries), (ii) withdrawable funds from brokerage accounts of ACI and its Domestic Subsidiaries (other than the Securitization Subsidiaries and Bonding Subsidiaries) and (iii) any unused commitments that are available to be drawn by ACI pursuant to the terms of any Working Capital Facility. For purposes of this definition, the terms "Domestic Subsidiary," "Securitization Subsidiaries," "Bonding Subsidiaries" and "Working Capital Facility" have the respective meanings assigned thereto in the Credit Agreement as in effect on the Closing Date without giving effect to any subsequent amendment, supplement or other modification thereof except to the extent that such amendment, supplement or modification (as the case may be) has been consented to in writing by the Administrator and each Purchaser Agent (each acting in its sole discretion and in its capacity as such hereunder).

"Liquidity Agent" means any bank or other financial institution acting as agent for the various Liquidity Providers under each Liquidity Agreement.

"Liquidity Agreement" means any agreement entered into in connection with the Agreement pursuant to which a Liquidity Provider agrees to make purchases or advances to, or purchase assets from, any Conduit Purchaser in order to provide liquidity for such Conduit Purchaser's Purchases.

"Liquidity Provider" means each bank or other financial institution that provides liquidity support to any Conduit Purchaser pursuant to the terms of a Liquidity Agreement.

"LLC Agreement" means the limited liability company agreement of Seller.

"LMIR" means for any day during any Settlement Period, the greater of (a) 0.00% and (b) the interest rate per annum determined by dividing (i) the one-month Eurodollar rate for U.S. dollar deposits as reported by Bloomberg Finance L.P. and shown on US0001M Screen or any other service or page that may replace such page from time to time for the purpose of displaying offered rates of leading banks for London interbank deposits in United States dollars, as of 11:00 a.m. (London time) on such day, or if such day is not a Business Day, then the immediately preceding Business Day (or if not so reported, then as determined by the Administrator from another recognized source for interbank quotation), in each case, changing when and as such rate changes, by (ii) a number equal to 1.00 minus the Euro-Rate Reserve Percentage on such day. The calculation of LMIR may also be expressed by the following formula:

$$\text{LMIR} = \frac{\text{One-month Eurodollar rate for U.S. Dollars shown on Bloomberg US0001M Screen or appropriate successor}}{\text{1.00 - Euro-Rate Reserve Percentage}}$$

LMIR shall be adjusted on the effective date of any change in the Euro-Rate Reserve Percentage as of such effective date.

"Lock-Box Account" means each account listed on Schedule II to this Agreement (in each case, in the name of the Seller) and maintained at a Lock-Box Bank pursuant to a Lock-Box Agreement for the purpose of receiving Collections.

"Lock-Box Agreement" means each agreement, in form and substance reasonably satisfactory to the Administrator, among the Seller, the Servicer, the Administrator and a Lock-Box Bank, governing the terms of the related Lock-Box Accounts.

"Lock-Box Bank" means any of the banks or other financial institutions holding one or more Lock-Box Accounts; provided, however, that such bank or other financial institution shall be either PNC or an Affiliate thereof so long as PNC is the Administrator.

"Loss Reserve" means, on any date, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such date multiplied by (b) (i) the Loss Reserve Percentage on such date divided by (ii) 100% minus the Loss Reserve Percentage on such date.

"Loss Reserve Percentage" means, on any date,(i) the product of (A) 2.5 times (B) the highest average of the Default Ratios for any three consecutive calendar months during the twelve most recent calendar months times (C) the aggregate credit sales made by the Originators and the Transferor during the 5 most recent calendar months divided by (ii) the Net Receivables Pool Balance as of such date.

"Majority LC Participants" means, at any time, (i) if fewer than three (3) LC Participants are then a party to this Agreement, all LC Participants and (ii) otherwise, the LC Participants whose Commitments aggregate more than 66 2/3% of the Commitments of all LC Participants at such time; provided that so long as Regions' Pro Rata Share of the Commitments are not less than its Pro Rata Share of the Commitments as of the Closing Date, the Majority LC Participants shall include Regions.

"Majority Purchaser Agents" means, at any time, (i) if fewer than three (3) Purchaser Agents are then a party to this Agreement, all Purchaser Agents and (ii) otherwise, the Purchaser Agents for the Purchaser Groups with Related Committed Purchasers whose Commitments aggregate more than 66 2/3% of the aggregate of the Commitments of all Related Committed Purchasers in all Purchaser Groups; provided that so long as Regions' Ratable Share of the Commitments are not less than its Ratable Share of the Commitments as of the Closing Date, the Majority Purchaser Agents shall be required to include Regions.

"Material Adverse Effect" means relative to any Person with respect to any event or circumstance, a material adverse effect on:

(a) the assets, operations, business or financial condition of such Person;

(b) the ability of any such Person to perform its obligations under the Agreement or any other Transaction Document to which it is a party;

(c) the validity or enforceability of the Agreement or any other Transaction Document, or the validity, enforceability, value or collectibility of any of the Pool Receivables;

(d) the status, perfection, enforceability or priority of any Secured Party's or the Seller's interest in the Pool Assets; or

(e) the rights and remedies of any Secured Party under the Transaction Documents.

"Minimum Dilution Reserve" means, on any day, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such day, multiplied by (b)(i)the Minimum Dilution Reserve Percentage divided by (ii) 100% minus the Minimum Dilution Reserve Percentage on such day.

"Minimum Dilution Reserve Percentage" means, on any day, the product of (a) the average of the Dilution Ratios for the twelve most recent calendar months multiplied by (b) the Dilution Horizon.

"Minimum Liquidity" means $325,000,000.

"Minimum Liquidity Period" means each period, if any, commencing on the date that the Liquidity is less than the Minimum Liquidity and ending on (but not including) the date, if any, that the Liquidity is no longer less than the Minimum Liquidity.

"Monthly Settlement Date" means the 21st day of each calendar month (or if such day is not a Business Day, the next occurring Business Day); provided, however, that on and after the occurrence and continuation of any Termination Event, the Monthly Settlement Date shall be the date selected as such by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) from time to time (it being understood that the Administrator (with the consent or at the direction of the Majority Purchaser Agents) may select such Monthly Settlement Date to occur as frequently as daily) or, in the absence of any such selection, the date which would be the Monthly Settlement Date pursuant to this definition).

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a mortgage or deed of trust in favor of any Person on any real property of any Originator for which all, or any portion thereof, is a location of such Originator's mining operations or a minehead.

"Net Receivables Pool Balance" means, at any time: (a) the Outstanding Balance of Eligible Receivables then in the Receivables Pool, minus (b) the Excess Concentration.

"No Proceedings Agreement" means that certain no proceedings letter agreement, dated as of October 5, 2016, among the Administrator, the Term Loan Agent and ACI and any replacement or successor agreement consented to in writing by the Administrator in its reasonable discretion and entered into by the agent under any Credit Agreement and ACI.

"Notes" means short-term promissory notes issued, or to be issued, by any Conduit Purchaser to fund its investments in accounts receivable or other financial assets.

"Obligor" means, with respect to any Receivable, the Person obligated to make payments pursuant to the Contract relating to such Receivable.

"Obligor Percentage" means, at any time of determination, for each Obligor, a fraction, expressed as a percentage, (a) the numerator of which is the aggregate Outstanding Balance of the Eligible Receivables of such Obligor less the amount (if any) then included in the calculation of the Excess Concentration with respect to such Obligor and (b) the denominator of which is the aggregate Outstanding Balance of all Eligible Receivables at such time.

"Order" has the meaning set forth in Section 1.20 of the Agreement.

"Originator" and "Originators" have the meaning set forth in the Purchase and Sale Agreement, as the same may be modified from time to time by adding new Originators or removing Originators, in each case with the prior written consent of the Administrator.

"Originator Performance Guaranty" means the Amended and Restated Originator Performance Guaranty, dated as of the Closing Date, by each Originator in favor of the Administrator for the benefit of the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Outstanding Balance" of any Receivable at any time means the then outstanding principal balance thereof.

"Participant" has the meaning set forth in Section 5.3(b) of the Agreement.

"Participant Register" has the meaning set forth in Section 5.3(b) of the Agreement.

"Paydown Notice" has the meaning set forth in Section 1.4(f)(i) of the Agreement.

"Performance Guarantor" means ACI.

"Performance Guaranty" means the Third Amended and Restated Performance Guaranty, dated as of the Closing Date, by the Performance Guarantor in favor of the Administrator for the benefit of the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Permitted Lien" means any Lien (a) as to which no enforcement collection, execution, levy or foreclosure proceeding shall have been commenced or threatened and that solely secure the payment of taxes, assessments and/or governmental charges or levies, if and to the extent the same are either (x) not yet due and payable or (y) being contested in good faith and as to which adequate reserves have been provided in accordance with GAAP, but, in any case, only to the extent that such Lien securing payment of such taxes or assessments or other governmental charges constitutes an inchoate tax lien, and (b) inchoate and unperfected workers', mechanics', suppliers' or similar Liens arising in the ordinary course of business, in any case, as to which no enforcement collection, execution, levy or foreclosure proceeding shall have been commenced or

threatened; provided, however, that no Lien(s) that could (individually or in the aggregate) be expected to result in a Material Adverse Effect shall constitute a Permitted Lien.

"Permitted Investments" means:

i. securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed or insured by the United States government or any agency thereof;

ii. certificates of deposit and time deposits with maturities of 18 months or less from the date of acquisition and overnight bank deposits of any commercial bank having capital and surplus in excess of $500,000,000;

iii. repurchase obligations of any commercial bank satisfying the requirements of clause (ii) of this definition with respect to securities issued or fully guaranteed or insured by the United States government;

iv. commercial paper of a domestic issuer rated at least A-2 by Standard & Poor's or P-2 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of Standard & Poor's and Moody's cease publishing ratings of investments;

v. securities with maturities of 18 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by Standard & Poor's or A by Moody's;

vi. securities with maturities of 18 months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (ii) of this definition;

vii. corporate obligations such as notes, bonds, loan participation certificates, master notes, and variable rate demand notes rated at least A by Standard & Poor's or A2 by Moody's;

viii. asset backed and mortgage backed securities and collateralized mortgage obligations rated AAA by Standard & Poor's or Aaa by Moody's;

ix. money market auction rate preferred securities and auction rate notes with auctions scheduled no less frequently than every 49 days; and

x. shares of money market mutual or similar funds which invest principally in assets satisfying the requirements of clauses (i) through (ix) of this definition.

"Permitted Merger" means (i) any merger of any existing Originator into any other existing Originator or (ii) any merger of any existing Originator into ACI.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

"Plan of Reorganization" shall mean the chapter 11 plan of reorganization of the Chapter 11 Debtors confirmed by the Confirmation Order.

"PNC" has the meaning set forth in the preamble to the Agreement.

"Pool Assets" has the meaning set forth in Section 1.2(d) of the Agreement.

"Pool Receivable" means a Receivable in the Receivables Pool.

"Portion of Capital" means, with respect to any Purchaser and its related Capital, the portion of such Capital being funded or maintained by such Purchaser by reference to a particular interest rate basis.

"Prior Agreement" has the meaning set forth in the preamble to the Agreement.

"Prior Agreement Outstanding Amounts" has the meaning set forth in the preamble to the Agreement.

"Program Support Agreement" means and includes any Liquidity Agreement and any other agreement entered into by any Program Support Provider providing for: (a) the issuance of one or more letters of credit for the account of any Conduit Purchaser, (b) the issuance of one or more surety bonds for which any Conduit Purchaser is obligated to reimburse the applicable Program Support Provider for any drawings thereunder, (c) the sale by any Conduit Purchaser to any Program Support Provider of the Purchased Interest (or portions thereof) maintained by such Conduit Purchaser and/or (d) the making of loans and/or other extensions of credit to any Conduit Purchaser in connection with such Conduit Purchaser's receivables-securitization program contemplated in the Agreement, together with any letter of credit, surety bond or other instrument issued thereunder.

"Program Support Provider" means and includes, with respect to any Conduit Purchaser, any Liquidity Provider and any other Person (other than any customer of such Conduit Purchaser) now or hereafter extending credit or having a commitment to extend credit to or for the account of, or to make purchases from, such Conduit Purchaser pursuant to any Program Support Agreement.

"Pro Rata Share" means, as to any LC Participant, a fraction, the numerator of which equals the Commitment of such LC Participant at such time and the denominator of which equals the aggregate of the Commitments of all LC Participants at such time.

"Purchase" has the meaning set forth in Section 1.1(a) of this Agreement.

"Purchase and Sale Agreement" means the Second Amended and Restated Purchase and Sale Agreement, dated as of the Closing Date, between the Originators and the Transferor, as such agreement may be amended, supplemented or otherwise modified from time to time.

"Purchase and Sale Indemnified Amounts" has the meaning set forth in Section 9.1 of the Purchase and Sale Agreement.

"Purchase and Sale Indemnified Party" has the meaning set forth in Section 9.1 of the Purchase and Sale Agreement.

"Purchase and Sale Termination Date" has the meaning set forth in Section 1.4 of the Purchase and Sale Agreement.

"Purchase and Sale Termination Event" has the meaning set forth in Section 8.1 of the Purchase and Sale Agreement.

"Purchase Date" means the date on which a Funded Purchase or a reinvestment is made pursuant to this Agreement.

"Purchase Facility" has the meaning set forth in Section 1.1 of the Purchase and Sale Agreement.

"Purchase Limit" means $200,000,000, as such amount may be reduced pursuant to Section 1.1 (b) of the Agreement or otherwise in connection with any Exiting Purchaser, or increased pursuant to Section 1.1(f) of this Agreement. References to the unused portion of the Purchase Limit shall mean, at any time, the Purchase Limit minus the sum of the then Aggregate Capital plus the LC Participation Amount.

"Purchase Notice" has the meaning set forth in Section 1.2(a) of the Agreement.

"Purchase Price" has the meaning set forth in Section 2.1 of the Purchase and Sale Agreement.

"Purchase Report" has the meaning set forth in Section 2.1 of the Purchase and Sale Agreement.

"Purchased Interest" means, at any time, the undivided percentage ownership interest in: (a) each and every Pool Receivable now existing or hereafter arising, (b) all Related Security with respect to such Pool Receivables and (c) all Collections with respect to, and other proceeds of, such Pool Receivables and Related Security. Such undivided percentage interest shall be computed as:

$$\frac{\text{Aggregate Capital + Adjusted LC}}{\text{Participation Amount + Total Reserves}}$$
$$\text{Net Receivables Pool Balance}$$

The Purchased Interest shall be determined from time to time pursuant to Section 1.3 of the Agreement.

"Purchaser" means each Conduit Purchaser, Related Committed Purchaser, LC Participant and the LC Bank.

"Purchaser Agent" means each Person acting as agent on behalf of a Purchaser Group and designated as a Purchaser Agent for such Purchaser Group on the signature pages to this Agreement or any other Person who becomes a party to the Agreement as a Purchaser Agent pursuant to an Assumption Agreement or a Transfer Supplement.

"Purchaser Group" means, (i) for any Conduit Purchaser, such Conduit Purchaser, together with such Conduit Purchaser's Related Committed Purchasers, related Purchaser Agent and related LC Participants, (ii) for Regions, Regions as a Purchaser Agent, a Related Committed Purchaser and an LC Participant and (iii) for PNC, PNC as a Purchaser Agent, a Related Committed Purchaser, the LC Bank and an LC Participant.

"Purchasers' Share" of any amount, at any time, means such amount multiplied by the Purchased Interest at such time.

"Purchasing Related Committed Purchaser" has the meaning set forth in Section 5.3(c) of the Agreement.

"Ratable Share' means, for each Purchaser Group, such Purchaser Group's Group Commitment divided by the aggregate Group Commitments of all Purchaser Groups.

"Rating Agency" mean each of Standard & Poor's and Moody's (and/or each other rating agency then rating the Notes of any Conduit Purchaser).

"Receivable" means any indebtedness and other obligations owed to any Originator, the Transferor or the Seller by, or any right of the Seller, the Transferor or any Originator to payment from or on behalf of, an Obligor, whether constituting an account, as-extracted collateral, chattel paper, a payment intangible, an instrument or a general intangible, in each instance arising in connection with the sale of goods or the rendering of services, and includes, without limitation, the obligation to pay any finance charges, fees and other charges with respect thereto. Indebtedness and other obligations arising from any one transaction, including, without limitation, indebtedness and other obligations represented by an individual invoice or agreement, shall constitute a Receivable separate from a Receivable consisting of the indebtedness and other obligations arising from any other transaction.

"Receivables Pool" means, at any time, all of the then outstanding Receivables purchased by the Seller pursuant to the Sale and Contribution Agreement prior to the Facility Termination Date.

"Regions" means Regions Bank.

"Register" has the meaning set forth in Section 5.17 of the Agreement.

"Reimbursement Obligation" has the meaning set forth in Section 1.14 of the Agreement.

"Related Committed Purchaser" means each Person listed as such for each Conduit Purchaser as set forth on the signature pages of the Agreement or in any Assumption Agreement or Transfer Supplement.

"Related Rights" has the meaning set forth in Section 1.1 of the Purchase and Sale Agreement.

"Related Security" means, with respect to any Receivable:

(a) all of the Seller's, the Transferor's and each Originator's interest in any goods (including returned goods), and documentation of title evidencing the shipment or storage of any goods (including returned goods), the sale of which gave rise to such Receivable;

(b) all instruments and chattel paper that may evidence such Receivable;

(c) all other security interests or liens and property subject thereto from time to time purporting to secure payment of such Receivable, whether pursuant to the Contract related to such Receivable or otherwise, together with all UCC financing statements or similar filings relating thereto;

(d) all of the Seller's, the Transferor's and each Originator's rights, interests and claims under the Contracts and all guaranties, indemnities, insurance and other agreements (including the related Contract) or arrangements of whatever character from time to time supporting or securing payment of such Receivable or otherwise relating to such Receivable, whether pursuant to the Contract related to such Receivable or otherwise; and

(e) all of the Seller's rights, interests and claims under the Sale Agreements and the other Transaction Documents.

"Release Agreement" means, as the context may require, either of or both of (a) the letter agreement dated as of February 3, 2006, and (b) the letter agreement dated as of February 24, 2010, in each case between ACI and PNC, as administrative agent and collateral agent, as may be amended, modified, restated or replaced from time to time with the consent of the Administrator.

"Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

"Restricted Payments" has the meaning set forth in Section 1(n) of Exhibit IV of the Agreement.

"Rio Tinto" means Rio Tinto Energy America Inc.

"Rio Tinto Receivable" means a Receivable (a) arising under the "SRP Contract" (as such term is defined in the Coal Sales Agreement, dated October 1, 2009, by and among ACI and Kennecott Coal Sales Company (the "SRP Agreement") and acquired by ACI pursuant to the terms and conditions of such SRP Agreement or (b) arising under a "Coal Sales Agreement" (as such term is defined in the Arch Coal Supply Agreement, dated October 1, 2009, between ACI and Rio Tinto (the "Rio Tinto Agreement") and acquired by ACI pursuant to the terms and conditions of such Rio Tinto Agreement.

"Rio Tinto Trigger Event" means, with respect to all Rio Tinto Receivables, the first to occur of (a) Rio Tinto shall fail to maintain a long term debt rating of at least "BBB-" by Standard & Poor's and "Baa3" by Moody's and (b) the aggregate amount of any asserted dispute, offset, hold back, defense, or Adverse Claim outstanding against all Rio Tinto Receivables shall be greater than $50,000.

"Sale Agreements" means, collectively the Purchase and Sale Agreement and the Sale and Contribution Agreement.

"Sale and Contribution Agreement" means the Second Amended and Restated Sale and Contribution Agreement, dated as of the Closing Date, between the Transferor and the Seller, as such agreement may be amended, supplemented or otherwise modified from time to time.

"Sale and Contribution Indemnified Amounts" has the meaning set forth in Section 9.1 of the Sale and Contribution Agreement.

"Sale and Contribution Indemnified Party" has the meaning set forth in Section 9.1 of the Sale and Contribution Agreement.

"Sale and Contribution Termination Date" has the meaning set forth in Section 1.4 of the Sale and Contribution Agreement.

"Sale and Contribution Termination Event" has the meaning set forth in Section 8.1 of the Sale and Contribution Agreement.

"Sales Agency Agreements" means each of (i) the Customer Relations and Marketing Services Agreement, dated as of January 1, 2006, between Arch Sales and the Originators from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time and (ii) the Customer Relations and Marketing Services Agreement, dated as of June 15, 2011, between Arch Sales and the Originators from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"Sanctioned Country" means a country subject to a sanctions program maintained under any Anti-Terrorism Law.

"Sanctioned Person" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law.

"Scheduled Commitment Termination Date" means with respect to the LC Bank, any LC Participant or any Related Committed Purchaser, October 5, 2019, as such date may be extended from time to time in the sole and absolute discretion of the LC Bank, such LC Participant or such Related Committed Purchaser, as the case may be.

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

"Secured Parties" means the Administrator, each Purchaser, each Purchaser Agent, each Indemnified Party and each Affected Person.

"Seller" has the meaning set forth in the preamble to the Agreement.

"Seller's Share" of any amount means the greater of: (a) $0 and (b) such amount minus the Purchasers' Share.

"Servicer" has the meaning set forth in the preamble to the Agreement.

"Servicing Fee" means the fee referred to in Section 4.6 of the Agreement.

"Servicing Fee Rate" means the rate referred to in Section 4.6 of the Agreement.

"Settlement Date" means with respect to any Portion of Capital for any Settlement Period, (i) prior to the Facility Termination Date, the Monthly Settlement Date and (ii) on and after the Facility Termination Date, each day selected from time to time by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) (it being understood that the Administrator (with the consent or at the direction of the Majority Purchaser Agents) may select such Settlement Date to occur as frequently as daily), or, in the absence of such selection, the Monthly Settlement Date.

"Settlement Period" means: (a) before the Facility Termination Date: (i) initially the period commencing on the date of the initial purchase pursuant to Section 1.2 of the Agreement (or in the case of any fees payable hereunder, commencing on the Closing Date) and ending on (but not including) the next Monthly Settlement Date, and (ii) thereafter, each period commencing on such Monthly Settlement Date and ending on (but not including) the next Monthly Settlement Date, and (b) on and after the Facility Termination Date, such period (including a period of one day) as shall be selected from time to time by the Administrator (with the consent or at the direction of the Majority Purchaser Agents) or, in the absence of any such selection, each period of 30 days from the last day of the preceding Settlement Period.

"Solvent" means, with respect to any Person at any time, a condition under which:

(i) the fair value and present fair saleable value of such Person's total assets is, on the date of determination, greater than such Person's total liabilities (including contingent and unliquidated liabilities) at such time;

(ii) the fair value and present fair saleable value of such Person's assets is greater than the amount that will be required to pay such Person's probable liability on its

existing debts as they become absolute and matured ("debts," for this purpose, includes all legal liabilities, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent);

(iii) such Person is and shall continue to be able to pay all of its liabilities as such liabilities mature; and

(iv) such Person does not have unreasonably small capital with which to engage in its current and in its anticipated business.

For purposes of this definition:

(A) the amount of a Person's contingent or unliquidated liabilities at any time shall be that amount which, in light of all the facts and circumstances then existing, represents the amount which can reasonably be expected to become an actual or matured liability;

(B) the "fair value" of an asset shall be the amount which may be realized within a reasonable time either through collection or sale of such asset at its regular market value;

(C) the "regular market value" of an asset shall be the amount which a capable and diligent business person could obtain for such asset from an interested buyer who is willing to purchase such asset under ordinary selling conditions; and

(D) the "present fair saleable value" of an asset means the amount which can be obtained if such asset is sold with reasonable promptness in an arm's-length transaction in an existing and not theoretical market.

"Spike Factor" means, for any calendar month, (a) the positive difference, if any, between: (i) the highest Dilution Ratio for any one calendar month during the twelve most recent calendar months and (ii) the arithmetic average of the Dilution Ratios for such twelve months times (b) (i) the highest Dilution Ratio for any one calendar month during the twelve most recent calendar months divided by (ii) the arithmetic average of the Dilution Ratios for such twelve months.

"Standard & Poor's" means S&P Global Ratings and any successor thereto.

"Sub-Servicer" has the meaning set forth in Section 4.1(d) of this Agreement.

"Subsidiary" means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock of each class or other interests having ordinary voting power (other than stock or other interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other managers of such entity are at the time owned, or management of which is otherwise controlled: (a) by such Person, (b) by one or more Subsidiaries of such Person or (c) by such Person and one or more Subsidiaries of such Person.

"Tangible Net Worth" means, with respect to any Person, the tangible net worth of such Person as determined in accordance with generally accepted accounting principles, consistently applied.

"Taxes" has the meaning set forth in Section 1.10 of the Agreement.

"Term Loan Agent" has the meaning set forth in the definition of Credit Agreement.

"Termination Day" means: (a) each day on which the conditions set forth in Section 2(b) of Exhibit II to the Agreement are not satisfied or (b) each day that occurs on or after the Facility Termination Date.

"Termination Event" has the meaning specified in Exhibit V to the Agreement.

"Termination Fee" means, for any Settlement Period during which a Termination Day occurs, the amount, if any, by which: (a) the additional Discount (calculated without taking into account any Termination Fee or any shortened duration of such Settlement Period pursuant to the definition thereof) that would have accrued during such Settlement Period on the reductions of Capital relating to such Settlement Period had such reductions not been made, exceeds (b) the income, if any, received by the applicable Purchaser from investing the proceeds of such reductions of Capital, as determined by the applicable Purchaser Agent, which determination shall be binding and conclusive for all purposes, absent manifest error.

"Total Reserves" means, at any time, the sum of: (a) the Yield Reserve, plus (b) the greater of (i) the Concentration Reserve plus the Minimum Dilution Reserve and (ii) the Loss Reserve plus the Dilution Reserve.

"Transaction Documents" means the Agreement, the Lock-Box Agreements, each Fee Letter, the Purchase and Sale Agreement, the Sale and Contribution Agreement, each Company Note, the Performance Guaranty, the Originator Performance Guaranty, each Sales Agency Agreement, the No Proceedings Agreement and all Information Packages, Interim Reports, other certificates, instruments, UCC financing statements, reports, notices, agreements and documents executed or delivered under or in connection with the Agreement, in each case as the same may be amended, supplemented or otherwise modified from time to time in accordance with the Agreement.

"Transfer Supplement" has the meaning set forth in Section 6.3(c) of this Agreement.

"Transferor" has the meaning set forth in the Sale and Contribution Agreement.

"TVA" means Tennessee Valley Authority, an Obligor of the Originators and the Transferor.

"UCC" means the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction.

"Unmatured Purchase and Sale Termination Event" means any event which, with the giving of notice or lapse of time, or both, would become a Purchase and Sale Termination Event.

"Unmatured Sale and Contribution Termination Event" means any event which, with the giving of notice or lapse of time, or both, would become a Sale and Contribution Termination Event.

"Unmatured Termination Event" means an event that, with the giving of notice or lapse of time, or both, would constitute a Termination Event.

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

"Weekly Report" has the meaning set forth in Section 1(a)(ii) of Exhibit IV to the Agreement.

"Yield Reserve" means, on any date, an amount equal to: (a) the sum of the Aggregate Capital plus the Adjusted LC Participation Amount at the close of business of the Servicer on such date multiplied by (b) (i) the Yield Reserve Percentage on such date divided by (ii) 100% minus the Yield Reserve Percentage on such date.

"Yield Reserve Percentage" means at any time:

$$\frac{(BR+SFR)}{360} \times 1.5 \times DSO$$

where:

BR = the Base Rate computed for the most recent Settlement Period,

DSO = Days' Sales Outstanding, and

SFR = the Servicing Fee Rate

Other Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles. As the context requires, all terms used in Article 9 of the UCC in the State of New York, and not specifically defined herein, are used herein as defined in such Article 9. Unless the context otherwise requires, "or" means "and/or," and "including" (and with correlative meaning "include" and "includes") means including without limiting the generality of any description preceding such term.

EXHIBIT II
CONDITIONS PRECEDENT

1. Conditions Precedent to Effectiveness. The effectiveness of the Agreement is subject to the condition precedent that (I) the Confirmation Order shall have been entered and shall not be subject to a stay or have been reversed, modified or amended (other than as otherwise consented to in writing by the Administrator and each Purchaser), (II) the Plan of Reorganization shall have become effective and (III) the Administrator and each Purchaser Agent shall have received, on or before the Closing Date, each of the following, each in form and substance (including the date thereof) reasonably satisfactory to the Administrator and each Purchaser Agent:

(a) Counterparts of (i) the Agreement, (ii) each Sale Agreement, (iii) the Performance Guaranty, (iv) each Fee Letter and (v) the Originator Performance Guaranty, in each case, duly executed by the parties thereto.

(b) Certified copies of: (i) the resolutions of the board of directors of each of the Seller, the Originators, the Transferor, and ACI authorizing the execution, delivery and performance by the Seller, the Originators, the Transferor and ACI, as the case may be, of the Agreement and the other Transaction Documents to which it is a party; (ii) all documents evidencing other necessary corporate or organizational action and governmental approvals, if any, with respect to the Agreement and the other Transaction Documents and (iii) the certificate of incorporation and by-laws or limited liability company agreement, as applicable, of the Seller, the Originators, the Transferor and ACI.

(c) A certificate of the Secretary or Assistant Secretary of the Seller, each of the Originators, the Transferor and ACI certifying the names and true signatures of its officers who are authorized to sign this Agreement and the other Transaction Documents to which it is a party. Until the Administrator receives a subsequent incumbency certificate from the Seller, the Originators, the Transferor or ACI, as the case may be, the Administrator shall be entitled to rely on the last such certificate delivered to it by the Seller, the Originators, the Transferor or ACI, as the case may be.

(d) Completed UCC search reports, dated the Closing Date or no earlier than 30 days prior thereto, listing the financing statements filed in all applicable jurisdictions that name any Originator, Transferor or the Seller as debtor, together with copies of such other financing statements, and similar search reports with respect to judgment liens, federal tax liens and liens of the Pension Benefit Guaranty Corporation in such jurisdictions, as the Administrator may reasonably request, showing no Adverse Claims on any Pool Assets other than any security interests that are released as of the Closing Date pursuant to the Confirmation Order or the Plan of Reorganization.

(e) Favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for the Seller, the Originators, the Servicer and ACI, covering such matters as the Administrator may reasonably request, including, without limitation, (i) certain Delaware corporate and no conflict matters, (ii) certain organizational and New York enforceability

matters (iii) certain bankruptcy matters, and (iv) certain UCC creation and Delaware perfection matters.

(f) Evidence of payment by the Seller of all accrued and unpaid fees (including those contemplated by the Fee Letters), costs and expenses to the extent then due and payable on the date thereof, including any such costs, fees and expenses arising under or referenced in Section 5.4 of the Agreement (including all Attorney Costs that have been invoiced at least one (1) Business Day prior to the Closing Date and payment of reasonable costs and expenses to counsel for Regions in an amount not to exceed $15,000) and the Fee Letters.

(g) Each Fee Letter duly executed by the Seller and ACI.

(h) Good standing certificates with respect to each of the Seller, the Originators, the Transferor and ACI issued by the Secretary of State (or similar official) of the state of each such Person's organization or formation and principal place of business.

(i) All information with respect to the Receivables as the Administrator or the Purchasers may reasonably request.

(j) A copy of the Confirmation Order.

2. Conditions Precedent to All Funded Purchases, Issuances of Letters of Credit and Reinvestments. Each Funded Purchase (including the initial Funded Purchase) and the issuance of any Letters of Credit and each reinvestment shall be subject to the further conditions precedent that:

(a) in the case of each Funded Purchase and the issuance of any Letters of Credit, the Servicer shall have delivered to the Administrator and each Purchaser Agent on or before such purchase or issuance, as the case may be, in form and substance reasonably satisfactory to the Administrator and each Purchaser Agent, a completed pro forma Information Package to reflect the level of the Aggregate Capital, the LC Participation Amount and related reserves and the calculation of the Purchased Interest after such subsequent purchase or issuance, as the case may be, and a completed Purchase Notice or Issuance Notice, as applicable, in the form of Annex B-1 or B-2, as applicable; and

(b) on the date of such Funded Purchase, issuance or reinvestment, as the case may be, the following statements shall be true (and acceptance of the proceeds of such Funded Purchase, issuance or reinvestment shall be deemed a representation and warranty by the Seller that such statements are then true):

(i) the representations and warranties contained in Exhibit III to the Agreement are true and correct in all material respects on and as of the date of such Funded Purchase, issuance or reinvestment as though made on and as of such date except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);

(ii) no event has occurred and is continuing, or would result from such Funded Purchase, issuance or reinvestment, that constitutes a Termination Event or an Unmatured Termination Event;

(iii) the sum of the Aggregate Capital plus the LC Participation Amount, after giving effect to any such Funded Purchase, issuance or reinvestment, as the case may be, shall not exceed the Purchase Limit, and the Purchased Interest shall not exceed 100%; and

(iv) the Facility Termination Date has not occurred.

EXHIBIT III
REPRESENTATIONS AND WARRANTIES

1. Representations and Warranties of the Seller. The Seller represents and warrants to the Administrator, each Purchaser Agent and each Purchaser as of the Closing Date that:

(a) Existence and Power. The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, and has all organizational power and all governmental licenses, authorizations, consents and approvals required to carry on its business in each jurisdiction in which its business is conducted except if failure to have such licenses, authorizations, consents or approvals could not reasonably be expected to have a Material Adverse Effect.

(b) Company and Governmental Authorization, Contravention. The execution, delivery and performance by the Seller of this Agreement and each other Transaction Document to which it is a party (i) are within the Seller's organizational powers, have been duly authorized by all necessary organizational action, require no action by or in respect of, or filing with (other than the filing of UCC financing statements and continuation statements), any governmental body, agency or official, (ii) except as would not reasonably be expected to have a Material Adverse Effect, do not contravene, or constitute a default under, any provision of Applicable Law or of the operating agreement of the Seller or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Seller and (iii) do not result in the creation or imposition of any lien (other than liens in favor of the Administrator) on assets of the Seller.

(c) Binding Effect of Agreement. This Agreement and each other Transaction Document to which it is a party constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

(d) Accuracy of Information. All information heretofore furnished in writing by the Seller to the Administrator, any Purchaser Agent or any Purchaser pursuant to or in connection with this Agreement or any other Transaction Document is, and all such information hereafter furnished by the Seller to the Administrator, any Purchaser Agent or any Purchaser in writing pursuant to this Agreement or any Transaction Document will be, taken as a whole, true and accurate in all material respects on the date such information is stated or certified; provided that with respect to projected financial information and information of a general economic or industry specific nature, the Seller represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made.

(e) Actions, Suits. Except as set forth in Schedule III, there are no actions, suits or proceedings pending or, to the best of the Seller's knowledge, threatened against or affecting the Seller or its properties, in or before any court, arbitrator or other body, which could reasonably be expected to have a Material Adverse Effect upon the ability of the Seller to perform its obligations under this Agreement or any other Transaction Document to which it is a party.

(f) Accuracy of Exhibits; Lock-Box Arrangements. The names and addresses of all the Lock-Box Banks together with the account numbers of the Lock-Box Accounts at such Lock-Box Banks, are specified in Schedule II to this Agreement (or at such other Lock-Box Banks and/or with such other Lock-Box Accounts as have been notified to the Administrator), and all Lock-Box Accounts are subject to Lock-Box Agreements. All information on each Exhibit, Schedule or Annex to this Agreement or the other Transaction Documents (as updated by the Seller from time to time) is true and complete in all material respects. The Seller has delivered a copy of all Lock-Box Agreements to the Administrator. The Seller has not granted any interest in any Lock-Box Account (or any related lock-box or post office box) to any Person other than the Administrator and, upon delivery to a Lock-Box Bank of the related Lock-Box Agreement, the Administrator will have exclusive ownership and control of the Lock-Box Account at such Lock-Box Bank.

(g) No Material Adverse Effect. Since the date of formation of Seller as set forth in its certificate of formation, there has been no Material Adverse Effect with respect to the Seller.

(h) Names and Location. The Seller has not used any company names, trade names or assumed names other than its name set forth on the signature pages of this Agreement. The Seller is "located" (as such term is defined in the applicable UCC) in Delaware. The office where the Seller keeps its records concerning the Receivables is at the address set forth below its signature to this Agreement.

(i) Margin Stock. The Seller is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U and X, as issued by the Board of Governors of the Federal Reserve System), and no proceeds of any purchase or reinvestment hereunder will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(j) Eligible Receivables. Each Pool Receivable included as an Eligible Receivable in the calculation of the Net Receivables Pool Balance is an Eligible Receivable.

(k) Credit and Collection Policy. The Seller has complied in all material respects with the Credit and Collection Policy of each Originator and the Transferor with regard to each Receivable originated by such Originator or the Transferor, as applicable.

(l) Investment Company Act. The Seller is neither (i) required to register as an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended nor (ii) is a "covered fund" under Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and the applicable rules and regulations thereunder.

(m) Mortgages Covering As-Extracted Collateral. Except for any security interest, lien or other rights in the Receivables, Contracts and Related Security that have been released pursuant to the Release Agreement, there are no mortgages that are effective as financing statements covering as-extracted collateral that constitutes Pool Assets and that name any

Originator (or, if such Originator is not the "record owner" of the underlying property, any "record owner" with respect to such as-extracted collateral, as such term is used in the UCC) as grantor, debtor or words of similar effect filed or recorded in any jurisdiction.

(n) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

2. Representations and Warranties of the Servicer. The Servicer represents and warrants to the Administrator, each Purchaser Agent and each Purchaser as of the Closing Date that:

(a) Existence and Power. The Servicer is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware, and has all company power and all governmental licenses, authorizations, consents and approvals required to carry on its business in each jurisdiction in which its business is conducted, except if failure to have such licenses, authorizations, consents or approvals would not reasonably be expected to have a Material Adverse Effect.

(b) Company and Governmental Authorization, Contravention. The execution, delivery and performance by the Servicer of this Agreement and each other Transaction Document to which it is a party (i) are within the Servicer's organizational powers, have been duly authorized by all necessary organizational action, require no action by or in respect of, or filing with, any governmental body, agency or official, (ii) except as would not reasonably be expected to have a Material Adverse Effect, do not contravene, or constitute a default under, any provision of Applicable Law or of the certificate of incorporation or bylaws of the Servicer or of any judgment, injunction, order or decree or agreement or other instrument binding upon the Servicer and (iii) do not result in the creation or imposition of any lien on assets of the Servicer (other than in favor of the Administrator under the Transaction Documents) or any of its Subsidiaries.

(c) Binding Effect of Agreement. This Agreement and each other Transaction Document to which it is a party constitutes the legal, valid and binding obligation of the Servicer enforceable against the Servicer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

(d) Accuracy of Information. All information heretofore furnished in writing by the Servicer to the Administrator, any Purchaser Agent or any Purchaser pursuant to or in connection with this Agreement or any other Transaction Document is, and all such information hereafter furnished by the Servicer to the Administrator, any Purchaser Agent or any Purchaser in writing

pursuant to this Agreement or any other Transaction Document will be, taken as a whole, true and accurate in all material respects on the date such information is stated or certified; provided that with respect to projected financial information and information of a general economic or industry specific nature, the Servicer represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made.

(e) Actions, Suits. Except as set forth in Schedule III, there are no actions, suits or proceedings pending or, to the best of the Servicer's knowledge, threatened against or affecting the Servicer or ACI or any of its Subsidiaries or their respective properties, in or before any court, arbitrator or other body, which could reasonably be expected to have a Material Adverse Effect upon the ability of the Servicer (or such Affiliate) to perform its obligations under this Agreement or any other Transaction Document to which it is a party.

(f) No Material Adverse Effect. Since the Closing Date, there has been no Material Adverse Effect on the Servicer.

(g) Credit and Collection Policy. The Servicer has complied in all material respects with the Credit and Collection Policy of each Originator and the Transferor with regard to each Receivable originated by such Originator or the Transferor, as applicable.

(h) Investment Company Act. The Servicer is not an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

(i) Lock-Box Accounts. On or prior to the Closing Date, the Servicer has transferred and assigned all of its right, title and interest in and to, and remedies, powers and privileges under, the Lock-Box Accounts to the Seller.

(j) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

(k) Effectiveness of Orders. The Confirmation Order is in full force and effect and has not been vacated or reversed, is not subject to a stay, and has not been modified or amended (other than any amendment or modification approved in writing by the Administrator and the Majority Purchaser Agents in their sole discretion).

3. Representations, Warranties and Agreements Relating to the Security Interest. The Seller hereby makes the following representations, warranties and agreements with respect to the Receivables and Related Security:

(a) The Receivables.

(i) Creation. This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the Receivables included in the Receivables Pool in favor of the Administrator (for the benefit of the Secured Parties), which security interest is prior to all other Adverse Claims, and is enforceable as such as against creditors of and purchasers from the Seller.

(ii) Nature of Receivables. The Receivables included in the Receivables Pool constitute either "accounts" (including, without limitation, "accounts" constituting "as-extracted collateral"), "general intangibles" or "tangible chattel paper" within the meaning of the applicable UCC.

(iii) Ownership of Receivables. The Seller owns and has good and marketable title to the Receivables included in the Receivables Pool and Related Security free and clear of any Adverse Claim.

(iv) Perfection and Related Security. The Seller has caused (and shall have caused each Originator and the Transferor to cause) the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the sale of the Receivables and Related Security from such Originator to the Transferor pursuant to the Purchase and Sale Agreement and in order to perfect the sale from the Transferor to the Seller pursuant to the Sale and Contribution Agreement, and the sale and security interest therein from the Seller to the Administrator under this Agreement, to the extent that such collateral constitutes "accounts" (including, without limitation, "accounts" constituting "as-extracted collateral"), "general intangibles," or "tangible chattel paper."

(v) Tangible Chattel Paper. With respect to any Receivables included in the Receivables Pool that constitute "tangible chattel paper", if any, the Seller (or the Servicer on its behalf) has in its possession the original copies of such tangible chattel paper that constitute or evidence such Receivables. The Receivables to the extent they are evidenced by "tangible chattel paper" do not have any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Seller or the Administrator.

(b) The Lock-Box Accounts.

(i) Nature of Accounts. Each Lock-Box Account constitutes a "deposit account" within the meaning of the applicable UCC.

(ii) Ownership. The Seller owns and has good and marketable title to the Lock-Box Accounts free and clear of any Adverse Claim.

(iii) Perfection. The Seller has delivered to the Administrator a fully executed Lock-Box Agreement relating to each Lock-Box Account, pursuant to which each applicable Lock-Box Bank, respectively, has agreed, following the occurrence and continuation of a Termination Event or Unmatured Termination

Event or during a Minimum Liquidity Period, to comply with all instructions originated by the Administrator (on behalf of the Secured Parties) directing the disposition of funds in such Lock-Box Account without further consent by the Seller or the Servicer.

(c) Priority.

(i) Other than the transfer of the Receivables to the Transferor, the Seller and the Administrator under the Purchase and Sale Agreement, the Sale and Contribution Agreement and this Agreement, respectively, and/or the security interest granted to the Transferor, the Seller and the Administrator pursuant to the Purchase and Sale Agreement, the Sale and Contribution Agreement and this Agreement, respectively, neither the Transferor, the Seller nor any Originator has pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Receivables transferred or purported to be transferred under the Transaction Documents, the Lock-Box Accounts or any subaccount thereof, except for any such pledge, grant or other conveyance which has been or will be released or terminated. Neither the Seller, the Transferor nor any Originator has authorized the filing of, or is aware of any financing statements against any of the Seller, the Transferor or such Originator that include a description of Receivables transferred or purported to be transferred under the Transaction Documents, the Lock-Box Accounts or any subaccount thereof, other than any financing statement (i) relating to the sale thereof by such Originator to the Transferor under the Purchase and Sale Agreement or relating to the sale thereof by the Transferor to the Seller under the Sale and Contribution Agreement, (ii) relating to the security interest granted to the Administrator under this Agreement, or (iii) that has been or will be released or terminated pursuant to the Release Agreement.

(ii) The Seller is not aware of any judgment, ERISA or tax lien filings against either the Seller, the Servicer, the Transferor, any Originator, ACI, or any of their ERISA Affiliates other than such judgment, ERISA or tax lien filing that (x)(A) has not been outstanding for greater than 30 days from the earlier of such Person's knowledge or notice thereof, (B) is less than $250,000 and (C) does not otherwise give rise to a Termination Event under clause (l) of Exhibit V hereto or (y) as to which no enforcement collection, execution, levy or foreclosure proceeding shall have been commenced or threatened and that solely secures the payment of taxes, if and to the extent the taxes are either (A) not yet due and payable or (B) being contested in good faith and as to which adequate reserves have been provided in accordance with generally accepted accounting principles, but, in any case, only to the extent such lien securing payment of such taxes constitutes an inchoate tax lien.

(iii) The Lock-Box Accounts are not in the name of any person other than the Seller or the Administrator. Neither the Seller nor the Servicer has consented to any bank maintaining such account to comply with instructions of any person other than the Administrator.

(d) Survival of Supplemental Representations. Notwithstanding any other provision of this Agreement or any other Transaction Document, the representations contained in this Section shall be continuing, and remain in full force and effect until the Final Payout Date.

(e) No Waiver. To the extent required pursuant to the securitization program of any Conduit Purchaser, the parties to this Agreement: (i) shall not, without obtaining a confirmation of the then-current rating of the Notes, waive any of the representations set forth in this Section; (ii) shall provide the Ratings Agencies with prompt written notice of any breach of any representations set forth in this Section, and shall not, without obtaining a confirmation of the then-current rating of the Notes (as determined after any adjustment or withdrawal of the ratings following notice of such breach) waive a breach of any of the representations set forth in this Section.

(f) Servicer to Maintain Perfection and Priority. In order to evidence the interests of the Administrator under this Agreement, the Servicer shall, from time to time take such action, or execute and deliver such instruments as may be necessary (including, without limitation, such actions as are reasonably requested by the Administrator) to maintain and perfect, as a first-priority interest, the Administrator's security interest in the Receivables, Related Security and Collections. The Servicer shall, from time to time and within the time limits established by law, prepare and present to the Administrator for the Administrator's authorization and approval, all financing statements, amendments, continuations or initial financing statements in lieu of a continuation statement, or other filings necessary to continue, maintain and perfect the Administrator's security interest as a first-priority interest. The Administrator's approval of such filings shall authorize the Servicer to file such financing statements under the UCC without the signature of the Seller, any Originator, the Transferor or the Administrator where allowed by Applicable Law. Notwithstanding anything else in the Transaction Documents to the contrary, the Servicer shall not have any authority prior to the Final Payout Date to file a termination, partial termination, release, partial release, or any amendment that

deletes the name of a debtor or excludes collateral of any such financing statements filed in connection with the Transaction Documents, without the prior written consent of the Administrator.

(g) Mining Operations and Mineheads. The Servicer shall (and shall cause each applicable Originator to) promptly, and in any event within 30 days of any change, deletion or addition to the location of any Originator's mining operations or mineheads set forth on Schedule V to the Purchase and Sale Agreement, (i) notify the Administrator and each Purchaser Agent of such change, deletion or addition, (ii) cause the filing or recording of such financing statements and amendments and/or releases to financing statements, mortgages or other instruments, if any, necessary to preserve and maintain the perfection and priority of the security interest of the Transferor, Seller and Administrator (on behalf of the Secured Parties) in the Pool Assets pursuant to this Agreement, in each case in form and substance reasonably satisfactory to the Administrator and (iii) deliver to the Administrator and each Purchaser Agent an updated Schedule V to the Purchase and Sale Agreement reflecting such change, deletion or addition; it being understood that no Receivable the related location of mining operations and/or mineheads of which is not as set forth on Schedule V to the Purchase and Sale Agreement as of the Closing Date shall be an Eligible Receivable until such time as each condition under this clause (g) shall

have been satisfied (and upon such satisfaction, the Purchase and Sale Agreement shall be deemed amended to reflect such updated Schedule V to the Purchase and Sale Agreement).

(h) Additional Mortgages Under Credit Agreement. The Servicer shall (and shall cause each applicable Originator to) (x) provide written notice promptly, and in any event within 30 days, to the Seller, the Administrator and each Purchaser Agent of each new Mortgage or amendment or modification of an existing Mortgage under the Credit Agreement covering as-extracted collateral, (y) cause to be delivered to the Administrator a letter, in the form of the Release Agreement (or such other form as may be approved by the Administrator), addressed to the Administrator and duly executed by the related grantee or beneficiary releasing such party's security interest, lien or other rights under such new Mortgage or amended or modified Mortgage in the Receivables, Contracts and Related Security subject thereto and (z) file or record all amendments and/or releases to such new, amended or modified Mortgages necessary to release and remove of record any such security interest, lien or other interest of the related grantee or beneficiary in the Receivables, Contracts and Related Security, in each case in form and substance satisfactory to the Administrator.

4. Ordinary Course of Business. Seller represents and warrants that each remittance of Collections by or on behalf of the Seller to the Purchasers under this Agreement will have been (i) in payment of a debt incurred by the Seller in the ordinary course of business or financial affairs of the Seller and (ii) made in the ordinary course of business or financial affairs of the Seller.

5. Reaffirmation of Representations and Warranties. On the date of each purchase and/or reinvestment and issuance of a Letter of Credit hereunder, and on the date each Information Package or Interim Report is delivered to the Administrator, any Purchaser Agent or any Purchaser hereunder, the Seller and the Servicer, by accepting the proceeds of such purchase reinvestment or Letter of Credit, as applicable and/or the provision of such Information Package or Interim Report, shall each be deemed to have certified that (i) all representations and warranties of the Seller and the Servicer, as applicable, described in this Exhibit III, as from time to time amended in accordance with the terms hereof, are correct in all material respects on and as of such day as though made on and as of such day, except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such date), and (ii) no event has occurred and is continuing, or would result from any such purchase, reinvestment or issuance, which constitutes a Termination Event or an Unmatured Termination Event.

EXHIBIT IV
COVENANTS

1. Covenants of the Seller. At all times from the date hereof until the Final Payout Date:

(a) Financial Reporting. The Seller will maintain a system of accounting established and administered in accordance with generally accepted accounting principles as in effect in the appropriate jurisdiction, and the Seller (or the Servicer on its behalf) shall furnish to the Administrator and each Purchaser Agent:

(i) Annual Reporting. Promptly upon completion and in no event later than 90 days after the close of each fiscal year of the Seller, annual unaudited financial statements of the Seller certified by a designated financial or other officer of the Seller.

(ii) Reports. (A) As soon as available and in any event not later than two Business Days prior to the Monthly Settlement Date, an Information Package as of the most recently completed calendar month, (B) as soon as available and in any event no later than the second Business Day of each calendar week, a report substantially in the form of Annex H-1 (each, a "Weekly Report") as of the most recently completed calendar week, which shall include, among other things, the Liquidity as of the last day of such calendar week, and (C) if requested by the Agent or any Purchaser at any time following the occurrence and during the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, a report substantially in the form of Annex H-2 (each, a "Daily Report") on each Business Day as of date that is one Business Day prior to such date.

(iii) Cash Flow Forecasts. During each Minimum Liquidity Period, from time to time a report substantially in the form of Annex J (a "Cash Flow Forecast") promptly (but in any event no later than 10 Business Days) following the request therefore from the Administrator or any Purchaser.

(iv) Other Information. Such other information (including non-financial information) as the Administrator or any Purchaser Agent may from time to time reasonably request.

(b) Notices. The Seller will notify the Administrator and each Purchaser Agent in writing of any of the following events promptly upon (but in no event later than three Business Days after) a financial or other officer learning of the occurrence thereof, with such notice describing the same, and if applicable, the steps being taken by the Person(s) affected with respect thereto:

(i) Notice of Termination Events or Unmatured Termination Events. A statement of the chief financial officer or chief accounting officer of the Seller

setting forth details of any Termination Event or Unmatured Termination Event and the action which the Seller proposes to take with respect thereto.

(ii) Representations and Warranties. The failure of any representation or warranty to be true and correct (when made or at any time thereafter) with respect to the Receivables included in the Receivables Pool.

(iii) Litigation. The institution of any litigation, arbitration proceeding or governmental proceeding which may have a Material Adverse Effect on the Seller.

(iv) Adverse Claim. (A) Any Person shall obtain an Adverse Claim upon the Pool Receivables or Collections with respect thereto, (B) any Person other than the Seller, the Servicer or the Administrator shall obtain any rights or direct any action with respect to any Lock-Box Account (or related lock-box or post office box) or (C) any Obligor shall receive any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Servicer or the Administrator.

(v) ERISA and Other Claims. Promptly after the filing or receiving thereof, copies of all reports and notices that the Seller or any ERISA Affiliate files under ERISA with the Internal Revenue Service, the Pension Benefit Guaranty Corporation or the U.S. Department of Labor or that the Seller or any ERISA Affiliate receives from any of the foregoing or from any multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) to which the Seller or any of its ERISA Affiliates is or was, within the preceding five years, a contributing employer, in each case in respect of the assessment of withdrawal liability or an event or condition that could, in the aggregate, result in the imposition of liability on the Seller and/or any such ERISA Affiliate.

(vi) Name Changes. At least ten days before any change in the Seller's name, jurisdiction of organization or any other change requiring the amendment of UCC financing statements, a notice setting forth such changes and the effective date thereof.

(vii) Material Adverse Change. Promptly after the occurrence thereof, notice of a material adverse change in the business, operations, property or financial or other condition of the Seller, the Servicer, the Transferor or any Originator.

(c) Conduct of Business. The Seller will carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and will do all things necessary to remain duly organized, validly existing and in good standing as a domestic organization in its jurisdiction of organization and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

(d) Compliance with Laws. The Seller will comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

(e) Furnishing of Information and Inspection of Receivables. The Seller will furnish to the Administrator and each Purchaser Agent from time to time such information with respect to the Pool Receivables as the Administrator or any Purchaser Agent may reasonably request. The Seller will, at the Seller's expense, during regular business hours with prior written notice (i) permit the Administrator and/or any Purchaser Agent, or their respective agents or representatives, (A) to examine and make copies of and abstracts from all books and records relating to the Pool Receivables or other Pool Assets and (B) to visit the offices and properties of the Seller for the purpose of examining such books and records, and to discuss matters relating to the Pool Receivables, other Pool Assets or the Seller's performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors, employees or independent public accountants of the Seller (provided that representatives of the Seller are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Seller's expense, upon prior written notice from the Administrator and/or such Purchaser Agent, permit certified public accountants or other auditors acceptable to the Administrator to conduct a review of its books and records with respect to such Receivables; provided, that unless a Termination Event has occurred and is continuing, the Seller shall be required to reimburse the Administrator and Purchaser Agents for only one (1) such audit per year.

(f) Payments on Receivables, Accounts. The Seller will, and will cause each Originator and the Transferor to, at all times instruct all Obligors to deliver payments on the Pool Receivables to a Lock-Box Account. If any such payments or other Collections are received by the Seller, an Originator or the Transferor, it shall hold such payments in trust for the benefit of the Administrator and the Purchasers and promptly (but in any event within two Business Days after receipt) remit such funds into a Lock-Box Account. The Seller will cause each Lock-Box Bank to comply with the terms of each applicable Lock-Box Agreement. The Seller will not permit the funds other than Collections on Pool Receivables and other Pool Assets to be deposited into any Lock-Box Account. If such funds are nevertheless deposited into any Lock-Box Account, the Seller will within two Business Days identify such funds for segregation. The Seller will not, and will not permit the Servicer, any Originator or the Transferor or other Person to, commingle Collections or other funds to which the Administrator, any Purchaser Agent or any Purchaser is entitled with any other funds. The Seller shall only add, and shall only permit an Originator or the Transferor to add, a Lock-Box Bank (or the related lock-box or post office box), or Lock-Box Account to those listed on Schedule II to this Agreement, if the Administrator has received notice of such addition, a copy of any new Lock-Box Agreement and an executed and acknowledged copy of a Lock-Box Agreement (or an amendment thereto) in form and substance reasonably acceptable to the Administrator from the applicable Lock-Box Bank. The Seller shall only terminate a Lock-Box Bank or close a Lock-Box Account (or the related lock-box or post office box), with the prior written consent of the Administrator.

(g) Sales, Liens, etc. Except as otherwise provided herein, the Seller will not sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any

Adverse Claim upon (including, without limitation, the filing of any financing statement) or with respect to, any Pool Receivable or other Pool Asset, or assign any right to receive income in respect thereof.

(h) Extension or Amendment of Pool Receivables. Except as otherwise permitted in Section 4.2 of this Agreement, the Seller will not, and will not permit the Servicer to, alter the delinquency status or adjust the Outstanding Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive, in any material respect, any term or condition of any related Contract (which term or condition relates to payments under, or the enforcement of, such Contract). The Seller shall at its expense, timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Contracts related to the Pool Receivables, and timely and fully comply with the Credit and Collection Policy with regard to each Receivable and the related Contract (which term or condition relates to payments under, or the enforcement of, such Contract).

(i) Change in Business. The Seller will not (i) make any change in the character of its business or (ii) make any change in any Credit and Collection Policy that could reasonably be expected to have a Material Adverse Effect, in the case of either clause (i) or (ii) above, without the prior written consent of the Administrator and the Majority Purchaser Agents. The Seller shall not make any other written change in any Credit and Collection Policy without giving prior written notice thereof to the Administrator and each Purchaser Agent.

(j) Fundamental Changes. The Seller shall not, without the prior written consent of the Administrator and the Majority Purchaser Agents, permit itself (i) to merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person or (ii) to be owned by any Person other than ACI and thereby cause ACI's percentage of ownership or control of the Seller to be reduced. The Seller shall provide the Administrator and each Purchaser with at least 10 days' prior written notice before making any change in the Seller's name, location or making any other change in the Seller's identity or corporate structure that could impair or otherwise render any UCC financing statement filed in connection with this Agreement or any other Transaction Document "seriously misleading" as such term (or similar term) is used in the applicable UCC; each notice to the Administrator and the Purchaser Agents pursuant to this sentence shall set forth the applicable change and the proposed effective date thereof. The Seller will also maintain and implement (or cause the Servicer to maintain and implement) administrative and operating procedures (including an ability to recreate records evidencing Pool Receivables and related Contracts in the event of the destruction of the originals thereof), and keep and maintain (or cause the Servicer to keep and maintain) all documents, books, records, computer tapes and disks

and other information reasonably necessary or advisable for the collection of all Pool Receivables (including records adequate to permit the daily identification of each Pool Receivable and all Collections of and adjustments to each existing Pool Receivable).

(k) Change in Payment Instructions to Obligors. The Seller shall not (and shall not cause the Servicer or any Sub-Servicer to) add to, replace or terminate any of the Lock-Box Accounts (or any related lock-box or post office box) listed in Schedule II hereto or make any

change in its (or their) instructions to the Obligors regarding payments to be made to the Lock-Box Accounts (or any related lock-box or post office box), unless the Administrator shall have received (x) prior written notice of such addition, termination or change and (y) a signed and acknowledged Lock-Box Agreement (or amendment thereto) with respect to such new Lock-Box Accounts (or any related lock-box or post office box).

(l) Ownership Interest, Etc. The Seller shall (and shall cause the Servicer to), at its expense, take all action necessary or reasonably desirable to establish and maintain a valid and enforceable undivided percentage ownership or security interest, to the extent of the Purchased Interest, in the Pool Receivables, the Related Security and Collections with respect thereto, and a first priority perfected security interest in the Pool Assets, in each case free and clear of any Adverse Claim, in favor of the Administrator (on behalf of the Secured Parties), including taking such action to perfect, protect or more fully evidence the interest of the Administrator (on behalf of the Secured Parties) as the Administrator or any Purchaser may reasonably request.

(m) Certain Agreements. Without the prior written consent of the Administrator and the Majority Purchaser Agents, the Seller will not (and will not permit the Originators or the Transferor to) amend, modify, waive, revoke or terminate any Transaction Document to which it is a party or any provision of the Seller's organizational documents which requires the consent of the "Independent Director" (as defined in the Seller's LLC Agreement).

(n) Restricted Payments. (i) Except pursuant to clause (ii) below, the Seller will not: (A) purchase or redeem any shares of its capital stock, (B) declare or pay any dividend or set aside any funds for any such purpose, (C) prepay, purchase or redeem any Debt, (D) lend or advance any funds or (E) repay any loans or advances to, for or from any of its Affiliates (the amounts described in clauses (A) through (E) being referred to as "Restricted Payments").

(ii) Subject to the limitations set forth in clause (iii) below, the Seller may make Restricted Payments so long as such Restricted Payments are made only in one or more of the following ways: (A) the Seller may make cash payments (including prepayments) on the Company Notes in accordance with their respective terms, and (B) if no amounts are then outstanding under any Company Note, the Seller may declare and pay dividends.

(iii) The Seller may make Restricted Payments only out of the funds, if any, it receives pursuant to Sections 1.4(b)(ii) and (iv) and 1.4(d) of this Agreement. Furthermore, the Seller shall not pay, make or declare: (A) any dividend if, after giving effect thereto, the Tangible Net Worth of the Seller would be less than $5,000,000, or (B) any Restricted Payment (including any dividend) if, after giving effect thereto, any Termination Event or Unmatured Termination Event shall have occurred and be continuing.

(o) Other Business. The Seller will not: (i) engage in any business other than the transactions contemplated by the Transaction Documents, (ii) create, incur or permit to exist any Debt of any kind (or cause or permit to be issued for its account any letters of credit or bankers'

acceptances) other than pursuant to this Agreement or the Company Notes, or (iii) form any Subsidiary or make any investments in any other Person.

(p) Use of Seller's Share of Collections. The Seller shall apply the Seller's Share of Collections to make payments in the following order of priority: (i) the payment of its expenses (including all obligations payable to the Purchasers, Purchaser Agents and the Administrator under this Agreement and under the Fee Letters), (ii) the payment of accrued and unpaid interest on the Company Notes and (iii) other legal and valid organizational purposes.

(q) Further Assurances; Change in Name or Jurisdiction of Origination, etc. (i) The Seller hereby authorizes and hereby agrees from time to time, at its own expense, promptly to execute (if necessary) and deliver all further instruments and documents, and to take all further actions, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or more fully evidence the purchases or issuances made under this Agreement and/or security interest granted pursuant to this Agreement or any other Transaction Document, or to enable the Administrator (on behalf of the Secured Parties) to exercise and enforce the Purchasers' rights and remedies under this Agreement and any other Transaction Document. Without limiting the foregoing, the Seller hereby authorizes, and will, upon the request of the Administrator, at the Seller's own expense, execute (if necessary) and file such financing or continuation statements (including fixture filings and as extracted collateral filings), or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or evidence any of the foregoing.

(i) The Seller authorizes the Administrator to file financing or continuation statements, and amendments thereto and assignments thereof, relating to the Receivables and the Related Security, the related Contracts and the Collections with respect thereto and the other collateral subject to a lien under any Transaction Document without the signature of the Seller. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement where permitted by law.

(ii) The Seller shall at all times be organized under the laws of the State of Delaware and shall not take any action to change its jurisdiction of organization.

(iii) The Seller will not change its name, location, identity or corporate structure unless (x) the Administrator and each Purchaser Agent shall have received at least thirty (30) days' advance written notice of such change, (y) the Seller, at its own expense, shall have taken all action necessary or appropriate to perfect or maintain the perfection of the lien under this Agreement (including, without limitation, the filing of all financing statements and the taking of such other action as the Administrator may request in connection with such change or relocation), and (z) if requested by the Administrator or any Purchaser, the Seller shall cause to be delivered to the Administrator or any Purchaser Agent, an opinion, in form and substance reasonably satisfactory to the Administrator and

such Purchaser Agent as to such UCC perfection and priority matters as such Person may request at such time.

(r) Tangible Net Worth. The Seller will not permit its Tangible Net Worth, at any time, to be less than $5,000,000.

(s) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity will become a Sanctioned Person. No Covered Entity, either in its own right or through any third party, will (a) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-

Terrorism Law; (b) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (c) engage in any dealings or transactions prohibited by any Anti-Terrorism Law or (d) use the proceeds of any Purchase to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law. The funds used to repay Seller's obligations under this Agreement and each of the other Transaction Documents will not be derived from any unlawful activity. Each Covered Entity shall comply with all Anti-Terrorism Laws. Seller shall promptly notify the Administrator in writing upon the occurrence of a Reportable Compliance Event.

(t) Seller's Tax Status. The Seller will remain a wholly-owned subsidiary of a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) and not be subject to withholding under Section 1446 of the Internal Revenue Code. No action will be taken that would cause the Seller to (i) be treated other than as a "disregarded entity" within the meaning of U.S. Treasury Regulation § 301.7701-3 for U.S. federal income tax purposes or (ii) become an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

2. Covenants of the Servicer. At all times from the date hereof until the Final Payout Date:

(a) Financial Reporting. The Servicer will maintain a system of accounting established and administered in accordance with generally accepted accounting principles as in effect in the appropriate jurisdiction, and the Servicer shall furnish to the Administrator and each Purchaser Agent:

(i) Compliance Certificates. (a) A compliance certificate promptly upon completion of the annual report of the Performance Guarantor and in no event later than 90 days after the close of the Performance Guarantor's fiscal year, in form and substance substantially similar to Annex D signed by its chief accounting officer or treasurer solely in their capacities as officers of the Servicer stating that no Termination Event or Unmatured Termination Event exists, or if any Termination Event or Unmatured Termination Event exists, stating the nature and status thereof, and (b) within 45 days after the close of each fiscal quarter of the Servicer, a compliance certificate in form and substance substantially similar to Annex D.

(ii) Reports. (A) As soon as available and in any event not later than two Business Days prior to the Monthly Settlement Date, an Information Package as of the most recently completed calendar month, (B) as soon as available and in any event no later than the second Business Day of each calendar week, a Weekly Report as of the most recently completed calendar week, which shall include, among other things, the Liquidity as of the last day of such calendar week, and (C) if requested by the Agent or any Purchaser at any time following the occurrence and during the continuance of a Termination Event or Unmatured Termination Event or during a Minimum Liquidity Period, a Daily Report on each Business Day as of date that is one Business Day prior to such date.

(iii) Cash Flow Forecasts. During each Minimum Liquidity Period, a Cash Flow Forecast from time to time promptly (but in any event no later than 5 Business Days) following the request therefore from the Administrator or any Purchaser.

(iv) Other Information. Such other information (including non-financial information) as the Administrator or any Purchaser Agent may from time to time reasonably request.

(v) Annual Reporting. Promptly upon completion and in no event later than 90 days after the close of each fiscal year of ACI, the annual audited financial statements of ACI and its consolidated Subsidiaries certified by independent certified public accountants of nationally recognized standing (which shall be free of qualifications (other than any consistency qualification that may result from a change in the method used to prepare the financial statements as to which such accountants concur)), prepared in accordance with GAAP (after giving effect to Fresh Start Reporting, as applicable), including consolidated balance sheets as of the end of such period, consolidated statements of income, related profit and loss and reconciliation of surplus statements, and a statement of changes in financial position.

(b) Notices. The Servicer will notify the Administrator and each Purchaser Agent in writing of any of the following events promptly upon (but in no event later than three Business Days after) a financial or other officer learning of the occurrence thereof, with such notice describing the same, and if applicable, the steps being taken by the Person(s) affected with respect thereto:

(i) Notice of Termination Events or Unmatured Termination Events. A statement of the chief financial officer or chief accounting officer of the Servicer setting forth details of any Termination Event or Unmatured Termination Event and the action which the Servicer proposes to take with respect thereto.

(ii) Representations and Warranties. The failure of any representation or warranty to be true and correct (when made or at any time thereafter) with respect to the Receivables included in the Receivables Pool.

(iii) Litigation. The institution of any litigation, arbitration proceeding or governmental proceeding which could reasonably be expected to have a Material Adverse Effect on the Servicer.

(iv) Adverse Claim. (A) Any Person shall obtain an Adverse Claim upon the Pool Receivables or Collections with respect thereto, (B) any Person other than the Seller, the Servicer or the Administrator shall obtain any rights or direct any action with respect to any Lock-Box Account (or related lock-box or post office box) or (C) any Obligor shall receive any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Servicer or the Administrator.

(v) ERISA. Promptly after the filing or receiving thereof notice of and, upon the request of the Administrator, copies of all reports and notices that ACI or any ERISA Affiliate of ACI files under ERISA with the Internal Revenue Service, the Pension Benefit Guaranty Corporation or the U.S. Department of Labor or that such Person or any of its ERISA Affiliates receives from any of the foregoing or from any multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) to which such Person or any ERISA Affiliate of ACI is or was, within the preceding five years, a contributing employer, in each case in respect of the assessment of withdrawal liability or an event or condition that could, in the aggregate, result in the imposition of liability on ACI and/or any such ERISA Affiliate.

(vi) Name Changes. At least ten days before any change in ACI's, any Originator's or the Transferor's name or any other change requiring the amendment of UCC financing statements, a notice setting forth such changes and the effective date thereof.

(vii) Material Adverse Change. A material adverse change in the business, operations, property or financial or other condition of ACI or any Originator or the Transferor or any of their respective Subsidiaries.

(viii) Other Debt Default. A default or any event of default under (x) the Credit Agreement or (y) any other financing arrangement evidencing $35,000,000 or more of indebtedness pursuant to which ACI, Arch Sales, any Originator, the Transferor or any of their Subsidiaries is a debtor or an obligor.

(ix) Permitted Merger. No later than 10 Business Days after the effective date of any Permitted Merger, a notice setting forth, in reasonable detail, the terms, conditions and Persons involved therein.

(c) Conduct of Business. The Servicer will carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and will do all things necessary to remain duly incorporated, validly existing and in good standing as a domestic corporation in its jurisdiction of incorporation and maintain all

requisite authority to conduct its business in each jurisdiction in which its business is conducted if the failure to have such authority could reasonably be expected to have a Material Adverse Effect.

(d) Compliance with Laws. The Servicer will comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject if the failure to comply could reasonably be expected to have a Material Adverse Effect.

(e) Furnishing of Information and Inspection of Receivables. The Servicer will furnish to the Administrator and each Purchaser Agent from time to time such information with respect to the Pool Receivables as the Administrator or any Purchaser Agent may reasonably request. The Servicer will, at the Servicer's expense, during regular business hours with prior written notice, (i) permit the Administrator and/or any Purchaser Agent, or their respective agents or representatives, (A) to examine and make copies of and abstracts from all books and records relating to the Pool Receivables or other Pool Assets, (B) to visit the offices and properties of the Servicer for the purpose of examining such books and records, and (C) to discuss matters relating to the Pool Receivables, other Pool Assets or the Servicer's performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors, employees or independent public accountants of the Servicer (provided that representatives of the Servicer are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Servicer's expense, upon prior written notice from the Administrator or such Purchaser Agent, permit certified public accountants or other auditors acceptable to the Administrator to conduct, a review of its books and records with respect to such Receivables; provided, that unless a Termination Event has occurred and is continuing, that the Servicer shall be required to reimburse the Administrator and the Purchaser Agents for only one (1) such audit per year.

(f) Payments on Receivables, Accounts. The Servicer will at all times instruct all Obligors to deliver payments on the Pool Receivables to a Lock-Box Account. The Servicer will, at all times, maintain such books and records necessary to identify Collections received from time to time on Pool Receivables and to segregate such Collections from other property of the Servicer, the Transferor and the Originators. If any such payments or other Collections are received by the Servicer, it shall hold such payments in trust for the benefit of the Administrator and the Purchasers and promptly (but in any event within two Business Days after receipt) remit such funds into a Lock-Box Account. The Servicer will cause each Lock-Box Bank to comply with the terms of each applicable Lock-Box Agreement. The Servicer will not permit the funds other than Collections on Pool Receivables and other Pool Assets to be deposited into any Lock-Box Account. If such funds are nevertheless deposited into any Lock-Box Account, the Servicer will within two Business Days identify such funds for segregation. The Servicer will not commingle Collections or other funds to which the Administrator or any other Secured Party is entitled with any other funds. The Servicer shall only add, a Lock-Box Bank (or the related lock-box or post office box), or Lock-Box Account to those listed on Schedule II to this Agreement, if the Administrator has received notice of such addition, a copy of any new Lock-Box Agreement and an executed and acknowledged copy of a Lock-Box Agreement (or an amendment thereto) in form and substance acceptable to the Administrator from any such new Lock-Box Bank. The Servicer shall only terminate a Lock-Box Bank or close a Lock-Box

Account (or the related lock-box or post office box) with the prior written consent of the Administrator.

(g) Extension or Amendment of Pool Receivables. Except as otherwise permitted in Section 4.2 of this Agreement, the Servicer will not alter the delinquency status or adjust the Outstanding Balance or otherwise modify the terms of any Pool Receivable in any material respect, or amend, modify or waive, in any material respect any term or condition of any related Contract (which term or condition relates to payments under, or the enforcement of, such Contract). The Servicer shall at its expense, timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Contracts related to the Pool Receivables, and timely and fully comply with the Credit and Collection Policy with regard to each Pool Receivable and the related Contract (which term or condition relates to payments under, or the enforcement of, such Contract).

(h) Change in Business. The Servicer will not (i) make any material change in the character of its business or (ii) make any change in any Credit and Collection Policy that could reasonably be expected to have a Material Adverse Effect, in the case of either (i) or (ii) above, without the prior written consent of the Administrator and the Majority Purchaser Agents. The Servicer shall not make any written change in any Credit and Collection Policy without giving prior written notice thereof to the Administrator and each Purchaser Agent.

(i) Records. The Servicer will maintain and implement administrative and operating procedures (including an ability to recreate records evidencing Pool Receivables and related Contracts in the event of the destruction of the originals thereof), and keep and maintain all documents, books, records, computer tapes and disks and other information reasonably necessary or advisable for the collection of all Pool Receivables (including records adequate to permit the daily identification of each Pool Receivable and all Collections of and adjustments to each existing Pool Receivable).

(j) Change in Payment Instructions to Obligors. The Servicer shall not (and shall not permit any Sub-Servicer to) add to, replace or terminate any of the Lock-Box Accounts (or any related lock-box or post office box) listed in Schedule II hereto or make any change in its instructions to the Obligors regarding payments to be made to the Lock-Box Accounts (or any related lock-box or post office box), unless the Administrator shall have received (x) prior written notice of such addition, termination or change and (y) a signed and acknowledged Lock-Box Agreement (or an amendment thereto) with respect to such new Lock-Box Accounts (or any related lock-box or post office box).

(k) Ownership Interest, Etc. The Servicer shall, at its expense, take all action necessary or reasonably desirable to establish and maintain a valid and enforceable undivided percentage ownership or security interest, to the extent of the Purchased Interest, in the Pool Receivables, the Related Security and Collections with respect thereto, and a first priority perfected security interest in the Pool Assets, in each case free and clear of any Adverse Claim, in favor of the Administrator (on behalf of the Secured Parties), including taking such action to perfect, protect or more fully evidence the interest of the Administrator (on behalf of the Secured Parties) as the Administrator may reasonably request.

(l) Further Assurances; Change in Name or Jurisdiction of Origination, etc. The Servicer hereby authorizes and hereby agrees from time to time, at its own expense, promptly to execute (if necessary) and deliver all further instruments and documents, and to take all further actions, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or more fully evidence the purchases or issuances made under this Agreement and/or security interest granted pursuant to this Agreement or any other Transaction Document, or to enable the Administrator (on behalf of the Secured Parties) to exercise and enforce their respective rights and remedies under this Agreement or any other Transaction Document. Without limiting the foregoing, the Servicer hereby authorizes, and will, upon the request of the Administrator, at the Servicer's own expense, execute (if necessary) and file such financing or continuation statements (including fixture filings and as extracted collateral

filings), or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Administrator may reasonably request, to perfect, protect or evidence any of the foregoing.

(i) The Servicer authorizes the Administrator to file financing or continuation statements, and amendments thereto and assignments thereof, relating to the Receivables and the Related Security, the related Contracts and the Collections with respect thereto and the other collateral subject to a lien under any Transaction Document without the signature of the Servicer. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement where permitted by law.

(ii) The Servicer shall at all times be organized under the laws of the State of Delaware and shall not take any action to change its jurisdiction of organization.

(iii) The Servicer will not change its name, location, identity or corporate structure unless (x) the Administrator and each Purchaser Agent shall have received at least ten (10) days' advance written notice of such change, (y) the Servicer, at its own expense, shall have taken all action necessary or appropriate to perfect or maintain the perfection of the lien under this Agreement (including, without limitation, the filing of all financing statements and the taking of such other action as the Administrator may request in connection with such change or relocation), and (z) if requested by the Administrator or any Purchaser Agent, the Servicer shall cause to be delivered to the Administrator and each Purchaser Agent, an opinion, in form and substance satisfactory to the Administrator and each such Purchaser Agent as to such UCC perfection and priority matters as such Person may request at such time.

(m) Anti-Money Laundering/International Trade Law Compliance. No Covered Entity will become a Sanctioned Person. No Covered Entity, either in its own right or through any third party, will (a) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (c) engage in

any dealings or transactions prohibited by any Anti-Terrorism Law or (d) use the proceeds of any Purchase to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law. The funds used to repay Servicer's obligations under this Agreement and each of the other Transaction Documents will not be derived from any unlawful activity. Each Covered Entity shall comply with all Anti-Terrorism Laws. Servicer shall promptly notify the Administrator in writing upon the occurrence of a Reportable Compliance Event.

(n) Identifying of Records. The Servicer shall identify its master data processing records relating to Pool Receivables and related Contracts with a legend that indicates that the Pool Receivables have been pledged in accordance with this Agreement.

(o) Seller's Tax Status. The Servicer shall not take or cause any action to be taken that could result in the Seller (i) being treated other than as a "disregarded entity" within the meaning of U.S. Treasury Regulation § 301.7701-3 for U.S. federal income tax purposes or (ii) becoming an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

3. Separate Existence. Each of the Seller and the Servicer hereby acknowledges that the Purchasers, the Purchaser Agents and the Administrator are entering into the transactions contemplated by this Agreement and the other Transaction Documents in reliance upon the Seller's identity as a legal entity separate from ACI and its Affiliates. Therefore, from and after the date hereof, each of the Seller and ACI shall take all steps specifically required by this Agreement or reasonably required by the Administrator, any Purchaser Agent or any Purchaser to continue the Seller's identity as a separate legal entity and to make it apparent to third Persons that the Seller is an entity with assets and liabilities distinct from those of ACI and any other Person, and is not a division of ACI, its Affiliates or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, each of the Seller and ACI shall take such actions as shall be required in order that:

(a) The Seller will be a limited liability company whose primary activities are restricted in its LLC Agreement to: (i) purchasing or otherwise acquiring from the Transferor, owning, holding, granting security interests or selling interests in Pool Assets, (ii) entering into agreements for the selling and servicing of the Receivables Pool, and (iii) conducting such other activities as it deems necessary or appropriate to carry out its primary activities;

(b) The Seller shall not engage in any business or activity except as set forth in this Agreement nor incur any indebtedness or liability other than as expressly permitted by the Transaction Documents;

(c) (i) Not less than one member of the Seller's board of directors (the "Independent Director") shall be a natural person (A) who is not, and has not been at any time during the five (5) years preceding such person's initial appointment: (1) a direct, indirect or beneficial stockholder, equityholder, officer, director (other than the Independent Director), employee, member, manager, attorney, partner, affiliate, or supplier of Seller, ACI, Arch Sales, any Originator, the Transferor or any of their respective Subsidiaries (the "Arch Group"); provided,

that indirect stock ownership of any member of the Arch Group by any person through a mutual fund or similar diversified investment pool shall not disqualify such person from being an Independent Director unless such person maintains direct or indirect control of the investment decisions of such mutual fund or similar diversified investment pool, (2) a customer of, supplier to or other person who derives more than 1% of its purchases or revenues from its activities with any member of the Arch Group; (3) a trustee, conservator or receiver for any member of the Arch Group; (4) a person or other entity controlling, controlled by or under common control with any such equity holder, partner, member, manager, customer, supplier or other person; or (5) a member of the immediate family of any such equityholder, director, officer, employee, member, manager, partner, customer, supplier or other person and (B) (1) who has (x) prior experience as an independent director for a corporation or an independent manager of a limited liability company whose charter documents required the unanimous consent of all independent director or independent managers thereof before such corporation could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (y) at least three years of employment experience with one or more entities that provide, in the ordinary course of their respective businesses, advisory, management or placement services to issuers of securitization or structured finance instruments, agreements or securities and (2) is reasonably acceptable to the Administrator and each Purchaser Agent (such acceptability of any Independent Director appointed after the date hereof must be evidenced in writing signed by the Administrator and each Purchaser Agent). Under this clause (c), the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. (ii) The operating agreement of the Seller shall provide that: (A) the Seller's board of managers or other governing body shall not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Seller unless the Independent Director shall approve the taking of such action in writing before the taking of such action, and (B) such provision and each other provision requiring an Independent Director cannot be amended without the prior written consent of the Independent Director.

(d) The Independent Director shall not at any time serve as a trustee in bankruptcy for the Seller, ACI, any Originator, the Transferor or any of their respective Affiliates;

(e) The Seller shall maintain its organizational documents in conformity with this Agreement, such that it does not amend, restate, supplement or otherwise modify its ability to comply with the terms and provisions of any of the Transaction Documents, including, without limitation, clause (i) of Exhibit V;

(f) The Seller shall conduct its affairs strictly in accordance with its organizational documents and observe all necessary, appropriate and customary company formalities, including, but not limited to, holding all regular and special members' and board of directors' meetings appropriate to authorize all limited liability company action, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts;

(g) Any employee, consultant or agent of the Seller will be compensated from the Seller's funds for services provided to the Seller, and to the extent that Seller shares the same officers or other employees as ACI (or any other Affiliate thereof), the salaries and expenses relating to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with such common officers and employees. The Seller will not engage any agents other than its attorneys, auditors and other professionals, and a servicer and any other agent contemplated by the Transaction Documents for the Receivables Pool, which servicer will be fully compensated for its services by payment of the Servicing Fee, and a manager, which manager will be fully compensated from the Seller's funds;

(h) The Seller will contract with the Servicer to perform for the Seller all operations required on a daily basis to service the Receivables Pool. The Seller will pay the Servicer the Servicing Fee pursuant hereto. The Seller will not incur any indirect or overhead expenses for items shared with ACI (or any other Affiliate thereof) that are not reflected in the Servicing Fee. To the extent, if any, that the Seller (or any Affiliate thereof) shares items of expenses not reflected in the Servicing Fee or the manager's fee, such as legal, auditing and other professional services, such expenses will be allocated to the extent practical on the basis of actual use or the value of services rendered, and otherwise on a basis reasonably related to the actual use or the value of services rendered; it being understood that ACI shall pay all expenses relating to the preparation, negotiation, execution and delivery of the Transaction Documents, including legal, agency and other fees;

(i) The Seller's operating expenses will not be paid by ACI, the Transferor or any Originator or any Affiliate thereof;

(j) The Seller will have its own separate stationery;

(k) The Seller's books and records will be maintained separately from those of ACI and any other Affiliate thereof and in a manner such that it will not be difficult or costly to segregate, ascertain or otherwise identify the assets and liabilities of Seller;

(l) All financial statements of ACI or any Affiliate thereof that are consolidated to include the Seller will disclose that (i) the Seller's sole business consists of the purchase or acceptance through capital contributions of the Receivables and Related Rights from the Transferor and the subsequent retransfer of or granting of a security interest in such Receivables and Related Rights to certain purchasers party to this Agreement, (ii) the Seller is a separate legal entity with its own separate creditors who will be entitled, upon its liquidation, to be satisfied out of the Seller's assets prior to any assets or value in the Seller becoming available to the Seller's equity holders and (iii) the assets of the Seller are not available to pay creditors of ACI or any other Affiliates of ACI or the Originators or the Transferor;

(m) The Seller's assets will be maintained in a manner that facilitates their identification and segregation from those of ACI or any Affiliates thereof;

(n) The Seller will strictly observe corporate formalities in its dealings with ACI or any Affiliates thereof, and funds or other assets of the Seller will not be commingled with those of ACI or any Affiliates thereof except as permitted by this Agreement in connection with servicing the Pool Receivables. The Seller shall not maintain joint bank accounts or other depository accounts to which ACI or any Affiliate thereof (other than ACI in its capacity as the Servicer) has independent access. The Seller is not named, and has not entered into any agreement to be named, directly or indirectly, as a direct or contingent beneficiary or loss payee on any insurance policy with respect to any loss relating to the property of ACI or any Subsidiaries or other Affiliates thereof. The Seller will pay to the appropriate Affiliate the marginal increase or, in the absence of such increase, the market amount of its portion of the premium payable with respect to any insurance policy that covers the Seller and such Affiliate;

(o) The Seller will maintain arm's-length relationships with ACI (and any Affiliates thereof). Any Person that renders or otherwise furnishes services to the Seller will be compensated by the Seller at market rates for such services it renders or otherwise furnishes to the Seller. Neither the Seller on the one hand, nor ACI, on the other hand, will be or will hold itself out to be responsible for the debts of the other or the decisions or actions respecting the daily business and affairs of the other. The Seller and ACI will immediately correct any known misrepresentation with respect to the foregoing, and they will not operate or purport to operate as an integrated single economic unit with respect to each other or in their dealing with any other entity;

(p) The Seller shall have a separate area from ACI for its business (which may be located at the same address as such entities) and to the extent that any other such entity have offices in the same location, there shall be a fair and appropriate allocation of overhead costs between them, and each shall bear its fair share of such expenses; and

(q) To the extent not already covered in paragraphs (a) through (o) above, Seller shall comply and/or act in accordance with the provisions of Section 6.4 of the Sale and Contribution Agreement.

4. Certain Post-Closing Requirements. As soon as practicable and in any event not later than 120 days following the Closing Date, the Servicer shall (or shall cause the Seller to) deliver to the Administrator favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for the Seller, Originators, the Servicer and ACI, covering certain corporate and UCC perfection matters relating to the Originators organized in Kentucky, West Virginia and Virginia as well as certain UCC perfection matters with respect to county-level filings made by each Originator.

EXHIBIT V
TERMINATION EVENTS

Each of the following shall be a "Termination Event":

(a) (i) the Seller, ACI, any Originator, the Transferor or the Servicer shall fail to perform or observe any term, covenant or agreement under the Agreement or any other Transaction Document, and, except as otherwise provided herein, such failure, solely to the extent capable of cure, shall continue for 30 days, (ii) the Seller or the Servicer shall fail to make when due any payment or deposit to be made by it under the Agreement or any other Transaction Document and such failure shall continue unremedied for one Business Day, or (iii) Arch Sales shall resign as Servicer, and no successor Servicer reasonably satisfactory to the Administrator shall have been appointed;

(b) Arch Sales (or any Affiliate thereof) shall fail to transfer to any successor Servicer when required any rights pursuant to the Agreement that Arch Sales (or such Affiliate) then has as Servicer;

(c) any representation or warranty made or deemed made by the Seller, ACI, any Originator, the Transferor or the Servicer (or any of their respective officers) under or in connection with the Agreement or any other Transaction Document, or any information or report delivered by the Seller, ACI, any Originator, the Transferor or the Servicer pursuant to the Agreement or any other Transaction Document, shall prove to have been incorrect or untrue when made or deemed made or delivered, and shall remain incorrect or untrue for 10 Business Days;

(d) the Seller or the Servicer shall fail to deliver any Information Package or Interim Report pursuant to the Agreement, and such failure shall remain unremedied for two Business Days;

(e) the Agreement or any purchase or reinvestment pursuant to the Agreement shall for any reason: (i) cease to create, or the Purchased Interest shall for any reason cease to be, a valid and enforceable perfected undivided percentage ownership or security interest to the extent of the Purchased Interest in each Pool Receivable, the Related Security and Collections with respect thereto, free and clear of any Adverse Claim, or (ii) cease to create with respect to the Pool Assets, or the interest of the Administrator with respect to such Pool Assets shall cease to be, a valid and enforceable first priority perfected security interest, free and clear of any Adverse Claim;

(f) the Seller, ACI, the Transferor or any Originator shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Seller, ACI the Transferor or any Originator seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial

part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of the property) shall occur, or the Seller, ACI and the Transferor or any Originator shall take any corporate or organizational action to authorize any of the actions set forth above in this paragraph;

(g) (i) the (A) Default Ratio shall exceed 3% or (B) the Delinquency Ratio shall exceed 6%, or (ii) the average for three consecutive calendar months of: (A) the Default Ratio shall exceed 2%, (B) the Delinquency Ratio shall exceed 4% or (C) the Dilution Ratio shall exceed 3%, or (iii) Days' Sales Outstanding shall exceed 48 days;

(h) a Change in Control shall occur;

(i) at any time (i) the sum of (A) the Aggregate Capital, plus the Adjusted LC Participation Amount, plus (B) the Total Reserves exceeds (ii) the sum of (A) the Net Receivables Pool Balance at such time, plus (B) the Purchasers' Share of the amount of Collections then on deposit in the Lock-Box Accounts (other than amounts set aside therein representing Discount and fees), and such circumstance shall not have been cured within two Business Days;

(j) (i) ACI or any of its Subsidiaries shall fail to pay any principal of or premium or interest under (x) the Credit Agreement or (y) on any of its other Debt that is outstanding in a principal amount of at least $35,000,000 in the aggregate when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement, mortgage, indenture or instrument relating to such Debt (whether or not such failure shall have been waived under the related agreement), (ii) any other event shall occur or condition shall exist under the Credit Agreement or any agreement, mortgage, indenture or instrument relating to any such other Debt and shall continue after the applicable grace period, if any, specified in the Credit Agreement or such agreement, mortgage, indenture or instrument (whether or not such failure shall have been waived under the related agreement), if the effect of such event or condition is to give the applicable debtholders the right (whether acted upon or not) to accelerate the maturity of the Credit Agreement or such other Debt, or (iii) the Credit Agreement or any such other Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased, or an offer to repay, redeem, purchase or defease the Credit Agreement or such other Debt shall be required to be made, in each case before the stated maturity thereof;

(k) (i) ACI shall fail to perform any of its obligations under the Performance Guaranty or (ii) any Originator shall fail to perform any of its obligations under the Originator Performance Guaranty;

(l) (i) a contribution failure shall occur with respect to any Benefit Plan sufficient to give rise to a lien on any of the assets of Seller, any Originator, the Transferor, ACI or any ERISA Affiliate under Section 303(k) of ERISA and such failure is not cured and any related

lien released within 10 days or (ii) either the Internal Revenue Service or the Pension Benefit Guaranty Corporation shall have filed one or more notices of lien asserting a claim or claims pursuant to the Internal Revenue Code, or ERISA, as applicable, against the assets of (a) the Seller or (b) the Servicer, the Transferor, any Originator, ACI or any ERISA Affiliate (other than the Seller) in an amount in excess of $250,000 and such lien is not released within 10 days;

(m) the Seller or ACI shall fail to (x) provide the Administrator and each Purchaser Agent with at least ten days' prior written notice of any replacement or appointment of any director that is to serve as an Independent Director on the Seller's board of directors or (y) obtain the prior written consent of the Administrator and each Purchaser Agent for any replacement or appointment of any director that is to serve as an Independent Director on the Seller's board of directors and, in either case, such failure shall continue for ten days;

(n) any Letter of Credit is drawn upon and, unless as a result of the LC Bank's failure to provide the notice required by Section 1.14(b), not fully reimbursed pursuant to Section 1.14 (including, if applicable, with the proceeds of any funding by any Purchaser) within two Business Days from the date of such draw;

(o) an order of the Bankruptcy Court shall be entered in any of the Chapter 11 Cases staying, reversing, vacating, amending, supplementing or otherwise modifying the Confirmation Order or any member of the Arch Group shall apply for authority to do so, in each case without the prior written consent of the Administrator and the Majority Purchaser Agents;

(p) a member of the Arch Group shall file a pleading seeking or consenting to the matters described in clause (o) above;

(q) the filing by any member of the Arch Group of any motion or proceeding that could reasonably be expected to result in material impairment of the Administrator's or any Secured Party's rights under the Transaction Documents; or a final determination by the Bankruptcy Court (or any court of competent jurisdiction) with respect to any motion or proceeding brought by any other party that results in any material impairment of the Administrator's or any Secured Party's rights under the Transaction Documents; or

(r) the existence of any Adverse Claim on any Pool Assets.

Exhibit 10.3

EXECUTION VERSION

SECOND AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

Dated as of October 5, 2016

by and among

VARIOUS ENTITIES LISTED ON SCHEDULE I,

as the Originators

and

ARCH COAL, INC.

CONTENTS

CONTENTS

CONTENTS

SCHEDULES

EXHIBITS

THIS SECOND AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of October 5, 2016 is entered into by and among the VARIOUS ENTITIES LISTED ON SCHEDULE I HERETO (each, an "Originator"; and collectively, "Originators"), and ARCH COAL, INC., a Delaware corporation (the "Company").

DEFINITIONS

Unless otherwise indicated herein, capitalized terms used and not otherwise defined in this Agreement are defined in Exhibit I to the Third Amended and Restated Receivables Purchase Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Receivables Purchase Agreement"), among Arch Receivable Company, LLC, as Seller (the "Seller"), Arch Coal Sales Company, Inc., as initial Servicer, the various Purchasers and LC Participants from time to time party thereto, and PNC Bank, National Association, as Administrator and as LC Bank. All references herein to months are to calendar months unless otherwise expressly indicated.

BACKGROUND:

1. The Originators are operating subsidiaries of the Company;

2. The Originators generate Receivables in the ordinary course of their businesses;

3. The Originators, in order to finance their respective businesses, wish to sell Receivables to the Company, and the Company is willing to purchase Receivables from the Originators, on the terms and subject to the conditions set forth herein;

4. The Originators and the Company intend this transaction to be a true sale of Receivables by each Originator to the Company, providing the Company with the full benefits of ownership of the Receivables, and the Originators and the Company do not intend the transactions hereunder to be characterized as a loan from the Company to any Originator; and

5. The Originators and the Company acknowledge that the Company will sell and contribute the Receivables purchased by it hereunder and the related security (together with accounts receivable originated by the Company and the related security) to the Seller, from time to time, pursuant to that certain Second Amended and Restated Sale and Contribution Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Sale and Contribution Agreement"), between the Company, as transferor (in such capacity, the "Transferor") and the Seller, as buyer, and that thereafter the Seller may from time to time transfer, assign and grant a security interest in undivided beneficial interests in the Receivables, Related Security and other rights to the Administrator for the benefit of the Secured Parties under the Receivables Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
AGREEMENT TO PURCHASE AND SELL

SECTION 1.1 Agreement To Purchase and Sell. On the terms and subject to the conditions set forth in this Agreement, each Originator, severally and for itself, agrees to sell to the Company, and the Company agrees to purchase from such Originator, from time to time on or after the Closing Date, but before the Purchase and Sale Termination Date (as defined in Section 1.4), all of such Originator's right, title and interest in and to:

(a) each Receivable of such Originator that existed and was owing to such Originator at the closing of such Originator's business on January 1, 2006 (the "Cut-off Date");

(b) each Receivable generated by such Originator from and including the Cut-off Date to but excluding the Purchase and Sale Termination Date;

(c) all rights to, but not the obligations of, such Originator under all Related Security with respect to any of the foregoing Receivables;

(d) all monies due or to become due to such Originator with respect to any of the foregoing;

(e) all books and records of such Originator to the extent related to any of the foregoing;

(f) all Collections and other proceeds and products of any of the foregoing (as defined in the UCC) that are or were received by such Originator on or after the Cut-off Date, including, without limitation, all funds which either are received by such Originator, the Company or the Servicer from or on behalf of the Obligors in payment of any amounts owed (including, without limitation, invoice price, finance charges, interest and all other charges) in respect of any of the above Receivables or are applied to such amounts owed by the Obligors (including, without limitation, any insurance payments that such Originator, the Company or the Servicer applies in the ordinary course of its business to amounts owed in respect of any of the above Receivables, and net proceeds of sale or other disposition of repossessed goods or other collateral or property of the Obligors in respect of any of the above Receivables or any other parties directly or indirectly liable for payment of such Receivables); and

(g) all rights, remedies, powers, privileges, title and interest (but not obligations) in and to the Lock-Box Accounts into which any Collections or other proceeds with respect to such Receivables may be deposited.

All purchases hereunder are absolute and irrevocable and shall be made without recourse, but shall be made pursuant to, and in reliance upon, the representations, warranties and covenants of the Originators set forth in this Agreement and each other Transaction Document. No obligation or liability to any Obligor on any Receivable is intended to be assumed by the Company hereunder, and any such assumption is expressly disclaimed. The Company's foregoing agreement to purchase Receivables and the property, proceeds and rights described in clauses (c)

through (g) (collectively, the "Related Rights") is herein called the "Purchase Facility." Each Originator hereby authorizes and consents to the filing of each of the financing statements that have been filed prior to the date hereof by or on behalf of the Company or the Administrator in connection with the Original PSA notwithstanding that the collateral described therein may be broader in scope than the collateral described in this Agreement.

SECTION 1.2 Timing of Purchases.

(a) Closing Date Purchases. Each Originator's entire right, title and interest in (i) each Receivable that existed and was owing to such Originator on the Closing Date, and (ii) all Related Rights with respect thereto automatically shall be deemed to have been sold by such Originator to the Company on the Closing Date.

(b) Subsequent Purchases. After the Closing Date, until the Purchase and Sale Termination Date, each Receivable and the Related Rights generated or otherwise acquired by each Originator shall be deemed to have been sold by such Originator to the Company immediately (and without further action) upon the creation of such Receivable.

SECTION 1.3 Consideration for Purchases. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to make Purchase Price payments to the Originators in accordance with Article III.

SECTION 1.4 Purchase and Sale Termination Date. The "Purchase and Sale Termination Date" shall be the earliest to occur of (a) the date the Purchase Facility is terminated pursuant to Section 8.2 and (b) the Payment Date (as defined in Section 2.2) immediately following the day on which the Originators shall have given written notice to the Company, the Seller and the Administrator at or prior to 10:00 a.m. (New York City time) that the Originators desire to terminate this Agreement.

SECTION 1.5 Intention of the Parties. It is the express intent of each Originator and the Company that each conveyance by such Originator to the Company pursuant to this Agreement of the Receivables, including without limitation, all Receivables, if any, constituting general intangibles as defined in the UCC, and all Related Rights be construed as a valid and perfected sale and absolute assignment (without recourse except as provided herein) of such Receivables and Related Rights by such Originator to the Company (rather than the grant of a security interest to secure a debt or other obligation of such Originator) and that the right, title and interest in and to such Receivables and Related Rights conveyed to the Company be prior to the rights of and enforceable against all other Persons at any time, including, without limitation, lien creditors, secured lenders, purchasers and any Person claiming through such Originator. However, if, contrary to the mutual intent of the parties, any conveyance of Receivables and Related Rights, including without limitation any Receivables constituting general intangibles, is not construed to be both a valid and perfected sale and absolute assignment of such Receivables and Related Rights, and a conveyance of such Receivables and Related Rights that is prior to the rights of and enforceable against all other Persons at any time, including without limitation lien creditors, secured lenders, purchasers and any Person claiming through such Originator, then, it is the intent of such Originator and the Company that (i) this Agreement also shall be deemed to be, and hereby is, a security agreement within the meaning of the UCC; and (ii) such Originator

shall be deemed to have granted to the Company as of the Closing Date, and such Originator hereby grants to the Company, a security interest in, to and under all of such Originator's right, title and interest in and to: (A) the Receivables and the Related Rights now existing and hereafter created by such Originator transferred or purported to be transferred hereunder, (B) all monies due or to become due and all amounts received with respect thereto, (C) all books and records of such Originator to the extent related to any of the foregoing, (D) all rights, remedies, powers, privileges, title and interest (but not obligations) of such Originator in and to the Lock-Box Accounts into which any Collections or other proceeds with respect to such Receivables may be deposited, and any related investment property acquired with any such Collections or other proceeds (as such term is defined in the applicable UCC) and (E) all proceeds and products of any of the foregoing to secure all of such Originator's obligations hereunder.

ARTICLE II
PURCHASE REPORT; CALCULATION OF PURCHASE PRICE

SECTION 2.1 Purchase Report. On the 21st day of each calendar month after the Closing Date (or if such day is not a Business Day, the next occurring Business Day) (each such date, a "Monthly Purchase Report Date"), the Servicer shall deliver to the Company and each Originator a report in substantially the form of Exhibit A (each such report being herein called a "Purchase Report") setting forth, among other things:

(a) [Reserved];

(b) Receivables purchased by the Company from each Originator during the period commencing on the Monthly Purchase Report Date immediately preceding such Monthly Purchase Report Date to (but not including) such Monthly Purchase Report Date (in the case of each subsequent Purchase Report); and

(c) the calculations of reductions of the Purchase Price for any Receivables as provided in Section 3.2 (a) and (b).

SECTION 2.2 Calculation of Purchase Price. The "Purchase Price" to be paid to each Originator for the Receivables that are purchased hereunder from such Originator shall be determined in accordance with the following formula:

PP	=	OB x FMVD
where:		
PP	=	Purchase Price for each Receivable as calculated on the relevant Payment Date.
OB	=	The Outstanding Balance of such Receivable on the relevant Payment Date.
FMVD	=	Fair Market Value Discount, as measured on such Payment Date, which is equal to the quotient (expressed as percentage) of (a) one divided by (b) the sum of (i) one,

plus (ii) the product of (A) the Prime Rate on such Payment Date, and (B) a fraction, the numerator of which is the Days' Sales Outstanding (calculated as of the last Business Day of the calendar month next preceding such Payment Date) and the denominator of which is 365.

"Payment Date" means (i) the Closing Date and (ii) each Business Day thereafter that the Originators are open for business.

"Prime Rate" means a per annum rate equal to the "Prime Rate" as published in the "Money Rates" section of The Wall Street Journal or if such information ceases to be published in The Wall Street Journal, such other publication as determined by the Administrator in its sole discretion.

ARTICLE III
PAYMENT OF PURCHASE PRICE

SECTION 3.1 Purchases. On each Payment Date, on the terms and subject to the conditions set forth in this Agreement, the Company shall pay to each Originator the Purchase Price for the Receivables generated by such Originator on such Payment Date in cash.

SECTION 3.2 Settlement as to Specific Receivables and Dilution.

(a) If (i) on the day of purchase of any Receivable from an Originator hereunder, any of the representations or warranties set forth in Sections 5.10, 5.15 and 5.17 are not true with respect to such Receivable or (ii) as a result of any action or inaction (other than solely as a result of the failure to collect such Receivable due to a discharge in bankruptcy or similar insolvency proceeding or other credit related reasons with respect to the relevant Obligor) of such Originator, on any subsequent day, any of such representations or warranties set forth in Sections 5.10, 5.15 and 5.17 is no longer true with respect to such Receivable on such subsequent date (without giving effect to any reference to the date of sale, creation or purchase of such Receivable in such representation or warranty), then the Purchase Price with respect to such Receivable shall be reduced by an amount equal to the Outstanding Balance of such Receivable and shall be accounted to such Originator as provided in clause (c) below; provided, that if the Company thereafter receives payment on account of Collections due with respect to such Receivable, the Company promptly shall deliver such funds to such Originator.

(b) If, on any day, the Outstanding Balance of any Receivable purchased hereunder is reduced or adjusted as a result of any revision, cancellation, allowance, rebate, defective, rejected, returned, repossessed or foreclosed goods or services, or any discount or other adjustment made by any Originator, the Company or the Servicer or any setoff, netting of obligations or dispute between any Originator or the Servicer and an Obligor, as indicated on the books of the Company (or, for periods prior to the Closing Date, the books of such Originator), then the Purchase Price with respect to such Receivable shall be reduced by the amount of such net reduction and shall be accounted to such Originator as provided in clause (c) below.

(c) Any reduction in the Purchase Price of any Receivable pursuant to clause (a) or (b) above shall be applied as a credit for the account of the Company against the Purchase Price of Receivables subsequently purchased by the Company from such Originator hereunder; provided, however if there have been no purchases of Receivables from such Originator (or insufficiently large purchases of Receivables) to create a Purchase Price sufficient to so apply such credit against, the amount of such credit shall be paid in cash to the Company by such Originator;

provided, further, that at any time (y) when a Termination Event or an Unmatured Termination Event exists under the Receivables Purchase Agreement or (z) on or after the Purchase and Sale Termination Date, the amount of any such credit shall be paid by such Originator to the Company by deposit in immediately available funds into a Lock-Box Account for application by the Servicer to the same extent as if Collections of the applicable Receivable in such amount had actually been received on such date.

SECTION 3.3 Reconveyance of Receivables. In the event that an Originator has paid to the Company the full Outstanding Balance of any Receivable pursuant to Section 3.2, the Company shall reconvey such Receivable to such Originator, without representation or warranty, but free and clear of all liens, security interests, charges, and encumbrances created by the Company or the Seller.

ARTICLE IV
CONDITIONS OF PURCHASES

SECTION 4.1 Conditions Precedent to Initial Purchase. The initial purchase hereunder is subject to the condition precedent that the Company and the Administrator (as the total assignee of the Company) shall have received, on or before the Closing Date, the following, each (unless otherwise indicated) dated the Closing Date, and each in form and substance satisfactory to the Company and the Administrator (as the total assignee of the Company):

(a) A copy of the resolutions of the board of directors or managers of each Originator approving the Transaction Documents to be executed and delivered by it and the transactions contemplated hereby and thereby, certified by the Secretary or Assistant Secretary of such Originator;

(b) Good standing certificates for each Originator issued as of a recent date acceptable to the Company and the Administrator (as the total assignee of the Company) by the Secretary of State of the jurisdiction of such Originator's organization;

(c) A certificate of the Secretary or Assistant Secretary of each Originator certifying the names and true signatures of the officers authorized on such Person's behalf to sign the Transaction Documents to be executed and delivered by it (on which certificate the Servicer, the Company, the Seller and the Administrator (as the total assignee of the Company) may conclusively rely until such time as the Servicer, the Company, the Seller and the Administrator (as the total assignee of the Company) shall receive from such Person a revised certificate meeting the requirements of this clause (c));

(d) The certificate or articles of incorporation or other organizational document of each Originator (including all amendments and modifications thereto) duly certified by the Secretary of State of the jurisdiction of such Originator's organization as of a recent date, together with a copy of the by-laws of such Originator, each duly certified by the Secretary or an Assistant Secretary of such Originator;

(e) Completed UCC search reports, dated the Closing Date or no earlier than 30 days prior thereto, listing the financing statements filed in all applicable jurisdictions that name any Originator, Seller or the Company, as debtor, together with copies of such other financing statements, and similar search reports with respect to judgment liens, federal tax liens and liens of the Pension Benefit Guaranty Corporation in such jurisdictions, as the Administrator may reasonably request, showing no Adverse Claims on any Pool Assets other than any security interests that are released as of the Closing Date pursuant to the Confirmation Order or the Plan of Reorganization;

(f) Favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for such Originator, covering such matters as the Administrator may reasonably request, including, without limitation, (i) certain Delaware corporate and no conflict matters, (ii) certain organizational and New York enforceability matters, certain bankruptcy matters and (iii) certain UCC creation and Delaware perfection matters;

(g) Evidence (i) of the execution and delivery by each of the parties thereto of each of the other Transaction Documents to be executed and delivered in connection herewith and (ii) that each of the conditions precedent to the execution, delivery and effectiveness of such other Transaction Documents has been satisfied to the Company's and the Administrator's (as the total assignee of the Company) satisfaction; and

(h) A copy of the Confirmation Order that has not been modified or amended (except for modifications or amendments approved by the Administrator and the Majority Purchaser Agents).

SECTION 4.2 Certification as to Representations and Warranties. Each Originator, by accepting the Purchase Price related to each purchase of Receivables generated by such Originator, shall be deemed to have certified that the representations and warranties contained in Article V, as from time to time amended in accordance with the terms

hereof, are true and correct in all material respects on and as of such day, with the same effect as though made on and as of such day (except for representations and warranties which apply to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

SECTION 4.3 Additional Originators. Additional Persons may be added as Originators hereunder, with the prior written consent of the Company and the Administrator; provided that the following conditions are satisfied on or before the date of such addition:

(a) The Company shall have given the Administrator at least ten Business Days prior written notice of such proposed addition and the identity of the proposed additional

Originator and shall have provided such other information with respect to such proposed additional Originator as the Administrator may reasonably request;

(b) such proposed additional Originator has executed and delivered to the Company and the Administrator an agreement substantially in the form attached hereto as Exhibit B (a "Joinder Agreement");

(c) such proposed additional Originator has delivered to the Company and the Administrator (as the total assignee of the Company) each of the documents with respect to such Originator described in Sections 4.1 and 4.2, in each case in form and substance satisfactory to the Company and the Administrator (as the total assignee of the Company); and

(d) no Purchase and Sale Termination Date shall have occurred and be continuing.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE ORIGINATORS

In order to induce the Company to enter into this Agreement and to make purchases hereunder, each Originator hereby represents and warrants with respect to itself that each representation and warranty concerning it or the Receivables sold by it hereunder, that is contained in the Receivables Purchase Agreement is true and correct, and hereby makes as of the Closing Date the representations and warranties set forth in this Article V.

SECTION 5.1 Existence and Power. Such Originator is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and upon the entry by the Bankruptcy Court of the Confirmation Order, has all power and authority and all governmental licenses, authorizations, consents and approvals required to carry on its business in each jurisdiction in which its business is conducted except if failure to have such licenses, authorizations, consents or approvals would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.2 Company and Governmental Authorization, Contravention. The execution, delivery and performance by such Originator of this Agreement (i) are within such Originator's company powers, have been duly authorized by all necessary company action, require no action by or in respect of, or filing with (other than the filing of the UCC financing statements and continuation statements contemplated hereunder), any governmental body, agency or official, (ii) other than as would not reasonably be expected to result in a Material Adverse Effect, do not contravene, or constitute a default under, any provision of Applicable Law or of the organizational documents of such Originator or of any agreement, judgment, injunction, order, decree or other instrument binding upon such Originator and (iii) do not result in the creation or imposition of any Adverse Claim on assets of such Originator or any of its Subsidiaries.

SECTION 5.3 Binding Effect of Agreement. This Agreement and each of the other Transaction Documents to which it is a party constitutes the legal, valid and binding obligation of such Originator enforceable against such Originator in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar

laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

SECTION 5.4 Accuracy of Information. All information heretofore furnished in writing by such Originator to the Company or the Administrator pursuant to or in connection with this Agreement or any other Transaction Document or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by such Originator to the Company or the Administrator in writing pursuant to this Agreement or any Transaction Document will be, taken as a whole, true and accurate in all material respects on the date such information is stated or certified.

SECTION 5.5 Actions, Suits. There are no actions, suits or proceedings pending or, to the best of such Originator's knowledge, threatened against or affecting such Originator or any of its Affiliates or their respective properties, in or before any court, arbitrator or other body, which could reasonably be expected to have a Material Adverse Effect.

SECTION 5.6 Taxes. Such Originator has filed or caused to be filed all U.S. federal income tax returns and all other material returns, statements, forms and reports for taxes, domestic or foreign, required to be filed by it and has paid all taxes payable by it which have become due or any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except to the extent that such taxes are being contested in good faith by appropriate proceedings and for which such reserves or other appropriate provisions, if any, as are required by generally accepted accounting principles shall have been made.

SECTION 5.7 Compliance with Applicable Laws. Such Originator is in compliance with the requirements of all Applicable Laws and orders of all Governmental Authorities except to the extent that the failure to comply would not reasonably be expected to have a Material Adverse Effect. In addition, no Receivable sold hereunder contravenes any Applicable Laws, rules or regulations applicable thereto or to such Originator in any material respect.

SECTION 5.8 Reliance on Separate Legal Identity. Such Originator acknowledges that each of the Administrator and the other Secured Parties are entering into the Transaction Documents to which they are parties in reliance upon the Seller's identity as a legal entity separate from such Originator and the Transferor.

SECTION 5.9 Investment Company. Such Originator is not required to register as an "investment company," or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

SECTION 5.10 Perfection. Immediately preceding its sale of each Receivable hereunder, such Originator was the owner of such Receivable sold or purported to be sold, free and clear of any Adverse Claims, and each such sale hereunder constitutes a valid sale, transfer and assignment of all of such Originator's right, title and interest in, to and under the Receivables sold by it, free and clear of any Adverse Claims. On or before the date hereof and before the generation by such Originator of any new Receivable to be sold or otherwise conveyed hereunder, all financing statements and other documents, if any, required to be recorded or filed

in order to perfect and protect the Company's ownership interest in such Receivable against all creditors of and purchasers from such Originator will have been duly filed in each filing office necessary for such purpose, and all filing fees and taxes, if any, payable in connection with such filings shall have been paid in full. Each such financing statement, if filed with respect to such Receivable as an as-extracted collateral filing, includes a complete and correct description of the real property in all material respects related to such Receivable as extracted collateral, as contemplated by the UCC, and names a record owner of the real property.

SECTION 5.11 Creation of Receivables. Such Originator has exercised at least the same degree of care and diligence in the creation of the Receivables sold or otherwise conveyed hereunder as it has exercised in connection with the creation of receivables originated by it and not so transferred hereunder.

SECTION 5.12 Credit and Collection Policy. Such Originator has complied in all material respects with its Credit and Collection Policy in regard to each Receivable sold by it hereunder and the related Contract.

SECTION 5.13 Enforceability of Contracts. Each Contract related to any Receivable sold by such Originator hereunder is effective to create, and has created, a legal, valid and binding obligation of the related Obligor to pay the outstanding balance of such Receivable, enforceable against the Obligor in accordance with its terms, without being subject to any defense, deduction, offset or counterclaim and such Originator has fully performed its obligations under such Contract.

SECTION 5.14 Location and Offices. As of the Closing Date, such Originator's location (as such term is defined in the applicable UCC) is in the state set forth on Schedule II hereto, and such location has not been changed for at least four months before the date hereof. The offices where such Originator keeps all records concerning the Receivables are located at the addresses set forth on Schedule III hereto or such other locations of which the Company and the Administrator (as the total assignee of the Company) has been given written notice in accordance with the terms hereof.

SECTION 5.15 Good Title. Upon the creation of each new Receivable sold or otherwise conveyed or purported to be conveyed hereunder and on the Closing Date for then existing Receivables, the Company shall have a valid and perfected first priority ownership interest in each Receivable sold to it hereunder, free and clear of any Adverse Claim.

SECTION 5.16 Names. Except as described in Schedule IV, such Originator has not used any corporate or company names, tradenames or assumed names other than its name set forth on the signature pages of this Agreement.

SECTION 5.17 Nature of Receivables. Each Pool Receivable purchased hereunder and included in the calculation of Net Receivables Pool Balance is, on the date of such purchase, an Eligible Receivable.

SECTION 5.18 Bulk Sales, Margin Regulations, No Fraudulent Conveyance. No transaction contemplated hereby requires compliance with or will become subject to avoidance under any bulk sales act or similar law. No use of funds obtained by such Originator

hereunder will conflict with or contravene Regulation T, U or X of the Federal Reserve Board. No purchase hereunder constitutes a fraudulent transfer or conveyance or avoidable post-petition transfer under any United States federal or applicable state bankruptcy or insolvency laws or is otherwise void or voidable under such or similar laws or principles or for any other reason.

SECTION 5.19 Solvency. On the date hereof, and on the date of each purchase hereunder (both before and after giving effect to such purchase), such Originator shall be Solvent.

SECTION 5.20 Effectiveness of Orders. The Confirmation Order is in full force and effect and has not been vacated or reversed, is not subject to a stay, and has not been modified or amended (other than any amendment or modification approved in writing by the Administrator and the Majority Purchaser Agents).

SECTION 5.21 [Reserved.]

SECTION 5.22 Licenses, Contingent Liabilities, and Labor Controversies.

(a) Such Originator has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its properties or to the conduct of its business, except such failures to have such licenses, permits, franchises or other governmental authorizations that could not reasonably be expected to have a Material Adverse Effect.

(b) There are no labor controversies pending against such Originator that have had (or could reasonably be expected to have) a Material Adverse Effect.

SECTION 5.23 Purchase Price. Each sale and contribution by such Originator to Company of an interest in Receivables has been made for "reasonably equivalent value" (as such term is used in Section 548 of the Bankruptcy Code) and not for or on account of "antecedent debt" (as such term is used in Section 547 of the Bankruptcy Code) owed by the Originator to Company, and is otherwise not subject to avoidance under any provision of the Bankruptcy Code or Applicable Law.

SECTION 5.24 No Material Adverse Effect. Since the Closing Date, there has been no Material Adverse Effect on the Servicer.

SECTION 5.25 Anti-Money Laundering/International Trade Law Compliance. No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

SECTION 5.26 Location of Mining Operations. The location of each Originator's mining operations and names of each minehead relating thereto are as set forth on Schedule V hereto.

SECTION 5.27 Mortgages Covering As-Extracted Collateral. There are no mortgages that are effective as financing statements covering as-extracted collateral that constitutes Pool Assets and that name the Transferor as grantor, debtor or words of similar effect filed or recorded in any jurisdiction.

SECTION 5.28 Reaffirmation of Representations and Warranties by the Originator. On each day that a new Receivable is created, and when sold to the Company hereunder, such Originator shall be deemed to have certified that all representations and warranties set forth in this Article V are true and correct on and as of such day (except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct as of such earlier date)).

ARTICLE VI
COVENANTS OF THE ORIGINATORS

SECTION 6.1 Affirmative Covenants. At all times from the date hereof until the Final Payout Date, each Originator shall:

(a) General Information. Furnish to the Company and the Administrator such information as the Company or the Administrator may from time to time reasonably request.

(b) Furnishing of Information and Inspection of Records. Furnish to the Company and the Administrator from time to time such information with respect to the Receivables as such Person may reasonably request. Such Originator will, at such Originator's expense, during regular business hours with prior written notice (i) permit the Company or the Administrator, or their respective agents or representatives, (A) to examine and make copies of and abstracts from all books and records relating to the Receivables or other Pool Assets and (B) to visit the offices and properties of such Originator for the purpose of examining such books and records, and to discuss matters relating to the Receivables, other Related Rights or such Originator's performance hereunder or under the other Transaction Documents to which it is a party with any of the officers, directors, employees or independent public accountants of such Originator (provided that representatives of such Originator are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at Originator's expense, upon reasonable prior written notice from the Company or the Administrator, permit certified public accountants or other auditors acceptable to the Administrator to conduct, a review of its books and records with respect to the Receivables; provided, that such Originator shall only be responsible for the expenses incurred in connection with one (1) review for any calendar year pursuant to this clause (ii), so long as no Termination Event has occurred.

(c) Keeping of Records and Books. Have and maintain (i) administrative and operating procedures (including an ability to recreate records if originals are destroyed), (ii) adequate facilities, personnel and equipment and (iii) all records and other information reasonably necessary for collection of the Receivables originated by such Originator (including records adequate to permit the daily identification of each new such Receivable and all Collections of, and adjustments to, each existing such Receivable). Such Originator will give the Company and the Administrator prior notice of any change in such administrative and operating

procedures that causes them to be materially different from the procedures described to the Company and the Administrator on or before the date hereof as such Originator's then existing or planned administrative and operating procedures for collecting Receivables.

(d) Performance and Compliance with Receivables and Contracts. Timely and fully perform and comply, at its own expense, in all material respects with all provisions, covenants and other promises required to be observed by it under all Contracts or other documents or agreements related to the Receivables.

(e) Credit and Collection Policy. Comply in all material respects with its Credit and Collection Policy in regard to each Receivable originated or acquired by it and any related Contract or other related document or agreement.

(f) Receivable Purchase Agreement. Perform and comply in all material respects with each covenant and other undertaking in the Receivables Purchase Agreement and the Sale and Contribution Agreement that the Company undertakes to cause such Originator to perform, subject to any applicable grace periods, if any, for such performance provided for in such agreements.

(g) Preservation of Existence. Preserve and maintain its existence as a corporation or limited liability company, as applicable, and all rights, franchises and privileges in the jurisdiction of its organization, and qualify and remain qualified in good standing as a foreign corporation or limited liability company, as applicable, in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification could reasonably be expected to have a Material Adverse Effect.

(h) Location of Records. Keep its location (as such term is defined in the applicable UCC), and the offices where it keeps its records concerning or related to Receivables, at the address(es) referred to in Schedule II or Schedule III, respectively, or, at such other locations in jurisdictions where all action required by Section 7.3 shall have been taken and completed; provided that such Originator shall promptly (and in any event prior to the date that is 30 days after any such change in location) give to the Company and the Administrator (as the assignee of the Company) written notice of any such change in location.

(i) Data Records. Place and maintain on its summary master control data processing records the following legend (or the substantive equivalent thereof): "THE RECEIVABLES DESCRIBED HEREIN HAVE BEEN SOLD TO ARCH COAL, INC. PURSUANT TO A SECOND AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT, DATED AS OF OCTOBER 5, 2016, BETWEEN THE ORIGINATORS NAMED THEREIN AND ARCH COAL, INC.; AND AN INTEREST IN THE RECEIVABLES DESCRIBED HEREIN HAS BEEN GRANTED TO PNC BANK, NATIONAL ASSOCIATION, FOR THE BENEFIT OF THE SECURED PARTIES UNDER THE THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT, DATED AS OF OCTOBER 5, 2016, AMONG ARCH RECEIVABLE COMPANY, LLC, ARCH COAL SALES COMPANY, INC., AS INITIAL SERVICER, THE VARIOUS CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS AND PURCHASER

AGENTS FROM TIME TO TIME PARTY THERETO AND PNC BANK, NATIONAL ASSOCIATION, AS ADMINISTRATOR AND AS LC BANK."

(j) Preservation of Security Interest. Take (or cause to be taken) any and all action as Company or the Administrator may require to preserve and maintain the perfection and priority of the security interest of the Administrator in the Receivables and Related Rights.

(k) Mining Operations and Mineheads. The Company shall (and shall cause each applicable Originator to) promptly, and in any event within 30 days of any change, deletion or addition to the location of any Originator's mining operations or mineheads set forth on Schedule V hereto, (i) notify the Administrator and each Purchaser Agent of such change, deletion or addition, (ii) cause the filing or recording of such financing statements and amendments and/or releases to financing statements, mortgages or other instruments, if any, necessary to preserve and maintain the perfection and priority of the security interest of the Transferor, Seller and the Administrator (for the benefit of the Secured Parties) in the Pool Assets pursuant to this Agreement, in each case in form and substance satisfactory to the Administrator and (iii) deliver to the Administrator and each Purchaser Agent an updated Schedule V hereto reflecting such change, deletion or addition; it being understood that no Receivable, the related location of mining operations and/or mineheads of which is not as set forth on Schedule V hereto as of such date of determination shall be an Eligible Receivable until such time as each condition under this clause (k) shall have been satisfied (and upon such satisfaction, this Agreement shall be deemed amended to reflect such updated Schedule V hereto).

(l) Additional Mortgages Under Credit Agreement. The Company shall (and shall cause each applicable Originator to) (x) provide written notice promptly, and in any event within 30 days, to the Seller, the Administrator and each Purchaser Agent of each new Mortgage or amendment or modification of an existing Mortgage under the Credit Agreement covering as-extracted collateral, (y) cause to be delivered to the Administrator a letter, in the form of the Release Agreement (or such other form as may be approved by the Administrator), addressed to the Administrator and duly executed by the related grantee or beneficiary releasing such party's security interest, lien or other rights under such new Mortgage or amended or modified Mortgage in the Receivables, Contracts and Related Security subject thereto and (z) file or record all amendments and/or releases to such new, amended or modified Mortgages necessary to release and remove of record any such security interest, lien or other interest of the related grantee or beneficiary in the Receivables, Contracts and Related Security, in each case in form and substance satisfactory to the Administrator.

(m) Payments on Receivables, Accounts. At all times instruct all Obligors to deliver payments on the Pool Receivables to a Lock-Box Account. Such Originator will, at all times, maintain such books and records necessary to identify Collections received from time to time on Pool Receivables and to segregate such Collections from other property of such Originator. If any such payments or other Collections are received by such Originator, it shall hold such payments in trust for the benefit of the Administrator and the other Secured Parties and promptly (but in any event within two Business Days after receipt) remit such funds into a Lock-Box Account. Such Originator will cause each Lock-Box Bank to comply with the terms of each applicable Lock-Box Agreement. Such Originator will not permit the funds other than

Collections on Pool Receivables and other Pool Assets to be deposited into any Lock-Box Account. If such funds are nevertheless deposited into any Lock-Box Account, such Originator will within two Business Days identify such funds for segregation. Such Originator will not commingle Collections or other funds to which the Administrator or any other Secured Party is entitled with any other funds.

(n) Certain Post-Closing Requirements. As soon as practicable and in any event not later than 120 days following the Closing Date, the Servicer shall (or shall cause the Company to) deliver to the Administrator favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for the Company, Originators, the Servicer and the Seller, covering certain corporate and UCC perfection matters relating to the Originators organized in Kentucky, West Virginia and Virginia as well as certain UCC perfection matters with respect to county-level filings made by each Originator.

SECTION 6.2 Reporting Requirements. From the date hereof until the first day following the Purchase and Sale Termination Date, each Originator will, unless the Company and the Administrator shall otherwise consent in writing, furnish to the Company and the Administrator:

(a) Purchase and Sale Termination Events. As soon as possible, and in any event within three (3) Business Days after such Originator becomes aware of the occurrence of each Purchase and Sale Termination Event or each event which with notice or the passage of time or both would become a Purchase and Sale Termination Event (an "Unmatured Purchase and Sale Termination Event"), a written statement of the chief financial officer, treasurer or other officer of such Originator describing such Purchase and Sale Termination Event or Unmatured Purchase and Sale Termination Event and the action that such Originator proposes to take with respect thereto, in each case in reasonable detail;

(b) Proceedings. As soon as possible, and in any event within three (3) Business Days after such Originator becomes aware thereof, written notice of (i) litigation, investigation or proceeding of the type described in Section 5.5 not previously disclosed to the Company and the Administrator which could reasonably be expected to have a Material Adverse Effect, and (ii) all material adverse developments that have occurred with respect to any previously disclosed litigation, proceedings and investigations; and

(c) Other. Promptly, from time to time, such other information, documents, records or reports respecting the Receivables or the conditions or operations, financial or otherwise, of such Originator as the Company or the Administrator may from time to time reasonably request in order to protect the interests of the Company, the Administrator or the other Secured Parties under or as contemplated by the Transaction Documents.

SECTION 6.3 Negative Covenants. At all times from the date hereof until the Final Payout Date, each Originator shall not, unless the Company and the Administrator shall otherwise consent in writing, it shall not:

(a) Sales, Liens, Etc. Except as otherwise provided herein or in any other Transaction Document, sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon or with respect to, any Receivable sold or otherwise conveyed or purported to be sold or otherwise conveyed hereunder or related Contract or Related Security, or any interest therein, or any Collections thereon, or assign any right to receive income in respect thereof.

(b) Extension or Amendment of Receivables. Except as otherwise permitted in Section 4.2(a) of the Receivables Purchase Agreement and the applicable Credit and Collection Policy, extend, amend or otherwise modify the terms of any Receivable in any material respect generated by it that is sold or otherwise conveyed hereunder, or amend, modify or waive, in any material respect, any term or condition of any Contract related thereto (which term or condition relates to payments under, or the enforcement of, such Contract).

(c) Change in Business or Credit and Collection Policy. (i) Make any change in the character of its business or (ii) make any change in its Credit and Collection Policy that could reasonably be expected to have a Material Adverse Effect, in the case of either clause (i) or (ii) above, without the prior written consent of the Administrator. No Originator shall make any other written change in any Credit and Collection Policy without giving prior written notice thereof to the Administrator.

(d) Receivables Not to be Evidenced by Promissory Notes or Chattel Paper. Except as otherwise provided in the Receivables Purchase Agreement in regard to servicing, take any action to cause or permit any Receivable generated by it that is sold by it hereunder to become evidenced by any "instrument" or "chattel paper" (as defined in the applicable UCC).

(e) Mergers, Acquisitions, Sales, etc. (i) Be a party to any merger, consolidation or other restructuring, except (A) a Permitted Merger or (B) any other merger, consolidation or other restructuring where the Company and the Administrator have each (1) received 10 Business Days' prior notice thereof, (2) consented in writing thereto, (3) received executed copies of all documents, certificates and opinions (including, without limitation, opinions relating to bankruptcy and UCC matters) as the Company or the Administrator shall request and (4) been satisfied that all other action to perfect and protect the interests of the Company and the Administrator, on behalf of the Secured Parties, in and to the Receivables to be sold by it hereunder and other Related Rights, as requested by the Company or the Administrator shall have been taken by, and at the expense of such Originator (including the filing of any UCC financing statements, the receipt of certificates and other requested documents from public officials and all such other actions required pursuant to Section 7.3) or (ii) directly or indirectly sell, transfer, assign, convey or lease whether in one or a series of transactions, all or substantially all of its assets (other than in accordance with the Transaction Documents); provided, that the Originators shall not be prohibited pursuant to this clause (e) to have granted Liens (other than Liens on any Pool Assets) in favor of the administrative agent or collateral agent under the Credit Agreement or Liens (other than Liens on any Pool Assets) that are otherwise permitted under the Credit Agreement.

(f) No Change in Name, Identity or Corporate Structure. Change its name, identity, corporate structure or jurisdiction of organization, in any case, unless the Company and

the Administrator have each (1) received prior notice thereof, (2) received executed copies of all documents, certificates and opinions (including, without limitation, opinions relating to bankruptcy and UCC matters) as the Company or the Administrator shall request and (3) been satisfied that all other action to perfect and protect the interests of the Company and the Administrator, on behalf of the Secured Parties, in and to the Receivables to be sold by it hereunder and other Related Rights, as requested by the Company or

the Administrator shall have been taken by, and at the expense of such Originator (including the filing of any UCC financing statements, the receipt of certificates and other requested documents from public officials and all such other actions required pursuant to Section 7.3).

(g) Lock-Box Banks. Make any changes in its instructions to Obligors regarding Collections on Receivables sold or otherwise conveyed by it hereunder or add or terminate any bank as a Lock-Box Bank unless the requirements of Sections 1(f) and (k) of Exhibit IV to the Receivables Purchase Agreement have been met.

(h) Accounting for Purchases. Account for or treat (whether in financial statements or otherwise) the transactions contemplated hereby in any manner other than as sales of the Receivables and Related Rights by such Originator to the Company.

(i) Transaction Documents. Enter into, execute, deliver or otherwise become bound after the Closing Date by any agreement, instrument, document or other arrangement that restricts the right of such Originator to amend, supplement, amend and restate or otherwise modify, or to extend or renew, or to waive any right under, this Agreement or any other Transaction Document

(j) Company's Tax Status. Take or cause any action to be taken that could result in the Seller (i) being treated other than as a "disregarded entity" within the meaning of U.S. Treasury Regulation § 301.7701-3 for U.S. federal income tax purposes or (ii) becoming an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

SECTION 6.4 Substantive Consolidation. Each Originator hereby acknowledges that this Agreement and the other Transaction Documents are being entered into in reliance upon the Seller's identity as a legal entity separate from such Originator and its Affiliates. Therefore, from and after the date hereof, each Originator shall take all reasonable steps necessary to make it apparent to third Persons that the Seller is an entity with assets and liabilities distinct from those of such Originator and any other Person, and is not a division of such Originator, its Affiliates or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, such Originator shall take such actions as shall be required in order that:

(a) such Originator shall not be involved in the day to day management of the Seller;

(b) such Originator shall maintain separate corporate records and books of account from the Seller and otherwise will observe corporate formalities and have a separate area from the Seller for its business (which may be located at the same

address as the Seller, and, to the extent that it and the Seller have offices in the same location, there shall be a fair and appropriate allocation of overhead costs between them, and each shall bear its fair share of such expenses);

(c) the financial statements and books and records of such Originator shall be prepared after the date of creation of the Seller to reflect and shall reflect the separate existence of the Seller; provided, that the Seller's assets and liabilities may be included in a consolidated financial statement issued by an affiliate of the Seller; provided, however, that any such consolidated financial statement or the notes thereto shall make clear that the Seller's assets are not available to satisfy the obligations of such affiliate;

(d) except as permitted by the Receivables Purchase Agreement, (i) such Originator shall maintain its assets (including, without limitation, deposit accounts) separately from the assets (including, without limitation, deposit accounts) of the Seller and (ii) the Company's assets, and records relating thereto, have not been, are not, and shall not be, commingled with those of any other Originator;

(e) all of the Seller's business correspondence and other communications shall be conducted in the Seller's own name and on its own stationery;

(f) such Originator shall not act as an agent for the Seller (other than servicing activities pursuant to the Transaction Documents);

(g) such Originator shall not conduct any of the business of the Seller in its own name;

(h) such Originator shall not pay any liabilities of the Seller out of its own funds or assets;

(i) such Originator shall maintain an arm's-length relationship with the Seller;

(j) such Originator shall not assume or guarantee or become obligated for the debts of the Seller or hold out its credit as being available to satisfy the obligations of the Seller;

(k) such Originator shall not acquire obligations of the Seller;

(l) such Originator shall allocate fairly and reasonably overhead or other expenses that are properly shared with the Seller, including, without limitation, shared office space;

(m) such Originator shall identify and hold itself out as a separate and distinct entity from the Seller;

(n) such Originator shall correct any known misunderstanding respecting its separate identity from the Seller;

(o) such Originator shall not enter into, or be a party to, any transaction with the Seller, except in the ordinary course of its business and on terms which are intrinsically fair and not less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(p) such Originator shall not pay the salaries of the Seller's employees, if any; and

(q) to the extent not already covered in paragraphs (a) through (p) above, such Originator shall comply and/or act in accordance with all of the other separateness covenants set forth in Section 3 of Exhibit IV to the Receivables Purchase Agreement.

ARTICLE VII
ADDITIONAL RIGHTS AND OBLIGATIONS
IN RESPECT OF RECEIVABLES

SECTION 7.1 Rights of the Company. Each Originator hereby authorizes the Company, the Servicer or their respective designees or assignees under the Sale and Contribution Agreement or the Receivables Purchase Agreement (including, without limitation, the Administrator) to take any and all steps in such Originator's name necessary or desirable, in their respective determination, to collect all amounts due under any and all Receivables sold or otherwise conveyed or purported to be conveyed by it hereunder,

including, without limitation, endorsing the name of such Originator on checks and other instruments representing Collections and enforcing such Receivables and the provisions of the related Contracts that concern payment and/or enforcement of rights to payment.

SECTION 7.2 Responsibilities of the Originators. Anything herein to the contrary notwithstanding:

(a) Collection Procedures. Each Originator agrees to direct its respective Obligors to make payments of Receivables sold or otherwise conveyed or purported to be conveyed by it hereunder directly to the relevant Lock-Box Account at a Lock-Box Bank. Each Originator further agrees to transfer any Collections of Receivables sold or conveyed by it hereunder that it receives directly to a Lock-Box Account within two (2) Business Days of receipt thereof, and agrees that all such Collections shall be deemed to be received in trust for the Company and the Administrator (for the benefit of the Secured Parties).

(b) Each Originator shall perform its obligations hereunder, and the exercise by the Company or its designee of its rights hereunder shall not relieve such Originator from such obligations.

(c) None of the Company, the Servicer, the Administrator nor any of the other Secured Parties shall have any obligation or liability to any Obligor or any other third Person with respect to any Receivables, Contracts related thereto or any other related agreements, nor shall the Company, the Servicer, the Administrator nor any of the other Secured Parties be obligated to perform any of the obligations of such Originator thereunder.

(d) Each Originator hereby grants to the Administrator an irrevocable power of attorney, with full power of substitution, coupled with an interest, during the occurrence and continuation of a Purchase and Sale Termination Event or a Termination Event to take in the name of such Originator all steps necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind held or transmitted by such Originator or transmitted or received by the Company (whether or not from such Originator) in connection with any Receivable sold or otherwise conveyed or purported to be conveyed by it hereunder or Related Rights.

SECTION 7.3 Further Action Evidencing Purchases. Each Originator agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action that the Company, the Servicer or the Administrator may reasonably request in order to perfect, protect or more fully evidence the Receivables and Related Rights purchased by the Company hereunder, or to enable the Company to exercise or enforce any of its rights hereunder or under any other Transaction Document. Without limiting the generality of the foregoing, upon the request of the Company, or the Administrator, such Originator will:

(a) execute (if applicable), authorize and file such financing or continuation statements, or amendments thereto or assignments thereof, and such other instruments or notices, as may be necessary or appropriate; and

(b) on the Closing Date and from time to time, if requested thereafter, mark the master data processing records that evidence or list such Receivables and related Contracts with the legend set forth in Section 6.1(i).

Each Originator hereby authorizes the Company or its designee (including, without limitation, the Administrator) to file one or more financing or continuation statements, and amendments thereto and assignments thereof, without the signature of such Originator, relative to all or any of the Receivables sold or otherwise conveyed or purported to be conveyed by it hereunder and Related Rights now existing or hereafter generated by such Originator. If any Originator fails to perform any of its agreements or obligations under this Agreement, the Company or its designee (including, without limitation, the Administrator) may (but shall not be required to) itself perform, or cause the performance of, such agreement or obligation, and the expenses of the Company or its designee (including, without limitation, the Administrator) incurred in connection therewith shall be payable by such Originator.

SECTION 7.4 Application of Collections. Any payment by an Obligor in respect of any indebtedness owed by it to any Originator shall, except as otherwise specified by such Obligor or required by Applicable Law and unless otherwise instructed by the Servicer (with the prior written consent of the Administrator) or the Administrator, be applied as a Collection of any Receivable or Receivables of such Obligor to the extent of any amounts then due and payable thereunder before being applied to any other indebtedness of such Obligor.

SECTION 7.5 Performance of Obligations. Such Originator shall (i) perform all of its obligations under the Contracts related to the Receivables generated or acquired by the Originator to the same extent as if interests in such Receivables had not been transferred

hereunder, and the exercise by the Company or the Administrator of its rights hereunder shall not relieve such Originator from any such obligations and (ii) pay when due any taxes, including, without limitation, any sales taxes payable in connection with the Receivables generated or acquired by such Originator and their creation and satisfaction.

ARTICLE VIII
PURCHASE AND SALE TERMINATION EVENTS

SECTION 8.1 Purchase and Sale Termination Events. Each of the following events or occurrences described in this Section 8.1 shall constitute a "Purchase and Sale Termination Event":

(a) The Facility Termination Date (as defined in the Receivables Purchase Agreement) shall have occurred; or

(b) Any Originator shall fail to make when due any payment or deposit to be made by it under this Agreement or any other Transaction Document to which it is a party and such failure shall remain unremedied for two (2) Business Days; or

(c) Any representation or warranty made or deemed to be made by any Originator (or any of its officers) under or in connection with this Agreement, any other Transaction Documents to which it is a party, or any other information or report delivered pursuant hereto or thereto shall prove to have been incorrect or untrue in any material respect when made or deemed made or delivered, and shall remain incorrect or untrue for ten (10) Business Days; or

(d) Any Originator shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Transaction Document to which it is a party on its part to be performed or observed and such failure shall continue for thirty (30) days after the earlier of such Originator's knowledge or notice thereof.

SECTION 8.2 Remedies.

(a) Optional Termination. Upon the occurrence of a Purchase and Sale Termination Event, the Company shall have the option, by notice to the Originators (with a copy to the Administrator), to declare the Purchase Facility as terminated.

(b) Remedies Cumulative. Upon any termination of the Purchase Facility pursuant to Section 8.2(a), the Company shall have, in addition to all other rights and remedies under this Agreement, all other rights and remedies provided under the UCC of each applicable jurisdiction and other Applicable Laws, which rights shall

be cumulative.

ARTICLE IX
INDEMNIFICATION

SECTION 9.1 Indemnities by the Originators. Without limiting any other rights which the Company may have hereunder or under Applicable Law, each Originator, jointly and

severally, hereby agrees to indemnify the Company and each of its officers, directors, employees and agents (each of the foregoing Persons being individually called a "Purchase and Sale Indemnified Party"), forthwith on demand, from and against any and all damages, losses, claims, judgments, liabilities and related costs and expenses, including reasonable attorneys' fees and disbursements (all of the foregoing being collectively called "Purchase and Sale Indemnified Amounts") awarded against or incurred by any of them arising out of or as a result of the failure of such Originator to perform its obligations under this Agreement or any other Transaction Document, or arising out of the claims asserted against a Purchase and Sale Indemnified Party relating to the transactions contemplated herein or therein or the use of proceeds thereof or therefrom; excluding, however, (i) Purchase and Sale Indemnified Amounts to the extent resulting from gross negligence or willful misconduct on the part of such Purchase and Sale Indemnified Party and (ii) any indemnification which has the effect of recourse for non-payment of the Receivables due to a discharge in bankruptcy or similar insolvency proceeding or other credit related reasons with respect to the relevant Obligor. Without limiting the foregoing, and subject to the exclusions set forth in the preceding sentence, each Originator, severally for itself alone, jointly and severally with each Originator, shall indemnify each Purchase and Sale Indemnified Party for Purchase and Sale Indemnified Amounts relating to or resulting from:

(a) the transfer by such Originator of an interest in any Receivable to any Person other than the Company;

(b) the breach of any representation or warranty made by such Originator (or any of its officers) under or in connection with this Agreement or any other Transaction Document, or any information or report delivered by Originator pursuant hereto or thereto, which shall have been false or incorrect when made or deemed made;

(c) the failure by such Originator to comply with any Applicable Law, rule or regulation with respect to any Receivable generated by such Originator sold or otherwise transferred or purported to be transferred hereunder or the related Contract, or the nonconformity of any Receivable generated by such Originator sold or otherwise transferred or purported to be transferred hereunder or the related Contract with any such Applicable Law, rule or regulation;

(d) the failure by such Originator to vest and maintain vested in the Company an ownership interest in the Receivables generated by such Originator sold or otherwise transferred or purported to be transferred hereunder free and clear of any Adverse Claim;

(e) the failure to file, or any delay in filing, by such Originator financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other Applicable Laws with respect to any Receivables or purported Receivables generated by such Originator sold or otherwise transferred or purported to be transferred hereunder, whether at the time of any purchase or at any subsequent time to the extent required hereunder;

(f) any dispute, claim, offset or defense (other than discharge in bankruptcy or similar insolvency proceeding of an Obligor or other credit related reasons)

of the Obligor to the payment of any Receivable or purported Receivable generated by such Originator sold or otherwise transferred or purported to be transferred hereunder (including, without limitation, a defense based on such Receivable's or the related Contract's not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the services related to any such Receivable or the furnishing of or failure to furnish such services;

(g) any product liability claim arising out of or in connection with services that are the subject of any Receivable generated by such Originator;

(h) any tax or governmental fee or charge, all interest and penalties thereon or with respect thereto, and all out-of-pocket costs and expenses, including the reasonable fees and expenses of counsel in defending against the same, which are required to be paid by reason of the purchase or ownership of the Receivables generated by such Originator or any Related Security connected with any such Receivables, including any amounts paid or payable by the Company under Sections 1.10 and 3.1 of the Receivables Purchase Agreement and any taxes imposed on the Company's income, capital, or revenue, and any liability of the Company attributable to taxes of any Person as a transferee or successor, by contract, operation of Applicable Law or otherwise;

(i) any failure of any Originator to perform any of its duties or obligations in accordance with the provisions hereof and of each other Transaction Document related to Receivables or to timely and fully comply with the Credit and Collection Policy in regard to each Receivable;

(j) the commingling (other than as a result of actions taken by the Administrator, any Purchaser Agent or any Purchaser) of Collections of Receivables at any time with other funds;

(k) any setoff with respect to any Receivable;

(l) the failure or delay to provide any Obligor with an invoice or other evidence of indebtedness;

(m) any investigation, litigation or proceeding (actual or threatened) related to this Agreement or any other Transaction Document or in respect of any Receivable or any Related Rights;

(n) any claim brought by any Person other than a Purchase and Sale Indemnified Party arising from any activity by an Originator or any Affiliate of an Originator in servicing, administering or collecting any Receivable;

(o) any failure by any Originator to comply with its covenants, obligations and agreements contained in this Agreement or any other Transaction Document; and

(p) any action taken by the Administrator as attorney-in-fact for any Originator pursuant to this Agreement or any other Transaction Document.

If for any reason the indemnification provided above in this Section 9.1 is unavailable to a Purchase and Sale Indemnified Party or is insufficient to hold such Purchase and Sale Indemnified Party harmless, then each of the Originators, jointly and severally, shall contribute to the amount paid or payable by such Purchase and Sale Indemnified Party to the maximum extent permitted under Applicable Law.

ARTICLE X
MISCELLANEOUS

SECTION 10.1 Amendments, etc.

(a) The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and executed by the Company and each Originator, with the prior written consent of the Administrator.

(b) No failure or delay on the part of the Company, the Servicer, any Originator, the Administrator or any third party beneficiary in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Company, the Servicer or any Originator in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Company, the Administrator or the Servicer under this Agreement shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval under this Agreement shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

(c) The Transaction Documents contain a final and complete integration of all prior expressions by the parties hereto with respect to the subject matter thereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter thereof, superseding all prior oral or written understandings.

SECTION 10.2 Notices, etc. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including facsimile or electronic mail communication) and shall be delivered or sent by facsimile, electronic mail or by overnight mail, to the intended party at the mailing address or electronic mail address or facsimile number of such party set forth under its name on the signature pages hereof or at such other address or facsimile number as shall be designated by such party in a written notice to the other parties hereto or in the case of the Administrator, at its address for notice pursuant to the Receivables Purchase Agreement. All such notices and communications shall be effective (i) if delivered by overnight mail, when received, and (ii) if transmitted by facsimile or electronic mail, when sent, receipt confirmed by telephone or electronic means.

SECTION 10.3 No Waiver; Cumulative Remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. Without limiting the foregoing, such Originator hereby authorizes the Company, the Administrator and each Purchaser (each, a "Set-off Party"), at any time and from time to time, to the fullest extent permitted by law, to set off, against any obligations of such Originator to such Set-off Party arising in connection with

the Transaction Documents (including, without limitation, amounts payable pursuant to Section 9.1) that are then due and payable or that are not then due and payable but have accrued, any and all deposits (general or special, time or demand, provisional or final) at any time held by, and any and all indebtedness at any time owing by, any Set-off Party to or for the credit or the account of such Originator; provided that such Set-off Party shall notify such Originator promptly following such set-off; provided further, that no Set-off Party shall exercise any setoff against such Originator pursuant to this Agreement with respect to any deposits of such Originator held by such Set-off Party, if such exercise is in contravention of any deposit account control agreement or other similar agreement with such Originator that is then in effect and to which such Set-off Party is a party in the capacity of the bank maintaining such Originator's relevant account.

SECTION 10.4 Binding Effect; Assignability. This Agreement shall be binding upon and inure to the benefit of the Company and each Originator and their respective successors and permitted assigns and any trustee or other representative of their respective bankruptcy estates. No Originator may assign any of its rights hereunder or any interest herein without the prior written consent of the Company and the Administrator. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms, and shall remain in full force and effect until such time as the parties hereto shall agree. The rights and remedies with respect to any breach of any representation and warranty made by any Originator pursuant to Article V and the indemnification and payment provisions of Article IX and Section 10.6 shall be continuing and shall survive any termination of this Agreement.

SECTION 10.5 Governing Law. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

SECTION 10.6 Costs, Expenses and Taxes. In addition to the obligations of the Originators under Article IX, each Originator, jointly and severally, agrees to pay on demand:

(a) to the Company (and any successor and permitted assigns thereof) all reasonable costs and expenses incurred by such Person in connection with the enforcement of this Agreement and the other Transaction Documents; and

(b) all stamp and other taxes and fees payable in connection with the execution, delivery, filing and recording of this Agreement or the other Transaction Documents to be delivered hereunder, and agrees to indemnify each Purchase and Sale Indemnified Party against any liabilities with respect to or resulting from any delay in paying or omitting to pay such taxes and fees.

SECTION 10.7 SUBMISSION TO JURISDICTION. EACH PARTY HERETO HEREBY IRREVOCABLY (a) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK OR THE FEDERAL COURT OF THE

UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT; (b) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OR UNITED STATES FEDERAL COURT; (c) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING; (d) IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PERSON AT ITS ADDRESS SPECIFIED IN SECTION 10.2; AND (e) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECTION 10.7 SHALL AFFECT THE COMPANY'S RIGHT TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING AGAINST ANY ORIGINATOR OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

SECTION 10.8 WAIVER OF JURY TRIAL. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, AND AGREES THAT (a) ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY AND (b) ANY PARTY HERETO (OR ANY ASSIGNEE OR THIRD PARTY BENEFICIARY OF THIS AGREEMENT) MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF ANY OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

SECTION 10.9 Captions and Cross References; Incorporation by Reference. The various captions (including, without limitation, the table of contents) in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. References in this Agreement to any underscored Section or Exhibit are to such Section or Exhibit of this Agreement, as the case may be. The Exhibits hereto are hereby incorporated by reference into and made a part of this Agreement.

SECTION 10.10 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

SECTION 10.11 Acknowledgment and Agreement. By execution below, each Originator expressly acknowledges and agrees that all of the Company's rights, title, and

interests in, to, and under this Agreement (but not its obligations), shall be assigned by the Company to the Seller pursuant to the Sale and Contribution Agreement and then by the Seller to the Administrator (for the benefit of the Secured Parties) pursuant to the Receivables Purchase Agreement, and each Originator irrevocably consents to such assignments. Each of the parties hereto acknowledges and agrees that the Administrator and the other Secured Parties are third party beneficiaries of the rights of the Company arising hereunder and under the other Transaction Documents to which any Originator is a party, and notwithstanding anything to the contrary contained herein or in any other Transaction Document, during the occurrence and continuation of a Termination Event under the Receivables Purchase Agreement, the Administrator, and not the Company, shall have the sole right to exercise all such rights and related remedies.

SECTION 10.12 No Proceeding. Each Originator hereby agrees that it will not institute, or join any other Person in instituting, against the Seller any Insolvency Proceeding for at least one year and one day following the Final Payout Date. Each Originator further agrees that notwithstanding any provisions contained in this Agreement to the contrary, the Seller shall not, and shall not be obligated to, pay any amount to such Originator pursuant to this Agreement or any other Transaction Document unless the Seller has received funds which may, subject to Section 1.4 of the Receivables Purchase Agreement, be used to make such payment. Any amount which the Seller does not pay pursuant to the operation of the preceding sentence shall not constitute a claim (as defined in §101 of the Bankruptcy Code) against or corporate obligation of the Seller by such Originator for any such insufficiency unless and until the provisions of the foregoing sentence are satisfied. The agreements in this Section 10.12 shall survive any termination of this Agreement.

SECTION 10.13 Joint and Several Liability. Each of the representations, warranties, covenants, indemnities and other undertakings of any Originator hereunder shall be made jointly and severally, and are joint and several liabilities of each of the Originators hereunder.

SECTION 10.14 Severability. Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.15 Amendment and Restatement. This Agreement amends and restates in its entirety, as of the date hereof, the Amended and Restated Purchase and Sale Agreement, dated as of January 13, 2016, among the parties hereto (as amended prior to the date hereof, the "Original PSA"). Upon the effectiveness of this Agreement in accordance with its terms, the terms and provisions of the Original PSA shall, subject to this paragraph, be superseded hereby in their entirety. Notwithstanding the foregoing and for the avoidance of doubt, (a) all indemnification obligations of the Originators under the Original PSA shall survive this Agreement, (b) all sales of Receivables and Related Rights under the Original PSA by the Originators to the Company are hereby ratified and confirmed and shall survive this Agreement and (c) the security interests granted by the Originators pursuant to the Original PSA shall remain in full force and effect and shall survive this Agreement as security for all obligations of the Originators under the Original PSA until such obligations have been finally and fully paid

and performed. Upon the effectiveness of this Agreement, each reference to the Original PSA in any other document, instrument or agreement shall mean and be a reference to this Agreement. Nothing contained herein, unless expressly herein stated to the contrary, is intended to amend, modify or otherwise affect any other instrument, document or agreement executed and or delivered in connection with the Original PSA.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

ARCH COAL, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Senior Vice President — Law, General Counsel & Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736

Email: bjones@archcoal.com

ORIGINATORS:

ARCH COAL SALES COMPANY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ARCH ENERGY RESOURCES, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ARCH WESTERN RESOURCES, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

COAL-MAC, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

CUMBERLAND RIVER COAL COMPANY

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

LONE MOUNTAIN PROCESSING, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

MINGO LOGAN COAL COMPANY

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

MOUNTAIN COAL COMPANY, L.L.C.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

THUNDER BASIN COAL COMPANY, L.L.C.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

BRONCO MINING COMPANY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

COALQUEST DEVELOPMENT LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

HAWTHORNE COAL COMPANY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

HUNTER RIDGE COAL COMPANY

By: /s/ Robert G. Jones

Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

HUNTER RIDGE HOLDINGS, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

HUNTER RIDGE, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ICG BECKLEY, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ICG EAST KENTUCKY, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ICG ILLINOIS, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ARCH COAL GROUP, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ICG, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ICG NATURAL RESOURCES, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

ICG TYGART VALLEY, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

INTERNATIONAL ENERGY GROUP, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

KING KNOB COAL CO., INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

MARINE COAL SALES COMPANY

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

MELROSE COAL COMPANY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

PATRIOT MINING COMPANY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

SIMBA GROUP, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

UPSHUR PROPERTY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

VINDEX ENERGY CORPORATION

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

Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

WHITE WOLF ENERGY, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

WOLF RUN MINING COMPANY

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Tel: 314-994-2716
Fax: 314-994-2736
Email: bjones@archcoal.com

Schedule I

LIST OF ORIGINATORS

Arch Coal Sales Company, Inc.
Arch Energy Resources, LLC
Arch Western Resources, LLC
Coal-Mac, Inc.
Cumberland River Coal Company
Lone Mountain Processing, Inc.
Mingo Logan Coal Company
Mountain Coal Company, L.L.C.
Thunder Basin Coal Company, L.L.C.
Bronco Mining Company, Inc.
CoalQuest Development LLC
Hawthorne Coal Company, Inc.
Hunter Ridge Coal Company
Hunter Ridge Holdings, Inc.
Hunter Ridge, Inc.
ICG Beckley, LLC
ICG East Kentucky, LLC
ICG Illinois, LLC
Arch Coal Group, LLC
ICG, LLC
ICG Natural Resources, LLC
ICG Tygart Valley, LLC
International Energy Group, LLC

King Knob Coal Co., Inc.
Marine Coal Sales Company
Melrose Coal Company, Inc.
Patriot Mining Company, Inc.
Simba Group, Inc.
Upshur Property, Inc.
Vindex Energy Corporation
White Wolf Energy, Inc.
Wolf Run Mining Company

Schedule II

LOCATION OF EACH ORIGINATOR

Originator	Location
Arch Coal Sales Company, Inc.	Delaware
Arch Energy Resources, LLC	Delaware
Arch Western Resources, LLC	Delaware
Coal-Mac, Inc.	Kentucky
Cumberland River Coal Company	Delaware
Lone Mountain Processing, Inc.	Delaware
Mingo Logan Coal Company	Delaware
Mountain Coal Company, L.L.C.	Delaware
Thunder Basin Coal Company, L.L.C.	Delaware
Bronco Mining Company, Inc.	West Virginia
CoalQuest Development LLC	Delaware
Hawthorne Coal Company, Inc.	West Virginia
Hunter Ridge Coal Company	Delaware
Hunter Ridge Holdings, Inc.	Delaware
Hunter Ridge, Inc.	Delaware
ICG Beckley, LLC	Delaware
ICG East Kentucky, LLC	Delaware
ICG Illinois, LLC	Delaware
Arch Coal Group, LLC	Delaware
ICG, LLC	Delaware
ICG Natural Resources, LLC	Delaware
ICG Tygart Valley, LLC	Delaware
International Energy Group, LLC	Delaware
King Knob Coal Co., Inc.	West Virginia

Marine Coal Sales Company	Delaware
Melrose Coal Company, Inc.	West Virginia
Patriot Mining Company, Inc.	West Virginia
Simba Group, Inc.	Delaware
Upshur Property, Inc.	Delaware
Vindex Energy Corporation	West Virginia

White Wolf Energy, Inc.	Virginia
Wolf Run Mining Company	West Virginia

Schedule III

LOCATION OF BOOKS AND RECORDS OF EACH ORIGINATOR

One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Schedule IV

TRADE NAMES

Legal Name	Trade Names
Arch Coal Sales Company, Inc.	
Arch Energy Resources, LLC	
Arch Western Resources, LLC	
Coal-Mac, Inc.	Phoenix Coal-Mac Mining, Inc.
Cumberland River Coal Company	Arch of the North Fork
Lone Mountain Processing, Inc.	
Mingo Logan Coal Company	
Mountain Coal Company, L.L.C.	
Thunder Basin Coal Company, L.L.C.	
Bronco Mining Company, Inc.	
CoalQuest Development LLC	
Hawthorne Coal Company, Inc.	
Hunter Ridge Coal Company	
Hunter Ridge Holdings, Inc.	
Hunter Ridge, Inc.	
ICG Beckley, LLC	ACI Beckley, LLC ACI Beckley
ICG East Kentucky, LLC	
ICG Illinois, LLC	ACI Illinois, LLC
Arch Coal Group, LLC	
ICG, LLC	ICG Coal, LLC
ICG Natural Resources, LLC	ACI Natural Resources, LLC ACI Natural Resources
ICG Tygart Valley, LLC	ACI Tygart Valley, LLC
International Energy Group, LLC	

King Knob Coal Co., Inc.	
Marine Coal Sales Company	
Melrose Coal Company, Inc.	
Patriot Mining Company, Inc.	

Simba Group, Inc.

Upshur Property, Inc.

Vindex Energy Corporation

White Wolf Energy, Inc.

Wolf Run Mining Company

Schedule V

LOCATION OF MINING OPERATIONS

ORIGINATORS	MINEHEAD	STATE	COUNTY
Arch Coal Sales Company, Inc.	N/A		
Arch Energy Resources, LLC	N/A		
Arch Western Resources, LLC	N/A		
Coal-Mac, Inc.	Holden	West Virginia	Logan
	Ragland / Phoenix	West Virginia	Mingo
Cumberland River Coal Company	Cumberland River (aka Pardee)	Kentucky	Letcher
	Cumberland River (aka Pardee)	Virginia	Wise
Lone Mountain Processing, Inc.	Lone Mountain	Kentucky	Harlan
	Lone Mountain	Virginia	Lee
Mingo Logan Coal Company	Mountain Laurel	West Virginia	Logan
Mountain Coal Company, L.L.C.	West Elk	Colorado	Gunnison
Thunder Basin Coal Company, L.L.C.	Black Thunder	Wyoming	Campbell
	Coal Creek	Wyoming	Campbell
Bronco Mining Company, Inc.	N/A		
CoalQuest Development LLC	N/A		
Hawthorne Coal Company, Inc.	N/A		

Purchase and Sale Agreement
(Arch Coal)

ORIGINATORS	MINEHEAD	STATE	COUNTY
Hunter Ridge Coal Company	N/A		
Hunter Ridge Holdings, Inc.	N/A		
Hunter Ridge, Inc.	N/A		
ICG Beckley, LLC	Beckley	West Virginia	Raleigh
ICG East Kentucky, LLC	East Kentucky	Kentucky	Pike
ICG Illinois, LLC	Viper	Illinois	Sangamon
Arch Coal Group, LLC	N/A		
ICG, LLC	N/A		
ICG Natural Resources, LLC	N/A		
ICG Tygart Valley, LLC	Tygart Valley	West Virginia	Taylor
International Energy Group, LLC	N/A		
King Knob Coal Co., Inc.	N/A		
Marine Coal Sales Company	N/A		
Melrose Coal Company, Inc.	N/A		
Patriot Mining Company, Inc.	Patriot Mining	West Virginia	Monogalia
Simba Group, Inc.	N/A		
Upshur Property, Inc.	N/A		
Vindex Energy Corporation	Jackson Mountain Mine	Maryland	Allegany
	Vindex Energy	Maryland	Garrett
	Vindex Energy	West Virginia	Grant

ORIGINATORS	MINEHEAD	STATE	COUNTY
White Wolf Energy, Inc.	N/A		
Wolf Run Mining Company	Buckhannon Harrison	West Virginia	Upshur
	Buckhannon Harrison	West Virginia	Harrison
	Sentinel	West Virginia	Barbour

Exhibit A

FORM OF PURCHASE REPORT

Originator: **[Name of Originator]**

Purchaser: Arch Coal, Inc.

Payment Date:

1. Outstanding Balance of Receivables Purchased:

2. Fair Market Value Discount:

$$1/\{1 + [(\text{Prime Rate} \times \frac{\text{Days' Sales Outstanding}}{365}]\}$$

Where:

Prime Rate =

Days' Sales Outstanding =

3. Purchase Price (1 x 2) = $

Exhibit B

FORM OF JOINDER AGREEMENT

THIS JOINDER AGREEMENT, dated as of _____, 20__ (this "Agreement") is executed by _____, a [corporation] organized under the laws of _____ (the "Additional Originator"), with its principal place of business located at _____.

BACKGROUND:

A. Arch Coal, Inc., a Delaware corporation (the "Company") and the various entities from time to time party thereto, as Originators (collectively, the "Originators"), have entered into that certain Second Amended and Restated Purchase and Sale Agreement, dated as of October 5, 2016 (as amended, restated, supplemented or otherwise modified through the date hereof, and as it may be further amended, restated, supplemented or otherwise modified from time to time, the "Purchase and Sale Agreement").

B. The Additional Originator desires to become a Originator pursuant to Section 4.3 of the Purchase and Sale Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Additional Originator hereby agrees as follows:

SECTION 1. Definitions. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Purchase and Sale Agreement or in the Receivables Purchase Agreement (as defined in the Purchase and Sale Agreement).

SECTION 2. Transaction Documents. The Additional Originator hereby agrees that it shall be bound by all of the terms, conditions and provisions of, and shall be deemed to be a party to (as if it were an original signatory to), the Purchase and Sale Agreement and each of the other relevant Transaction Documents. From and after the later of the date hereof and the date that the Additional Originator has complied with all of the requirements of Section 4.3 of the Purchase and Sale Agreement, the Additional Originator shall be an Originator for all purposes of the Purchase and Sale Agreement and all other Transaction Documents. The Additional Originator hereby acknowledges that it has received copies of the Purchase and Sale Agreement and the other Transaction Documents.

SECTION 3. Representations and Warranties. The Additional Originator hereby makes all of the representations and warranties set forth in Article V (to the extent applicable) of the Purchase and Sale Agreement as of the date hereof (unless such representations or warranties relate to an earlier date, in which case as of such earlier date), as if such representations and warranties were fully set forth herein. The Additional Originator hereby represents and warrants that its location (as defined in the applicable UCC) is [_____], and the offices where the Additional Originator keeps all of its Records and Related Security is as follows:

SECTION 4. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York. This Agreement is executed by the Additional Originator for the benefit of the Company, and its assigns, and each of the foregoing parties may rely hereon. This Agreement shall be binding upon, and shall inure to the benefit of, the Additional Originator and its successors and permitted assigns.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed by its duly authorized officer as of the date and year first above written.

[NAME OF ADDITIONAL ORIGINATOR]

By: _____
Name: _____
Title: _____

Consented to:

ARCH COAL, INC.

By: _____
Name: _____
Title: _____

Acknowledged by:

PNC BANK, NATIONAL ASSOCIATION,
as Administrator

By: _____
Name: _____
Title: _____

Exhibit 10.4

EXECUTION VERSION

SECOND AMENDED AND RESTATED SALE AND CONTRIBUTION AGREEMENT

Dated as of October 5, 2016

between

ARCH COAL, INC.,

as the Transferor

and

ARCH RECEIVABLE COMPANY, LLC

CONTENTS

CONTENTS

CONTENTS

SCHEDULES

EXHIBITS

THIS SECOND AMENDED AND RESTATED SALE AND CONTRIBUTION AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of October 5, 2016 is entered into between ARCH COAL, INC. (individually, "ACI"), as the transferor (the "Transferor"), and ARCH RECEIVABLE COMPANY, LLC, a Delaware limited liability company (the "Company").

DEFINITIONS

Unless otherwise indicated herein, capitalized terms used and not otherwise defined in this Agreement are defined in Exhibit I to the Third Amended and Restated Receivables Purchase Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Receivables Purchase Agreement"), among the Company, as Seller, Arch Coal Sales Company, Inc. (individually, "Arch Sales"), as initial Servicer (in such capacity, the "Servicer"), the various Purchasers and LC Participants from time to time party thereto, and PNC Bank, National Association, as Administrator and as LC Bank. All references herein to months are to calendar months unless otherwise expressly indicated.

BACKGROUND:

1. The Company is a special purpose limited liability company, all of the issued and outstanding membership interests of which are owned by ACI;

2. The Transferor generates Receivables in the ordinary course of its business, and purchases Receivables and the Related Security pursuant to that certain Amended and Restated Purchase and Sale Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Purchase and Sale Agreement") by and among the Originators and the Transferor;

3. The Transferor, in order to finance its business, wishes to sell or contribute Receivables to the Company, and the Company is willing to purchase or acquire Receivables from the Transferor, on the terms and subject to the conditions set forth herein;

4. The Transferor and the Company intend this transaction to be a true sale or contribution of Receivables by the Transferor to the Company, providing the Company with the full benefits of ownership of the Receivables, and the Transferor and the Company do not intend the transactions hereunder to be characterized as a loan from the Company to the Transferor; and

5. The Transferor acknowledges that the Company may from time to time transfer, assign and grant a security interest in undivided beneficial interests in the Receivables, Related Security and other rights to the Administrator for the benefit of the Secured Parties under the Receivables Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
AGREEMENT TO PURCHASE AND SELL

SECTION 1.1 Agreement To Purchase and Sell. On the terms and subject to the conditions set forth in this Agreement, the Transferor agrees to sell to the Company, and the Company agrees to purchase from the Transferor, from time to time on or after the Closing Date, but before the Sale and Contribution Termination Date (as defined in Section 1.4), all of the Transferor's right, title and interest in and to:

(a) each Receivable of the Transferor (including, without limitation, each such Receivable sold or purported sold to the Transferor pursuant to the Purchase and Sale Agreement) that existed and was owing to the Transferor at the closing of the Transferor's business on January 1, 2006 (the "Cut-off Date") other than Receivables contributed pursuant to Section 3.1 (the "Contributed Receivables");

(b) each Receivable sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement and each Receivable generated or otherwise acquired by the Transferor from and including the Cut-off Date to but excluding the Sale and Contribution Termination Date;

(c) all rights to, but not the obligations of, the Transferor under all Related Security with respect to any of the foregoing Receivables;

(d) all monies due or to become due to the Transferor with respect to any of the foregoing;

(e) all books and records of the Transferor to the extent related to any of the foregoing;

(f) all Collections and other proceeds and products of any of the foregoing (as defined in the UCC) that are or were received by the Transferor on or after the Cut-off Date, including, without limitation, all funds which either are received by the Transferor, the Company or the Servicer from or on behalf of the Obligors in payment of any amounts owed (including, without limitation, invoice price, finance charges, interest and all other charges) in respect of any of the above Receivables or are applied to such amounts owed by the Obligors (including, without limitation, any insurance payments that the Transferor, the Company or the Servicer applies in the ordinary course of its business to amounts owed in respect of any of the above Receivables, and net proceeds of sale or other disposition of repossessed goods or other collateral or property of the Obligors in respect of any of the above Receivables or any other parties directly or indirectly liable for payment of such Receivables);

(g) all rights, remedies, powers, privileges, title and interest (but not obligations) under the Purchase and Sale Agreement with respect to the Receivables sold and contributed hereunder; and

(h) all rights, remedies, powers, privileges, title and interest (but not obligations) in and to the Lock-Box Accounts into which any Collections or other proceeds with respect to such Receivables may be deposited.

All purchases and contributions hereunder are absolute and irrevocable and shall be made without recourse, but shall be made pursuant to, and in reliance upon, the representations, warranties and covenants of the Transferor set forth in this Agreement and each other Transaction Document. No obligation or liability to any Obligor on any Receivable is intended to be assumed by the Company hereunder, and any such assumption is expressly disclaimed. The Company's foregoing agreement to purchase Receivables and the property, proceeds and rights described in clauses (c) through (h) (collectively, the "Related Rights") is herein called the "Purchase Facility." The Transferor hereby authorizes and consents to the filing of each of the financing statements that have been filed prior to the date hereof by or on behalf of the Company or the Administrator in connection with the Original SCA notwithstanding that the collateral described therein may be broader in scope than the collateral described in this Agreement.

SECTION 1.2 Timing of Purchases.

(a) Closing Date Purchases. The Transferor's entire right, title and interest in (i) each Receivable that existed and was owing to the Transferor on the Closing Date (other than Contributed Receivables) and (ii) all Related Rights with respect thereto automatically shall be deemed to have been sold by the Transferor to the Company on the Closing Date.

(b) Subsequent Purchases. After the Closing Date, until the Sale and Contribution Termination Date, each Receivable and the Related Rights sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement and each Receivable and the Related Rights generated or otherwise acquired by the Transferor shall be deemed to have been sold by the Transferor to the Company immediately (and without further action) upon the sale or purported sale or the creation of such Receivable, as applicable.

SECTION 1.3 Consideration for Purchases. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to make Purchase Price payments to the Transferor in accordance with Article III and to reflect all contributions in accordance with Section 3.1.

SECTION 1.4 Sale and Contribution Termination Date. The "Sale and Contribution Termination Date" shall be the earliest to occur of (a) the date the Purchase Facility is terminated pursuant to Section 8.2 and (b) the Payment Date (as defined in Section 2.2) immediately following the day on which the Transferor shall have given written notice to the Company and the Administrator at or prior to 10:00 a.m. (New York City time) that the Transferor desires to terminate this Agreement.

SECTION 1.5 Intention of the Parties. It is the express intent of the Transferor and the Company that each conveyance by the Transferor to the Company pursuant to this Agreement of the Receivables, including without limitation, all Receivables, if any, constituting general intangibles as defined in the UCC, and all Related Rights be construed as a valid and perfected

sale and absolute assignment (without recourse except as provided herein) of such Receivables and Related Rights by the Transferor to the Company (rather than the grant of a security interest to secure a debt or other obligation of the Transferor) and that the right, title and interest in and to such Receivables and Related Rights conveyed to the Company be prior to the rights of and enforceable against all other Persons at any time, including, without limitation, lien creditors, secured lenders, purchasers and any Person claiming through the Transferor. However, if, contrary to the mutual intent of the parties, any conveyance of Receivables and Related Rights, including without limitation any Receivables constituting general intangibles, is not construed to be both a valid and perfected sale and absolute assignment of such Receivables and Related Rights, and a conveyance of such Receivables and Related Rights that is prior to the rights of and enforceable against all other Persons at any time, including without limitation lien creditors, secured lenders, purchasers and any Person claiming through the Transferor, then, it is the intent of the Transferor and the Company that (i) this Agreement also shall be deemed to be, and hereby is, a security agreement within the meaning of the UCC; and (ii) the Transferor shall be deemed to have granted to the Company as of the Closing Date, and the Transferor hereby grants to the Company, a security interest in, to and under all of the Transferor's right, title and interest in and to: (A) the Receivables and the Related Rights now existing and hereafter created, generated or otherwise acquired by the Transferor (including, without limitation, each such Receivable sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement), (B) all monies due or to become due and all amounts received with respect thereto, (C) all books and records of the Transferor to the extent related to any of the foregoing, (D) all rights, remedies, powers, privileges, title and interest (but not obligations) of the Transferor in and to the Lock-Box Accounts into which any Collections or other proceeds with respect to such Receivables may be deposited, and any related investment property acquired with any such Collections or other proceeds (as such term is defined in the applicable UCC) and (E) all proceeds and products of any of the foregoing to secure all of the Transferor's obligations hereunder.

ARTICLE II
PURCHASE REPORT; CALCULATION OF PURCHASE PRICE

SECTION 2.1 Purchase Report. On the 21st day of each calendar month after the Closing Date (or if such day is not a Business Day, the next occurring Business Day) (each such date, a "Monthly Purchase Report Date"), the Servicer shall deliver to the Company and the Transferor a report in substantially the form of Exhibit A (each such report being herein called a "Purchase Report") setting forth, among other things:

(a) [Reserved];

(b) Receivables purchased (or, in the case of Contributed Receivables, received) by the Company from the Transferor during the period commencing on the Monthly Purchase Report Date immediately preceding such Monthly Purchase Report Date to (but not including) such Monthly Purchase Report Date (in the case of each subsequent Purchase Report); and

(c) the calculations of reductions of the Purchase Price for any Receivables as provided in Section 3.3(a) and (b).

SECTION 2.2 Calculation of Purchase Price. The "Purchase Price" to be paid to the Transferor for the Receivables that are purchased hereunder from the Transferor shall be determined in accordance with the following formula:

PP = OB x FMVD

where:

PP = Purchase Price for each Receivable as calculated on the relevant Payment Date.

OB = The Outstanding Balance of such Receivable on the relevant Payment Date.

FMVD = Fair Market Value Discount, as measured on such Payment Date, which is equal to the quotient (expressed as percentage) of (a) one divided by (b) the sum of (i) one, *plus* (ii) the product of (A) the Prime Rate on such Payment Date, and (B) a fraction, the numerator of which is the Days' Sales Outstanding (calculated as of the last Business Day of the calendar month next preceding such Payment Date) and the denominator of which is 365.

"Payment Date" means (i) the Closing Date and (ii) each Business Day thereafter that the Transferor is open for business.

"Prime Rate" means a per annum rate equal to the "Prime Rate" as published in the "Money Rates" section of The Wall Street Journal or if such information ceases to be published in The Wall Street Journal, such other publication as determined by the Administrator in its sole discretion.

ARTICLE III
PAYMENT OF PURCHASE PRICE

SECTION 3.1 Contribution of Receivables and Initial Purchase Price Payment.

(a) Contribution of Receivables. On February 3, 2006, ACI contributed to the capital of the Company either or a combination of (i) Receivables and Related Rights consisting of each Receivable of ACI that existed and was owing to ACI on February 3, 2006, beginning with the oldest of such Receivables and continuing chronologically thereafter and/or (ii) cash or other assets, in either case, such that the aggregate outstanding balance of all equity held by the Transferor in the Company, after giving effect to such contribution, was equal to $5,500,000.

(b) Company Note. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to pay to the Transferor the Purchase Price for the purchases to be made from the Transferor from time to time (i) partially in cash (to the extent that the Company has available cash) and (ii) partially by issuing a promissory note in the form of Exhibit B to the Transferor (such promissory note, as it may be amended, supplemented, endorsed or otherwise modified from time to time, together with all promissory notes issued from time to time in substitution therefor or renewal thereof in accordance with the Transaction Documents, collectively referred to herein as the "Company Note").

SECTION 3.2 Purchase Price Payments; Letters of Credit. (a) On each Payment Date from and after the Closing Date, on the terms and subject to the conditions set forth in this Agreement, the Company shall pay to the Transferor the Purchase Price for the Receivables sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement and for the Receivables generated by the Transferor on such Payment Date:

(i) *First*, in cash to the extent the Company has cash available therefor and such payment is not prohibited under the Receivables Purchase Agreement and/or, if requested by Transferor and permitted under the Receivables Purchase Agreement, by causing the LC Bank to issue one or more Letters of Credit in accordance with this Section 3.2 and on the terms and subject to the conditions of this Article III and the Receivables Purchase Agreement; and

(ii) *Second*, to the extent any portion of the Purchase Price remains unpaid, the principal amount outstanding under the Company Note shall be automatically increased by an amount equal to such remaining Purchase Price.

The Servicer shall make all appropriate record keeping entries with respect to the Company Note to reflect the foregoing payments and reductions made pursuant to Section 3.3, and the Servicer's books and records shall constitute rebuttable presumptive evidence of the principal amount of, and accrued interest on, the Company Note at any time. The Transferor hereby irrevocably authorizes the Servicer to mark the Company Note "CANCELED" and to return the Company Note to the Company upon the final payment thereof after the occurrence of the Sale and Contribution Termination Date.

(b) The Transferor may request that the Purchase Price for Receivables sold on a Payment Date be paid by the Company by procuring the issuance of a Letter of Credit by the LC Bank. Upon the request of the Transferor, and on the terms and conditions for issuing Letters of Credit under the Receivables Purchase Agreement (including any limitations therein on the amount of any such issuance and/or whether such issuance is permitted), the Company agrees to cause the LC Bank to issue, on the Payment Dates specified by the Transferor, Letters of Credit in favor of one or more beneficiaries selected by the Transferor, with the consent of the Company. The aggregate stated amount of the Letters of Credit being issued on any Payment Date on behalf of the Transferor shall constitute a credit against the aggregate Purchase Price otherwise payable by the Company to the Transferor on such Payment Date. In the event that the Transferor requests that any purchases be paid for in whole and/or in part by the issuance of a Letter of Credit, the Transferor shall on a timely basis provide the Company with such

information as is necessary for the Company to obtain such Letter of Credit from the LC Bank. The Transferor shall have no reimbursement obligations in respect of any Letter of Credit. To the extent that the aggregate stated amount of the Letters of Credit being issued on any Payment Date exceeds the aggregate Purchase Price payable by the Company to the Transferor on such Payment Date, such excess shall be deemed to be (i) a reduction in the outstanding principal balance of (and, to the extent necessary, the accrued but unpaid interest on) the Company Note payable to the Transferor, to the extent the outstanding principal balance (and accrued interest) is greater than such excess and/or (ii) a reduction in the Purchase Price payable on the Payment Dates immediately following the date any such Letter of Credit is issued. In the event that any Letter of Credit issued in partial payment of any Purchase Price hereunder (i) expires or is cancelled or otherwise terminated with all or any portion of its stated amount undrawn, (ii) has its stated amount decreased (for a reason other than a drawing having been made thereunder) or (iii) the Company's Reimbursement Obligation in respect thereof is reduced for any reason other than by virtue of a payment made in respect of a drawing thereunder, then an amount equal to such undrawn amount or such reduction, as the case may be, shall either be paid in cash to the Transferor on the next Payment Date or, if the Company does not then have cash available therefor, shall be deemed to be added to the outstanding principal balance of the Company Note issued to the Transferor.

(c) The Transferor agrees to be bound by the terms of each Letter of Credit Application referenced in the Receivables Purchase Agreement and that each Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and any amendments or revisions thereof adhered to by the LC Bank or the International Standby Practices (ISP98-International Chamber of Commerce Publication Number 590), and any amendments or revisions thereof adhered to by the LC Bank, as determined by the LC Bank, in each case subject to the terms and conditions set forth in the Receivables Purchase Agreement.

SECTION 3.3 Settlement as to Specific Receivables and Dilution.

(a) If (i) on the day of purchase or contribution of any Receivable from the Transferor hereunder, any of the representations or warranties set forth in Sections 5.10, 5.15 and 5.17 are not true with respect to such Receivable or (ii) as a result of any action or inaction (other than solely as a result of the failure to collect such Receivable due to a discharge in bankruptcy or similar insolvency proceeding or other credit related reasons with respect to the relevant Obligor) of the Transferor or any Originator, on any subsequent day, any of such representations or warranties set forth in Sections 5.10, 5.15 and 5.17 is no longer true with respect to such Receivable on such subsequent date (without giving effect to any reference to the date of sale, creation, purchaser or contribution of such Receivable in such representation or warranty), then the Purchase Price (or in the case of a Contributed Receivable the Outstanding Balance of such Receivable (the "Contributed Value")), with respect to such Receivable shall be reduced by an amount equal to the Outstanding Balance of such Receivable and shall be accounted to the Transferor as provided in clause (c) below; provided, that if the Company thereafter receives payment on account of Collections due with respect to such Receivable, the Company promptly shall deliver such funds to the Transferor.

(b) If, on any day, the Outstanding Balance of any Receivable (including any Contributed Receivable) purchased or contributed hereunder is reduced or adjusted as a result of any revision, cancellation, allowance, rebate, defective, rejected, returned, repossessed or foreclosed goods or services, or any discount or other adjustment made by the Transferor, any Originator, the Company or the Servicer or any setoff, netting of obligations or dispute between the Transferor, any Originator or the Servicer and an Obligor, as indicated on the books of the Company (or, for periods prior to the Closing Date, the books of the Transferor), then the Purchase Price or Contributed Value, as the case may be, with respect to such Receivable shall be reduced by the amount of such net reduction and shall be accounted to the Transferor as provided in clause (c) below.

(c) Any reduction in the Purchase Price or Contributed Value of any Receivable pursuant to clause (a) or (b) above shall be applied as a credit for the account of the Company against the Purchase Price of Receivables subsequently purchased by the Company from the Transferor hereunder; provided, however if there have been no purchases of Receivables from the Transferor (or insufficiently large purchases of Receivables) to create a Purchase Price sufficient to so apply such credit against, the amount of such credit:

(i) to the extent of any outstanding principal balance under the Company Note payable to the Transferor, shall be deemed to be a payment under, and shall be deducted from the principal amount outstanding under, the Company Note payable to the Transferor; and

(ii) after making any deduction pursuant to clause (i) above, shall be paid in cash to the Company by the Transferor in the manner and for application as described in the following proviso;

provided, further, that at any time (y) when a Termination Event or an Unmatured Termination Event exists under the Receivables Purchase Agreement or (z) on or after the Sale and Contribution Termination Date, the amount of any such credit shall be paid by the Transferor to the Company by deposit in immediately available funds into a Lock-Box Account for application by the Servicer to the same extent as if Collections of the applicable Receivable in such amount had actually been received on such date.

SECTION 3.4 Reconveyance of Receivables. In the event that the Transferor has paid to the Company the full Outstanding Balance of any Receivable pursuant to Section 3.3, the Company shall reconvey such Receivable to the Transferor, without representation or warranty, but free and clear of all liens, security interests, charges, and encumbrances created by the Company.

ARTICLE IV
CONDITIONS OF PURCHASES

SECTION 4.1 Conditions Precedent to Initial Purchase. The initial purchase hereunder is subject to the condition precedent that the Company and the Administrator (as the total assignee of the Company) shall have received, on or before the Closing Date, the following, each

(unless otherwise indicated) dated the Closing Date, and each in form and substance satisfactory to the Company and the Administrator (as the total assignee of the Company):

(a) A copy of the resolutions of the board of directors or managers of the Transferor approving the Transaction Documents to be executed and delivered by it and the transactions contemplated hereby and thereby, certified by the Secretary or Assistant Secretary of the Transferor;

(b) Good standing certificates for the Transferor issued as of a recent date acceptable to the Company and the Administrator (as the total assignee of the Company) by the Secretary of State of the jurisdiction of the Transferor's organization;

(c) A certificate of the Secretary or Assistant Secretary of the Transferor certifying the names and true signatures of the officers authorized on such Person's behalf to sign the Transaction Documents to be executed and delivered by it (on which certificate the Servicer, the Company and the Administrator (as the total assignee of the Company) may conclusively rely until such time as the Servicer, the Company and the Administrator (as the total assignee of the Company) shall receive from such Person a revised certificate meeting the requirements of this clause (c));

(d) The certificate or articles of incorporation or other organizational document of the Transferor (including all amendments and modifications thereto) duly certified by the Secretary of State of the jurisdiction of the Transferor's organization as of a recent date, together with a copy of the by-laws of the Transferor, each duly certified by the Secretary or an Assistant Secretary of the Transferor;

(e) Completed UCC search reports, dated the Closing Date or no earlier than 30 days prior thereto, listing the financing statements filed in all applicable jurisdictions that name any Originator, Transferor or the Company, as debtor, together with copies of such other financing statements, and similar search reports with respect to judgment liens, federal tax liens and liens of the Pension Benefit Guaranty Corporation in such jurisdictions, as the Administrator may reasonably request, showing no Adverse Claims on any Pool Assets other than any security interests that are released as of the Closing Date pursuant to the Confirmation Order or the Plan of Reorganization;

(f) Favorable opinions, addressed to the Administrator, each Purchaser Agent and each Purchaser, in form and substance reasonably satisfactory to the Administrator, of external counsel for the Transferor, covering such matters as the Administrator may reasonably request, including, without limitation, (i) certain Delaware corporate and no conflict matters, (ii) certain organizational and New York enforceability matters, certain bankruptcy matters and (iii) certain UCC creation and Delaware perfection matters;

(g) Evidence (i) of the execution and delivery by each of the parties thereto of each of the other Transaction Documents to be executed and delivered in connection herewith and (ii) that each of the conditions precedent to the execution, delivery and effectiveness of such

other Transaction Documents has been satisfied to the Company's and the Administrator's (as the total assignee of the Company) satisfaction; and

(h) A copy of the Confirmation Order that has not been modified or amended (except for modifications or amendments approved by the Administrator and the Majority Purchaser Agents).

SECTION 4.2 Certification as to Representations and Warranties. The Transferor, by accepting the Purchase Price related to each purchase of Receivables generated or otherwise acquired by the Transferor, shall be deemed to have certified that the representations and warranties contained in Article V, as from time to time amended in accordance with the terms hereof, are true and correct in all material respects on and as of such day, with the same effect as though made on and as of such day (except for representations and warranties which apply to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE TRANSFEROR

In order to induce the Company to enter into this Agreement and to make purchases hereunder, the Transferor hereby represents and warrants that each representation and warranty concerning it or the Receivables sold or contributed by it hereunder, that is contained in the Receivables Purchase Agreement is true and correct, and hereby makes as of the Closing Date the representations and warranties set forth in this Article V.

SECTION 5.1 Existence and Power. The Transferor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and upon the entry by the Bankruptcy Court of the Confirmation Order, has all power and authority and all governmental licenses, authorizations, consents and approvals required to carry on its business in each jurisdiction in which its business is conducted except if failure to have such licenses, authorizations, consents or approvals would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.2 Company and Governmental Authorization, Contravention. The execution, delivery and performance by the Transferor of this Agreement (i) are within the Transferor's company powers, have been duly authorized by all necessary company action, require no action by or in respect of, or filing with (other than the filing of the UCC financing statements and continuation statements contemplated hereunder), any governmental body, agency or official, (ii) other than as would not reasonably be expected to result in a Material Adverse Effect, do not contravene, or constitute a default under, any provision of Applicable Law or of the organizational documents of the Transferor or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Transferor and (iii) do not result in the creation or imposition of any Adverse Claim on assets of the Transferor or any of its Subsidiaries.

SECTION 5.3 Binding Effect of Agreement. This Agreement and each of the other Transaction Documents to which it is a party constitutes the legal, valid and binding obligation of the Transferor enforceable against the Transferor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether enforceability is considered in a proceeding in equity or at law.

SECTION 5.4 Accuracy of Information. All information heretofore furnished in writing by the Transferor to the Company or the Administrator pursuant to or in connection with this Agreement or any other Transaction Document or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by the Transferor to the Company or the Administrator in writing pursuant to this Agreement or any Transaction Document will be, taken as a whole, true and accurate in all material respects on the date such information is stated or certified.

SECTION 5.5 Actions, Suits. There are no actions, suits or proceedings pending or, to the best of the Transferor's knowledge, threatened against or affecting the Transferor or any of its Affiliates or their respective properties, in or before any court, arbitrator or other body, which could reasonably be expected to have a Material Adverse Effect.

SECTION 5.6 Taxes. The Transferor has filed or caused to be filed all U.S. federal income tax returns and all other material returns, statements, forms and reports for taxes, domestic or foreign, required to be filed by it and has paid all taxes payable by it which have become due or any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except to the extent that such taxes are being contested in good faith by appropriate proceedings and for which such reserves or other appropriate provisions, if any, as are required by generally accepted accounting principles shall have been made.

SECTION 5.7 Compliance with Applicable Laws. The Transferor is in compliance with the requirements of all Applicable Laws and orders of all Governmental Authorities except to the extent that the failure to comply would not reasonably be expected to have a Material Adverse Effect. In addition, no Receivable sold, contributed or otherwise conveyed hereunder contravenes any Applicable Laws, rules or regulations applicable thereto or to the Transferor in any material respect.

SECTION 5.8 Reliance on Separate Legal Identity. The Transferor acknowledges that each of the Administrator and the other Secured Parties are entering into the Transaction Documents to which they are parties in reliance upon the Company's identity as a legal entity separate from the Transferor.

SECTION 5.9 Investment Company. The Transferor is not required to register as an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

SECTION 5.10 Perfection. Immediately preceding its sale of each Receivable hereunder, the Transferor was the owner of such Receivable sold or purported to be sold, free and clear of any Adverse Claims, and each such sale hereunder constitutes a valid sale, transfer and assignment of all of the Transferor's right, title and interest in, to and under the Receivables sold by it, free and clear of any Adverse Claims. On or before the date hereof and before the sale or purported sale by an Originator to the Transferor under the Purchase and Sale Agreement and before the generation by the Transferor of any new Receivable to be sold or otherwise conveyed hereunder, all financing statements and other documents, if any, required to be recorded or filed in order to perfect and protect the Company's ownership interest in such Receivable against all creditors of and purchasers from the Originators or the Transferor will have been duly filed in each filing office necessary for such purpose, and all filing fees and taxes, if any, payable in connection with such filings shall have been paid in full. Each such financing statement, filed with respect to such Receivable as an as-extracted collateral filing, includes a complete and correct description of the real property in all material respects related to such Receivable as extracted collateral, as contemplated by the UCC, and names a record owner of the real property.

SECTION 5.11 Creation of Receivables. The Transferor has exercised (and has caused each Originator to exercise) at least the same degree of care and diligence in the creation and acquisition of the Receivables sold, contributed or otherwise conveyed to the Transferor under the Purchase and Sale Agreement, in the case of the Originators and sold, contributed or otherwise conveyed to the Company hereunder in the case of the Transferor as it has exercised in connection with the creation of receivables originated by such Person and not so transferred.

SECTION 5.12 Credit and Collection Policy. The Transferor has complied (and has caused each Originator to comply) in all material respects with its Credit and Collection Policy in regard to each Receivable sold or contributed to the Transferor under the Purchase and Sale Agreement, in the case of the Originators and sold, contributed or otherwise conveyed to the Company by it hereunder and the related Contract.

SECTION 5.13 Enforceability of Contracts. Each Contract related to any Receivable sold or contributed by the Transferor hereunder is effective to create, and has created, a legal, valid and binding obligation of the related Obligor to pay the outstanding balance of such Receivable, enforceable against the Obligor in accordance with its terms, without being subject to any defense, deduction, offset or counterclaim and the Transferor has fully performed (and has caused each Originator to fully perform) the obligations under such Contract.

SECTION 5.14 Location and Offices. As of the Closing Date, the Transferor's location (as such term is defined in the applicable UCC) is in the state set forth on Schedule I hereto, and such location has not been changed for at least four months before the date hereof. The office where the Transferor keeps all records concerning the Receivables is located at the address set forth on Schedule II hereto or such other locations of which the Company and the Administrator (as the total assignee of the Company) have been given written notice in accordance with the terms hereof.

SECTION 5.15 Good Title. Upon the sale or purported sale by an Originator to the Transferor under the Purchase and Sale Agreement and upon the creation or acquisition of each

new Receivable sold, contributed or otherwise conveyed or purported to be conveyed hereunder and on the Closing Date for then existing Receivables, the Company shall have a valid and perfected first priority ownership interest in each Receivable sold or contributed to it hereunder, free and clear of any Adverse Claim.

SECTION 5.16 Names. The Transferor has not used any corporate or company names, tradenames or assumed names other than its name set forth on the signature pages of this Agreement.

SECTION 5.17 Nature of Receivables. Each Pool Receivable purchased or contributed hereunder and included in the calculation of Net Receivables Pool Balance is, on the date of such purchase or contribution, an Eligible Receivable.

SECTION 5.18 Bulk Sales, Margin Regulations, No Fraudulent Conveyance. No transaction contemplated hereby requires compliance with or will become subject to avoidance under any bulk sales act or similar law. No use of funds obtained by an Originator under the Purchase and Sale Agreement or by the Transferor hereunder will conflict with or contravene Regulation T, U or X of the Federal Reserve Board. No purchase under the Purchase and Sale Agreement or hereunder constitutes a fraudulent transfer or conveyance or avoidable post-petition transfer under any United States federal or applicable state bankruptcy or insolvency laws or is otherwise void or voidable under such or similar laws or principles or for any other reason.

SECTION 5.19 Effectiveness of Orders. The Confirmation Order is in full force and effect and has not been vacated or reversed, is not subject to a stay, and has not been modified or amended (other than any amendment or modification approved in writing by the Administrator and the Majority Purchaser Agents).

SECTION 5.20 Solvency. On the date hereof, and on the date of each purchase or contribution under the Purchase and Sale Agreement and hereunder (both before and after giving effect to such purchase or contribution), each Originator and the Transferor shall be Solvent.

SECTION 5.21 [Reserved.]

SECTION 5.22 Licenses, Contingent Liabilities, and Labor Controversies.

(a) The Transferor has not failed to obtain (and has caused each Originator to obtain) any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its properties or to the conduct of its business, except such failures to have such licenses, permits, franchises or other governmental authorizations that could not reasonably be expected to have a Material Adverse Effect.

(b) There are no labor controversies pending against any Originator or the Transferor that have had (or could reasonably be expected to have) a Material Adverse Effect.

SECTION 5.23 Purchase Price. Each sale and contribution by the Transferor to Company of an interest in Receivables has been made for "reasonably equivalent value" (as such

term is used in Section 548 of the Bankruptcy Code) and not for or on account of "antecedent debt" (as such term is used in Section 547 of the Bankruptcy Code) owed by the Transferor to Company, and is otherwise not subject to avoidance under any provision of the Bankruptcy Code or Applicable Law.

SECTION 5.24 No Material Adverse Effect. Since the Closing Date, there has been no Material Adverse Effect on the Transferor.

SECTION 5.25 Anti-Money Laundering/International Trade Law Compliance. No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

SECTION 5.26 Mortgages Covering As-Extracted Collateral. There are no mortgages that are effective as financing statements covering as-extracted collateral that constitutes Pool Assets and that name the Transferor as grantor, debtor or words of similar effect filed or recorded in any jurisdiction.

SECTION 5.27 Reaffirmation of Representations and Warranties by the Transferor. On each day that a Receivable is sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement or is created by the Transferor, and when sold or contributed to the Company hereunder, the Transferor shall be deemed to have certified that all representations and warranties set forth in this Article V are true and correct on and as of such day (except for representations and warranties which apply as to an earlier date (in which case such representations and warranties shall be true and correct as of such earlier date)).

ARTICLE VI
COVENANTS OF THE TRANSFEROR

SECTION 6.1 Affirmative Covenants. At all times from the date hereof until the Final Payout Date, the Transferor shall:

(a) General Information. Furnish to the Company and the Administrator such information as the Company or the Administrator may from time to time reasonably request.

(b) Furnishing of Information and Inspection of Records. Furnish to the Company and the Administrator from time to time such information with respect to the Receivables as such Person may reasonably request. The Transferor will, at the Transferor's expense, during regular business hours with prior written notice (i) permit the Company or the Administrator, or their respective agents or representatives, (A) to examine and make copies of and abstracts from all books and records relating to the Receivables or other Pool Assets and (B) to visit the offices and properties of the Transferor for the purpose of examining such books and records, and to discuss matters relating to the Receivables, other Related Rights or the Transferor's performance hereunder or under the other Transaction Documents to which it is a

party with any of the officers, directors, employees or independent public accountants of the Transferor (provided that representatives of the Transferor are present during such discussions) having knowledge of such matters and (ii) without limiting the provisions of clause (i) above, during regular business hours, at the Transferor's expense, upon reasonable prior written notice from the Company or the Administrator, permit certified public accountants or other auditors acceptable to the Administrator to conduct, a review

of its books and records with respect to the Receivables; provided, that the Transferor shall only be responsible for the expenses incurred in connection with one (1) review for any calendar year pursuant to this clause (ii), so long as no Termination Event has occurred.

(c) Keeping of Records and Books. Have and maintain (i) administrative and operating procedures (including an ability to recreate records if originals are destroyed), (ii) adequate facilities, personnel and equipment and (iii) all records and other information reasonably necessary for collection of the Receivables originated by the Transferor (including records adequate to permit the daily identification of each new such Receivable and all Collections of, and adjustments to, each existing such Receivable). The Transferor will give the Company and the Administrator prior notice of any change in such administrative and operating procedures that causes them to be materially different from the procedures described to the Company and the Administrator on or before the date hereof as the Transferor's then existing or planned administrative and operating procedures for collecting Receivables.

(d) Performance and Compliance with Receivables and Contracts. Timely and fully perform and comply (and cause each Originator to timely and fully comply), at its own expense, in all material respects with all provisions, covenants and other promises required to be observed under all Contracts or other documents or agreements related to the Receivables.

(e) Credit and Collection Policy. Comply (and cause each Originator to comply) in all material respects with its Credit and Collection Policy in regard to each Receivable originated or acquired by it and any related Contract or other related document or agreement.

(f) Receivable Purchase Agreement. Perform and comply (and cause each Originator to perform and comply) in all material respects with each covenant and other undertaking in the Purchase and Sale Agreement and the Receivables Purchase Agreement that the Company undertakes to cause the Originators or the Transferor to perform, subject to any applicable grace periods, if any, for such performance provided for in such agreements.

(g) Preservation of Existence. Preserve and maintain (and cause each Originator to preserve and maintain) its existence as a corporation or limited liability company, as applicable, and all rights, franchises and privileges in the jurisdiction of its organization, and qualify and remain qualified in good standing as a foreign corporation or limited liability company, as applicable, in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification could reasonably be expected to have a Material Adverse Effect.

(h) Location of Records. Keep (and cause each Originator to keep) its location (as such term is defined in the applicable UCC), and the office where it keeps its records concerning or related to Receivables, at the address(es) referred to in the Purchase and Sale Agreement, in the case of the Originators and in Schedule I or Schedule II, respectively, in the case of the Transferor or at such other locations in jurisdictions where all action required by Section 7.3 shall have been taken and completed; provided that the Transferor shall promptly (and in any event prior to the date that is 30 days after any such change in location) give (or shall cause the relevant Originator to give) to the Company and the Administrator (as the assignee of the Company) written notice of any such change in location.

(i) Data Records. Place and maintain on its summary master control data processing records the following legend (or the substantive equivalent thereof): "THE RECEIVABLES DESCRIBED HEREIN HAVE BEEN SOLD TO ARCH RECEIVABLE COMPANY, LLC PURSUANT TO A SECOND AMENDED AND RESTATED SALE AND CONTRIBUTION AGREEMENT, DATED AS OF OCTOBER 5, 2016, BETWEEN ARCH RECEIVABLE COMPANY, LLC AND ARCH COAL, INC.; AND AN INTEREST IN THE RECEIVABLES DESCRIBED HEREIN HAS BEEN GRANTED TO PNC BANK, NATIONAL ASSOCIATION, FOR THE BENEFIT OF THE SECURED PARTIES UNDER THE THIRD AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT, DATED AS OF OCTOBER 5, 2016, AMONG ARCH RECEIVABLE COMPANY, LLC, ARCH COAL SALES COMPANY, INC., AS INITIAL SERVICER, THE VARIOUS CONDUIT PURCHASERS, RELATED COMMITTED PURCHASERS, LC PARTICIPANTS AND PURCHASER AGENTS FROM TIME TO TIME PARTY THERETO AND PNC BANK, NATIONAL ASSOCIATION, AS ADMINISTRATOR AND AS LC BANK."

(j) Preservation of Security Interest. Take (or cause to be taken) any and all action as Company or the Administrator may require to preserve and maintain the perfection and priority of the security interest of the Administrator in the Receivables and Related Rights.

(k) Payments on Receivables, Accounts. At all times instruct all Obligors to deliver payments on the Pool Receivables to a Lock-Box Account. The Transferor will, at all times, maintain such books and records necessary to identify Collections received from time to time on Pool Receivables and to segregate such Collections from other property of the Transferor. If any such payments or other Collections are received by the Transferor, it shall hold such payments in trust for the benefit of the Administrator and the other Secured Parties and promptly (but in any event within two Business Days after receipt) remit such funds into a Lock-Box Account. The Transferor will cause each Lock-Box Bank to comply with the terms of each applicable Lock-Box Agreement. The Transferor will not permit the funds other than Collections on Pool Receivables and other Pool Assets to be deposited into any Lock-Box Account. If such funds are nevertheless deposited into any Lock-Box Account, the Transferor will within two Business Days identify such funds for segregation. The Transferor will not commingle Collections or other funds to which the Administrator or any other Secured Party is entitled with any other funds.

SECTION 6.2 Reporting Requirements. From the date hereof until the first day following the Sale and Contribution Termination Date, the Transferor will, unless the Company

and the Administrator shall otherwise consent in writing, furnish to the Company and the Administrator:

(a) Sale and Contribution Termination Events. As soon as possible, and in any event within three (3) Business Days after the Transferor becomes aware of the occurrence of each Purchase and Sale Termination Event, Unmatured Purchase and Sale Termination Event, Sale and Contribution Termination Event or each event which with notice or the passage of time or both would become a Sale and Contribution Termination Event (an "Unmatured Sale and Contribution Termination Event"), a written statement of the chief financial officer, treasurer or other officer of the Transferor describing such Purchase and Sale Termination Event, Unmatured Purchase and Sale Termination Event, Sale and Contribution Termination Event or Unmatured Sale and Contribution Termination Event and the action that the applicable Originator or the Transferor proposes to take with respect thereto, in each case in reasonable detail;

(b) Proceedings. As soon as possible and in any event within three (3) Business Days after the Transferor becomes aware thereof, written notice of (i) litigation, investigation or proceeding of the type described in Section 5.5 not previously disclosed to the Company and the Administrator which could reasonably be expected to have a Material Adverse Effect, and (ii) all material adverse developments that have occurred with respect to any previously disclosed litigation, proceedings and investigations; and

(c) Other. Promptly, from time to time, such other information, documents, records or reports respecting the Receivables or the conditions or operations, financial or otherwise, of an Originator, the Transferor as the Company or the Administrator may from time to time reasonably request in order to protect the interests of the Company, the Secured Parties or the Administrator under or as contemplated by the Transaction Documents.

SECTION 6.3 Negative Covenants. At all times from the date hereof until the Final Payout Date, the Transferor agrees that, unless the Company and the Administrator shall otherwise consent in writing, it shall not:

(a) Sales, Liens, Etc. Except as otherwise provided herein or in any other Transaction Document, sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon or with respect to, any Receivable sold, contributed or otherwise conveyed or purported to be sold, contributed or otherwise conveyed hereunder or related Contract or Related Security, or any interest therein, or any Collections thereon, or assign any right to receive income in respect thereof, and shall not permit any Originator to do or cause to be done, any of the foregoing, with respect to Receivables sold, contributed or otherwise conveyed or purported to be sold or otherwise conveyed under the Purchase and Sale Agreement.

(b) Extension or Amendment of Receivables. Except as otherwise permitted in Section 4.2(a) of the Receivables Purchase Agreement and the applicable Credit and Collection Policy, extend, amend or otherwise modify the terms of any Receivable in any material respect generated or acquired by it that is sold, contributed or otherwise conveyed hereunder, or amend, modify or waive, in any material respect, any term or condition of any

Contract related thereto (which term or condition relates to payments under, or the enforcement of, such Contract), and shall not permit any Originator to do or cause to be done, any of the foregoing, with respect to Receivables sold, contributed or otherwise conveyed or purported to be sold or otherwise conveyed under the Purchase and Sale Agreement.

(c) Change in Business or Credit and Collection Policy. (i) Make any change in the character of its business or (ii) make any change in its Credit and Collection Policy that could reasonably be expected to have a Material Adverse Effect, in the case of either clause (i) or (ii) above, and shall not permit any Originator to do or cause to be done, any of the foregoing, with respect to Receivables sold, contributed or otherwise conveyed or purported to be sold or otherwise conveyed under the Purchase and Sale Agreement without the prior written consent of the Administrator. The Transferor shall not make (and shall not permit any Originator to make) any other written change in any Credit and Collection Policy without giving prior written notice thereof to the Administrator.

(d) Receivables Not to be Evidenced by Promissory Notes or Chattel Paper. Except as otherwise provided in the Receivables Purchase Agreement in regard to servicing, take any action to cause or permit any Receivable generated or acquired by it that is sold or contributed by it hereunder to become evidenced by any "instrument" or "chattel paper" (as defined in the applicable UCC), and shall not permit any Originator to do or cause to be done, any of the foregoing, with respect to Receivables sold, contributed or otherwise conveyed or purported to be sold or otherwise conveyed under the Purchase and Sale Agreement.

(e) Mergers, Acquisitions, Sales, etc. (i) Be a party to (or permit any Originator to be a party to) any merger, consolidation or other restructuring, except (A) a Permitted Merger or (B) any other merger, consolidation or other restructuring where the Company and the Administrator have each (1) received 10 Business Days' prior notice thereof, (2) consented in writing thereto, (3) received executed copies of all documents, certificates and opinions (including, without limitation, opinions relating to bankruptcy and UCC matters) as the Company or the Administrator shall request and (4) been satisfied that all other action to perfect and protect the interests of the Company and the Administrator, on behalf of the Secured Parties, in and to the Receivables to be sold by it hereunder and other Related Rights, as requested by the Company or the Administrator shall have been taken by, and at the expense of the Transferor (including the filing of any UCC financing statements, the receipt of certificates and other requested documents from public officials and all such other actions required pursuant to Section 7.3) or (ii) directly or indirectly sell, transfer, assign, convey or lease whether in one or a series of transactions, all or substantially all of its assets (other than in accordance with the Transaction Documents).

(f) No Change in Name, Identity or Corporate Structure. Change its name, identity, corporate structure or jurisdiction of organization, in any case, unless the Company and the Administrator have each (1) received prior notice thereof, (2) received executed copies of all documents, certificates and opinions (including, without limitation, opinions relating to bankruptcy and UCC matters) as the Company or the Administrator shall request and (3) been satisfied that all other action to perfect and protect the interests of the Company and the Administrator, on behalf of the Secured Parties, in and to the Receivables to be sold by it

hereunder and other Related Rights, as requested by the Company or the Administrator shall have been taken by, and at the expense of the Transferor (including the filing of any UCC financing statements, the receipt of certificates and other requested documents from public officials and all such other actions required pursuant to Section 7.3).

(g) Lock-Box Banks. Make (or permit any Originator to make) any changes in instructions to Obligors regarding Collections on Receivables sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement or regarding Collections or Receivables sold, contributed or otherwise conveyed by it hereunder or add or terminate any bank as a Lock-Box Bank unless the requirements of Sections 1(f) and (k) of Exhibit IV to the Receivables Purchase Agreement have been met.

(h) Accounting for Purchases. Account for or treat (whether in financial statements or otherwise) the transactions contemplated by the Purchase and Sale Agreement and hereby in any manner other than as sales of the Receivables and Related Rights by the applicable Originator to the Transferor and the Transferor to the Company, as the case may be.

(i) Transaction Documents. Enter into, execute, deliver or otherwise become bound after the Closing Date by any agreement, instrument, document or other arrangement that restricts the right of the Transferor to amend, supplement, amend and restate or otherwise modify, or to extend or renew, or to waive any right under, this Agreement or any other Transaction Document, or permit any Originator to do or cause to be done, any of the foregoing.

(j) Company's Tax Status. Take or cause any action to be taken that could result in the Company (i) being treated other than as a "disregarded entity" within the meaning of U.S. Treasury Regulation § 301.7701-3 for U.S. federal income tax purposes or (ii) becoming an association taxable as a corporation or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

SECTION 6.4 Substantive Consolidation. The Transferor hereby acknowledges that this Agreement and the other Transaction Documents are being entered into in reliance upon the Company's identity as a legal entity separate from the Transferor and its Affiliates. Therefore, from and after the date hereof, the Transferor shall take all reasonable steps necessary to make it apparent to third Persons that the Company is an entity with assets and liabilities distinct from those of the Transferor and any other Person, and is not a division of the Transferor, its Affiliates or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, the Transferor shall take such actions as shall be required in order that:

(a) the Transferor shall not be involved in the day to day management of the Company;

(b) the Transferor shall maintain separate corporate records and books of account from the Company and otherwise will observe corporate formalities and have a separate area from the Company for its business (which may be located at the same address as the Company, and, to the extent that it and the Company have offices in the

same location, there shall be a fair and appropriate allocation of overhead costs between them, and each shall bear its fair share of such expenses);

(c) the financial statements and books and records of the Transferor shall be prepared after the date of creation of the Company to reflect and shall reflect the separate existence of the Company; provided, that the Company's assets and liabilities may be included in a consolidated financial statement issued by an affiliate of the Company; provided, however, that any such consolidated financial statement or the notes thereto shall make clear that the Company's assets are not available to satisfy the obligations of such affiliate;

(d) except as permitted by the Receivables Purchase Agreement, (i) the Transferor shall maintain its assets (including, without limitation, deposit accounts) separately from the assets (including, without limitation, deposit accounts) of the Company and (ii) the Company's assets, and records relating thereto, have not been, are not, and shall not be, commingled with those of the Transferor;

(e) all of the Company's business correspondence and other communications shall be conducted in the Company's own name and on its own stationery;

(f) the Transferor shall not act as an agent for the Company (other than servicing activities pursuant to the Transaction Documents);

(g) the Transferor shall not conduct any of the business of the Company in its own name;

(h) the Transferor shall not pay any liabilities of the Company out of its own funds or assets;

(i) the Transferor shall maintain an arm's-length relationship with the Company;

(j) the Transferor shall not assume or guarantee or become obligated for the debts of the Company or hold out its credit as being available to satisfy the obligations of the Company;

(k) the Transferor shall not acquire obligations of the Company;

(l) the Transferor shall allocate fairly and reasonably overhead or other expenses that are properly shared with the Company, including, without limitation, shared office space;

(m) the Transferor shall identify and hold itself out as a separate and distinct entity from the Company;

(n) the Transferor shall correct any known misunderstanding respecting its separate identity from the Company;

(o) the Transferor shall not enter into, or be a party to, any transaction with the Company, except in the ordinary course of its business and on terms which are intrinsically fair and not less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(p) the Transferor shall not pay the salaries of the Company's employees, if any; and

(q) to the extent not already covered in paragraphs (a) through (p) above, the Transferor shall comply and/or act in accordance with all of the other separateness covenants set forth in Section 3 of Exhibit IV to the Receivables Purchase Agreement.

ARTICLE VII
ADDITIONAL RIGHTS AND OBLIGATIONS IN RESPECT OF RECEIVABLES

SECTION 7.1 Rights of the Company. The Transferor hereby authorizes the Company, the Servicer or their respective designees or assignees under the Receivables Purchase Agreement (including, without limitation, the Administrator) to take any and all steps in the Transferor's name necessary or desirable, in their respective determination, to collect all amounts due under any and all Receivables sold, contributed or otherwise conveyed or purported to be conveyed by it hereunder, including, without limitation, endorsing the name of the Transferor on checks and other instruments representing Collections and enforcing such Receivables and the provisions of the related Contracts that concern payment and/or enforcement of rights to payment.

SECTION 7.2 Responsibilities of the Transferor. Anything herein to the contrary notwithstanding:

(a) Collection Procedures. The Transferor agrees to direct its respective Obligors to make payments of Receivables sold, contributed or otherwise conveyed or purported to be conveyed by it hereunder directly to the relevant Lock-Box Account at a Lock-Box Bank. The Transferor further agrees to transfer any Collections of Receivables sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement or sold or conveyed by it hereunder that it receives directly to a Lock-Box Account within two (2) Business Days of receipt thereof, and agrees that all such Collections shall be deemed to be received in trust for the Company and the Administrator (for the benefit of the Secured Parties).

(b) The Transferor shall perform its obligations hereunder, and the exercise by the Company or its designee of its rights hereunder shall not relieve the Transferor from such obligations.

(c) None of the Company, the Servicer, the Secured Parties or the Administrator shall have any obligation or liability to any Obligor or any other third Person with respect to any Receivables, Contracts related thereto or any other related agreements, nor shall the Company, the Servicer, the Secured Parties or the Administrator be obligated to perform any of the obligations of an Originator or the Transferor thereunder.

(d) The Transferor hereby grants to the Administrator an irrevocable power of attorney, with full power of substitution, coupled with an interest, during the occurrence and continuation of a Sale and Contribution Termination Event or a Termination Event to take in the name of the Transferor all steps necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind held or transmitted by the Transferor or transmitted or received by the Company (whether or not from the Transferor) in connection with any Receivable sold, contributed or otherwise conveyed or purported to be conveyed by it hereunder or Related Rights.

SECTION 7.3 Further Action Evidencing Purchases. The Transferor agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action that the Company, the Servicer or the Administrator may reasonably request in order to perfect, protect or more fully evidence the Receivables and Related Rights purchased by or contributed to the Company hereunder, or to enable the Company to exercise or enforce any of its rights hereunder or under any other Transaction Document. Without limiting the generality of the foregoing, upon the request of the Company or the Administrator, the Transferor will (and will cause each Originator to):

(a) execute (if applicable), authorize and file such financing or continuation statements, or amendments thereto or assignments thereof, and such other instruments or notices, as may be necessary or appropriate; and

(b) on the Closing Date and from time to time, if requested thereafter, mark the master data processing records that evidence or list such Receivables and related Contracts with the legend set forth in Section 6.1(i).

The Transferor hereby authorizes the Company or its designee (including, without limitation, the Administrator) to file one or more financing or continuation statements, and amendments thereto and assignments thereof, without the signature of the Transferor, relative to all or any of the Receivables sold, contributed or otherwise conveyed or purported to be conveyed by it hereunder and Related Rights now existing or hereafter sold or purported to be sold by an Originator to the Transferor pursuant to the Purchase and Sale Agreement or generated by the Transferor. If the Transferor fails to perform any of its agreements or obligations under this Agreement, the Company or its designee (including, without limitation, the Administrator) may (but shall not be required to) itself perform, or cause the performance of, such agreement or obligation, and the expenses of the Company or its designee (including, without limitation, the Administrator) incurred in connection therewith shall be payable by the Transferor.

SECTION 7.4 Application of Collections. Any payment by an Obligor in respect of any indebtedness owed by it to any Originator or the Transferor shall, except as otherwise specified

by such Obligor or required by Applicable Law and unless otherwise instructed by the Servicer (with the prior written consent of the Administrator) or the Administrator, be applied as a Collection of any Receivable or Receivables of such Obligor to the extent of any amounts then due and payable thereunder before being applied to any other indebtedness of such Obligor.

SECTION 7.5 Performance of Obligations. The Transferor shall (i) perform all of its obligations under the Contracts related to the Receivables generated or acquired by the Transferor to the same extent as if interests in such Receivables had not been transferred hereunder, and the exercise by the Company or the Administrator of its rights hereunder shall not relieve Transferor from any such obligations and (ii) pay when due any taxes, including, without limitation, any sales taxes payable in connection with the Receivables generated or acquired by the Transferor and their creation and satisfaction.

ARTICLE VIII
SALE AND CONTRIBUTION TERMINATION EVENTS

SECTION 8.1 Sale and Contribution Termination Events. Each of the following events or occurrences described in this Section 8.1 shall constitute a "Sale and Contribution Termination Event":

(a) The Facility Termination Date (as defined in the Receivables Purchase Agreement) shall have occurred; or

(b) The Transferor shall fail to make when due any payment or deposit to be made by it under this Agreement or any other Transaction Document to which it is a party and such failure shall remain unremedied for two (2) Business Days; or

(c) Any representation or warranty made or deemed to be made by the Transferor (or any of its officers) under or in connection with this Agreement, any other Transaction Documents to which it is a party, or any other information or report delivered pursuant hereto or thereto shall prove to have been incorrect or untrue in any material respect when made or deemed made or delivered, and shall remain incorrect or untrue for ten (10) Business Days; or

(d) The Transferor shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Transaction Document to which it is a party on its part to be performed or observed and such failure shall continue for thirty (30) days after the earlier of the Transferor's knowledge or notice thereof.

SECTION 8.2 Remedies.

(a) Optional Termination. Upon the occurrence of a Sale and Contribution Termination Event, the Company shall have the option, by notice to the Transferor (with a copy to the Administrator), to declare the Purchase Facility as terminated.

(b) Remedies Cumulative. Upon any termination of the Purchase Facility pursuant to Section 8.2(a), the Company shall have, in addition to all other rights and remedies under this Agreement, all other rights and remedies provided under the UCC of each applicable jurisdiction and other Applicable Laws, which rights shall be cumulative.

ARTICLE IX
INDEMNIFICATION

SECTION 9.1 Indemnities by the Transferor. Without limiting any other rights which the Company may have hereunder or under Applicable Law, the Transferor hereby agrees to indemnify the Company and each of its officers, directors, employees and agents (each of the foregoing Persons being individually called a "Sale and Contribution Indemnified Party"), forthwith on demand, from and against any and all damages, losses, claims, judgments, liabilities and related costs and expenses, including reasonable attorneys' fees and disbursements (all of the foregoing being collectively called "Sale and Contribution Indemnified Amounts") awarded against or incurred by any of them arising out of or as a result of the failure of the Transferor to perform its obligations under this Agreement or any other Transaction Document, or arising out of the claims asserted against a Sale and Contribution Indemnified Party relating to the transactions contemplated herein or therein or the use of proceeds thereof or therefrom; excluding, however, (i) Sale and Contribution Indemnified Amounts to the extent resulting from gross negligence or willful misconduct on the part of such Sale and Contribution Indemnified Party and (ii) any indemnification which has the effect of recourse for non-payment of the Receivables due to a discharge in bankruptcy or similar insolvency proceeding or other credit related reasons with respect to the relevant Obligor. Without limiting the foregoing, and subject to the exclusions set forth in the preceding sentence, the Transferor shall indemnify each Sale and Contribution Indemnified Party for Sale and Contribution Indemnified Amounts relating to or resulting from:

(a) the transfer by the Transferor of an interest in any Receivable to any Person other than the Company;

(b) the breach of any representation or warranty made by the Transferor (or any of its officers) under or in connection with this Agreement or any other Transaction Document, or any information or report delivered by the Transferor pursuant hereto or thereto, which shall have been false or incorrect when made or deemed made;

(c) the failure by the Transferor to comply with any Applicable Law with respect to any Receivable generated by the Transferor sold, contributed or otherwise transferred or purported to be transferred hereunder or the related Contract, or the nonconformity of any Receivable generated or acquired by the Transferor sold, contributed or otherwise transferred or purported to be transferred hereunder or the related Contract with any such Applicable Law;

(d) the failure by the Transferor to vest and maintain vested in the Company an ownership interest in the Receivables generated or acquired by the

Transferor sold, contributed or otherwise transferred or purported to be transferred hereunder free and clear of any Adverse Claim;

(e) the failure to file, or any delay in filing, by the Transferor financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other Applicable Laws with respect to any Receivables or purported Receivables generated or acquired by the Transferor sold, contributed or otherwise transferred or purported to be transferred hereunder, whether at the time of any purchase or contribution or at any subsequent time to the extent required hereunder;

(f) any dispute, claim, offset or defense (other than discharge in bankruptcy or similar insolvency proceeding of an Obligor or other credit related reasons) of the Obligor to the payment of any Receivable or purported Receivable generated or acquired by the Transferor sold, contributed or otherwise transferred or purported to be transferred hereunder (including, without limitation, a defense based on such Receivable's or the related Contract's not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the services related to any such Receivable or the furnishing of or failure to furnish such services;

(g) any product liability claim arising out of or in connection with the products or services that are the subject of any Receivable generated or acquired by the Transferor;

(h) any tax or governmental fee or charge, all interest and penalties thereon or with respect thereto, and all out-of-pocket costs and expenses, including the reasonable fees and expenses of counsel in defending against the same, which are required to be paid by reason of the purchase or ownership of the Receivables generated by the Transferor or any Related Security connected with any such Receivables, including any amounts paid or payable by the Company under Sections 1.10 and 3.1 of the Receivables Purchase Agreement and any taxes imposed on the Company's income, capital, or revenue, and any liability of the Company attributable to taxes of any Person as a transferee or successor, by contract, operation of Applicable Law or otherwise;

(i) any failure of Transferor to perform any of its duties or obligations in accordance with the provisions hereof and of each other Transaction Document related to Receivables or to timely and fully comply with the Credit and Collection Policy in regard to each Receivable;

(j) the commingling (other than as a result of actions taken by the Administrator, any Purchaser Agent or any Purchaser) of Collections of Receivables at any time with other funds;

(k) any setoff with respect to any Receivable;

(l) the failure or delay to provide any Obligor with an invoice or other evidence of indebtedness;

(m) any investigation, litigation or proceeding (actual or threatened) related to this Agreement or any other Transaction Document or in respect of any Receivable or any Related Rights;

(n) any claim brought by any Person other than a Sale and Contribution Indemnified Party arising from any activity by Transferor or any Affiliate of Transferor in servicing, administering or collecting any Receivable;

(o) any failure by Transferor to comply with its covenants, obligations and agreements contained in this Agreement or any other Transaction Document; and

(p) any action taken by the Administrator as attorney-in-fact for Transferor pursuant to this Agreement or any other Transaction Document.

If for any reason the indemnification provided above in this Section 9.1 is unavailable to a Sale and Contribution Indemnified Party or is insufficient to hold such Sale and Contribution Indemnified Party harmless, then the Transferor shall contribute to the amount paid or payable by such Sale and Contribution Indemnified Party to the maximum extent permitted under Applicable Law.

ARTICLE X
MISCELLANEOUS

SECTION 10.1 Amendments, etc.

(a) The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and executed by the Company and the Transferor, with the prior written consent of the Administrator.

(b) No failure or delay on the part of the Company, the Servicer, the Transferor, the Administrator or any third party beneficiary in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Company, the Servicer or the Transferor in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Company, the Administrator or the Servicer under this Agreement shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval under this Agreement shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

(c) The Transaction Documents contain a final and complete integration of all prior expressions by the parties hereto with respect to the subject matter thereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter thereof, superseding all prior oral or written understandings.

SECTION 10.2 Notices, etc. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including facsimile or electronic

mail communication) and shall be delivered or sent by facsimile, electronic mail, or by overnight mail, to the intended party at the mailing address or electronic mail address or facsimile number of such party set forth under its name on the signature pages hereof or at such other address or facsimile number as shall be designated by such party in a written notice to the other parties hereto or in the case of the Administrator, at its address for notice pursuant to the Receivables Purchase Agreement. All such notices and communications shall be effective (i) if delivered by overnight mail, when received, and (ii) if transmitted by facsimile or electronic mail, when sent, receipt confirmed by telephone or electronic means.

SECTION 10.3 No Waiver; Cumulative Remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. Without limiting the foregoing, the Transferor hereby authorizes the Company, the Administrator and each Purchaser (each, a "Set-off Party"), at any time and from time to time, to the fullest extent permitted by law, to set off, against any obligations of the Transferor to such Set-off Party arising in connection with the Transaction Documents (including, without limitation, amounts payable pursuant to Section 9.1) that are then due and payable or that are not then due and payable but have accrued, any and all deposits (general or special, time or demand, provisional or final) at any time held by, and any and all indebtedness at any time owing by, any Set-off Party to or for the credit or the account of the Transferor; provided that such Set-off Party shall notify the Transferor promptly following such set-off; provided further, that no Set-off Party shall exercise any setoff against the Transferor pursuant to this Agreement with respect to any deposits of the Transferor held by such Set-off Party, if such exercise is in contravention of any deposit account control agreement or other similar agreement with the Transferor that is then in effect and to which such Set-off Party is a party in the capacity of the bank maintaining the Transferor's relevant account.

SECTION 10.4 Binding Effect; Assignability. This Agreement shall be binding upon and inure to the benefit of the Company and the Transferor and its successors and permitted assigns including any trustee or other representative of the bankruptcy estate of the Transferor. The Transferor may not assign any of its rights hereunder or any interest herein without the prior written consent of the Company and the Administrator. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms, and shall remain in full force and effect until such time as the parties hereto shall agree. The rights and remedies with respect to any breach of any representation and warranty made by the Transferor pursuant to Article V and the indemnification and payment provisions of Article IX and Section 10.6 shall be continuing and shall survive any termination of this Agreement.

SECTION 10.5 Governing Law. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF A SECURITY INTEREST OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

SECTION 10.6 Costs, Expenses and Taxes. In addition to the obligations of the Transferor under Article IX, the Transferor agrees to pay on demand:

(a) to the Company (and any successor and permitted assigns thereof) all reasonable costs and expenses incurred by such Person in connection with the enforcement of this Agreement and the other Transaction Documents; and

(b) all stamp and other taxes and fees payable in connection with the execution, delivery, filing and recording of this Agreement or the other Transaction Documents to be delivered hereunder, and agrees to indemnify each Sale and Contribution Indemnified Party against any liabilities with respect to or resulting from any delay in paying or omitting to pay such taxes and fees.

SECTION 10.7 SUBMISSION TO JURISDICTION. EACH PARTY HERETO HEREBY IRREVOCABLY (a) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK OR THE FEDERAL COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT; (b) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OR UNITED STATES FEDERAL COURT; (c) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING; (d) IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PERSON AT ITS ADDRESS SPECIFIED IN SECTION 10.2; AND (e) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS SECTION 10.7 SHALL AFFECT THE COMPANY'S RIGHT TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING AGAINST THE TRANSFEROR OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

SECTION 10.8 WAIVER OF JURY TRIAL. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, AND AGREES THAT (a) ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY AND (b) ANY PARTY HERETO (OR ANY ASSIGNEE OR THIRD PARTY BENEFICIARY OF THIS AGREEMENT) MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF

ANY OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

SECTION 10.9 Captions and Cross References; Incorporation by Reference. The various captions (including, without limitation, the table of contents) in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. References in this Agreement to any underscored Section or Exhibit are to such Section or Exhibit of this Agreement, as the case may be. The Exhibits hereto are hereby incorporated by reference into and made a part of this Agreement.

SECTION 10.10 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

SECTION 10.11 Acknowledgment and Agreement. By execution below, the Transferor expressly acknowledges and agrees that all of the Company's rights, title, and interests in, to, and under this Agreement (but not its obligations), shall be assigned by the Company to the Administrator (for the benefit of the Secured Parties) pursuant to the Receivables Purchase Agreement, and the Transferor irrevocably consents to such assignment. Each of the parties hereto acknowledges and agrees that the Administrator and each of the other Secured Parties are third party beneficiaries of the rights of the Company arising hereunder and under the other Transaction Documents to which the Transferor is a party, and notwithstanding anything to the contrary contained herein or in any other Transaction Document, during the occurrence and continuation of a Termination Event under the Receivables Purchase Agreement, the Administrator, and not the Company, shall have the sole right to exercise all such rights and related remedies.

SECTION 10.12 No Proceeding. The Transferor hereby agrees that it will not institute, or join any other Person in instituting, against the Company any Insolvency Proceeding for at least one year and one day following the Final Payout Date. The Transferor further agrees that notwithstanding any provisions contained in this Agreement to the contrary, the Company shall not, and shall not be obligated to, pay any amount in respect of the Company Note or otherwise to the Transferor pursuant to this Agreement

unless the Company has received funds which may, subject to Section 1.4 of the Receivables Purchase Agreement, be used to make such payment. Any amount which the Company does not pay pursuant to the operation of the preceding sentence shall not constitute a claim (as defined in §101 of the Bankruptcy Code) against or corporate obligation of the Company by the Transferor for any such insufficiency unless and until the provisions of the foregoing sentence are satisfied. The agreements in this Section 10.12 shall survive any termination of this Agreement.

SECTION 10.13 Limited Recourse. Except as explicitly set forth herein, the obligations of the Company under this Agreement or any other Transaction Documents to which it is a party are solely the obligations of the Company. No recourse under any Transaction Document shall be had against, and no liability shall attach to, any officer, employee, director, or beneficiary,

whether directly or indirectly, of the Company. The agreements in this Section 10.13 shall survive any termination of this Agreement.

SECTION 10.14 Severability. Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.15 Amendment and Restatement. This Agreement amends and restates in its entirety, as of the date hereof, the Amended and Restated Sale and Contribution Agreement, dated as of January 13, 2016, among the parties hereto (as amended, the "Original SCA"). Upon the effectiveness of this Agreement in accordance with its terms, the terms and provisions of the Original SCA shall, subject to this paragraph, be superseded hereby in their entirety. Notwithstanding the foregoing and for the avoidance of doubt, (a) all indemnification obligations of the Transferor under the Original SCA shall survive this Agreement, (b) all sales and contributions of Receivables and Related Rights under the Original SCA by the Transferor to the Company are hereby ratified and confirmed and shall survive this Agreement and (c) the security interests granted by the Transferor pursuant to the Original SCA shall remain in full force and effect and shall survive this Agreement as security for all obligations of the Transferor under the Original SCA until such obligations have been finally and fully paid and performed. Upon the effectiveness of this Agreement, each reference to the Original SCA in any other document, instrument or agreement shall mean and be a reference to this Agreement. Nothing contained herein, unless expressly herein stated to the contrary, is intended to amend, modify or otherwise affect any other instrument, document or agreement executed and or delivered in connection with the Original SCA.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

ARCH COAL, INC.

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Senior Vice President — Law, General Counsel and Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Telephone: 314-994-2716
Facsimile: 314-994-2736
Email: bjones@archcoal.com

ARCH RECEIVABLE COMPANY, LLC

By: /s/ Robert G. Jones
Name: Robert G. Jones
Title: Senior Vice President — Law, General Counsel and Secretary

Address: One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Attention: Robert G. Jones
Telephone: 314-994-2716
Facsimile: 314-994-2736
Email: bjones@archcoal.com

Schedule I

LOCATION OF THE TRANSFEROR

Delaware

Schedule II

LOCATION OF BOOKS AND RECORDS OF THE TRANSFEROR

Arch Coal, Inc.
One CityPlace Drive, Suite 300
St. Louis, Missouri 63141

Exhibit A

FORM OF PURCHASE REPORT

Transferor: Arch Coal, Inc.

Purchaser: Arch Receivable Company, LLC

Payment Date:

1. Outstanding Balance of Receivables Purchased:

2. Fair Market Value Discount:

$$1/\left(1 + \left[\text{Prime Rate} \times \frac{\text{Days' Sales Outstanding}}{365}\right]\right)$$

Where:

Prime Rate =

Days' Sales Outstanding =

3. Purchase Price (1 x 2) = $

Exhibit B

COMPANY NOTE

New York, New York
[_____], 2016

FOR VALUE RECEIVED, the undersigned, ARCH RECEIVABLE COMPANY, LLC, a Delaware limited liability company (the "Company"), promises to pay to ARCH COAL, INC., a Delaware corporation (the "Transferor"), on the terms and subject to the conditions set forth herein and in the Sale and Contribution Agreement referred to below, the aggregate unpaid Purchase Price of all Receivables purchased by the Company from the Transferor pursuant to such Sale and Contribution Agreement, as such unpaid Purchase Price is shown in the records of Servicer.

1. Sale and Contribution Agreement. This Company Note is the Company Note described in, and is subject to the terms and conditions set forth in, that certain Second Amended and Restated Sale and Contribution Agreement dated as of October 5, 2016 (as the same may be amended, supplemented, amended and restated or otherwise modified in accordance with its terms, the "Sale and Contribution Agreement"), between the Company and the Transferor. Reference is hereby made to the Sale and Contribution Agreement for a statement of certain other rights and obligations of the Company and the Transferor.

2. Definitions. Capitalized terms used (but not defined) herein have the meanings assigned thereto in the Sale and Contribution Agreement and in Exhibit I to the Receivables Purchase Agreement (as defined in the Sale and Contribution Agreement). In addition, as used herein, the following terms have the following meanings:

"Bankruptcy Proceedings" has the meaning set forth in clause (b) of paragraph 9 hereof.

"Final Maturity Date" means the Payment Date immediately following the date that falls one year and one day after the Facility Termination Date.

"Interest Period" means the period from and including a Payment Date (or, in the case of the first Interest Period, the date hereof) to but excluding the next Payment Date.

"Senior Interests" means, collectively, (i) all accrued Discount on the Purchased Interest, (ii) the fees referred to in Section 1.5 of the Receivables Purchase Agreement, (iii) all amounts payable pursuant to Sections 1.7, 1.8, 1.19 or 5.4 of the Receivables Purchase Agreement, (iv) the Capital and (v) all other obligations of the Company and the Servicer that are due and payable, to (a) the Secured Parties, the Administrator and their respective successors, permitted transferees and assigns arising in connection with the Transaction Documents and

(b) any Indemnified Party or Affected Person arising in connection with the Receivables Purchase Agreement, in each case, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, together with any and all interest and Discount accruing on any such amount after the commencement of any Bankruptcy Proceedings, notwithstanding any provision or rule of law that might restrict the rights of any Senior Interest Holder, as against the Company or anyone else, to collect such interest.

"Senior Interest Holders" means, collectively, the Secured Parties, the Administrator and the Indemnified Parties and Affected Persons.

"Subordination Provisions" means, collectively, clauses (a) through (l) of paragraph 9 hereof.

"Telerate Screen Rate" means, for any Interest Period, the rate for thirty day commercial paper denominated in Dollars which appears on Page 1250 of the Dow Jones Telerate Service (or such other page as may replace that page on that service for the purpose of displaying Dollar commercial paper rates) at approximately 9:00 a.m., New York City time, on the first day of such Interest Period.

3. Interest. Subject to the Subordination Provisions set forth below, the Company promises to pay interest on this Company Note as follows:

(a) Prior to the Final Maturity Date, the aggregate unpaid Purchase Price from time to time outstanding during any Interest Period shall bear interest at a rate per annum equal to the Telerate Screen Rate for such Interest Period, as determined by the Servicer; and

(b) From (and including) the Final Maturity Date to (but excluding) the date on which the entire aggregate unpaid Purchase Price is fully paid, the aggregate unpaid Purchase Price from time to time outstanding shall bear interest at a rate per annum equal to the rate of interest publicly announced from time to time by PNC Bank, National Association, as its "base rate", "reference rate" or other comparable rate, as determined by the Servicer.

4. Interest Payment Dates. Subject to the Subordination Provisions set forth below, the Company shall pay accrued interest on this Company Note on each Payment Date, and shall pay accrued interest on the amount of each principal payment made in cash on a date other than a Payment Date at the time of such principal payment.

5. Basis of Computation. Interest accrued hereunder that is computed by reference to the Telerate Screen Rate shall be computed for the actual number of days elapsed on the basis of a 360-day year, and interest accrued hereunder that is computed by reference to the rate described in paragraph 3(b) of this Company Note shall be computed for the actual number of days elapsed on the basis of a 365- or 366-day year.

6. Principal Payment Dates. Subject to the Subordination Provisions set forth below, payments of the principal amount of this Company Note shall be made as follows:

(a) The principal amount of this Company Note shall be reduced by an amount equal to each payment deemed made pursuant to Section 3.3 of the Sale and Contribution Agreement; and

(b) The entire remaining unpaid Purchase Price of all Receivables purchased by the Company from the Transferor pursuant to the Sale and Contribution Agreement shall be paid on the Final Maturity Date.

Subject to the Subordination Provisions set forth below, the principal amount of and accrued interest on this Company Note may be prepaid by, and in the sole discretion of the Company, on any Business Day without premium or penalty.

7. Payment Mechanics. All payments of principal and interest hereunder are to be made in lawful money of the United States of America in the manner specified in Article III of the Sale and Contribution Agreement.

8. Enforcement Expenses. In addition to and not in limitation of the foregoing, but subject to the Subordination Provisions set forth below and to any limitation imposed by Applicable Law, the Company agrees to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by the Transferor in seeking to collect any amounts payable hereunder which are not paid when due.

9. Subordination Provisions. The Company covenants and agrees, and the Transferor and any other holder of this Company Note (collectively, the Transferor and any such other holder are called the "Holder"), by its acceptance of this Company Note, likewise covenants and agrees on behalf of itself and any holder of this Company Note, that the payment of the principal amount of and interest on this Company Note is hereby expressly subordinated in right of payment to the payment and performance of the Senior Interests to the extent and in the manner set forth in the following clauses of this paragraph 9:

(a) No payment or other distribution of the Company's assets of any kind or character, whether in cash, securities, or other rights or property, shall be made on account of this Company Note except to the extent such payment or other distribution is (i) permitted under Section 1(n) of Exhibit IV to the Receivables Purchase Agreement or (ii) made pursuant to clause (a) or (b) of paragraph 6 of this Company Note;

(b) In the event of any dissolution, winding up, liquidation, readjustment, reorganization or other similar event relating to the Company, whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership proceedings, or upon an assignment for the benefit of creditors, or any other marshalling of the assets and liabilities of the Company or any sale of all or substantially all of the assets of the Company other than as permitted by the Sale and Contribution Agreement (such proceedings being herein collectively called "Bankruptcy Proceedings"), the Senior Interests shall first be paid and performed in full and in cash before the Transferor shall

be entitled to receive and to retain any payment or distribution in respect of this Company Note. In order to implement the foregoing: (i) all payments and distributions of any kind or character in respect of this Company Note to which Holder would be entitled except for this clause (b) shall be made directly to the Administrator (for the benefit of the Senior Interest Holders); (ii) Holder shall promptly file a claim or claims, in the form required in any Bankruptcy Proceedings, for the full outstanding amount of this Company Note, and shall use commercially reasonable efforts to cause said claim or claims to be approved and all payments and other distributions in respect thereof to be made directly to the Administrator (for the benefit of the Senior Interest Holders) until the Senior Interests shall have been paid and performed in full and in cash; and (iii) Holder hereby irrevocably agrees that Administrator (acting on behalf of the Secured Parties), in the name of Holder or otherwise, demand, sue for, collect, receive and receipt for any and all such payments or distributions, and file, prove and vote or consent in any such Bankruptcy Proceedings with respect to any and all claims of Holder relating to this Company Note, in each case until the Senior Interests shall have been paid and performed in full and in cash;

(c) In the event that Holder receives any payment or other distribution of any kind or character from the Company or from any other source whatsoever, in respect of this Company Note, other than as expressly permitted by the terms of this Company Note, such payment or other distribution shall be received in trust for the Senior Interest Holders and shall be turned over by Holder to the Administrator (for the benefit of the Senior Interest Holders) forthwith. Holder will mark its books and records so as clearly to indicate that this Company Note is subordinated in accordance with the terms hereof. All payments and distributions received by the Administrator in respect of this Company Note, to the extent received in or converted into cash, may be applied by the Administrator (for the benefit of the Senior Interest Holders) first to the payment of any and all expenses (including reasonable attorneys' fees and legal expenses) paid or incurred by the Senior Interest Holders in enforcing these Subordination Provisions, or in endeavoring to collect or realize upon this Company Note, and any balance thereof shall, solely as between the Transferor and the Senior Interest Holders, be applied by the Administrator (in the order of application set forth in Section 1.4(d) of the Receivables Purchase Agreement) toward the payment of the Senior Interests; but as between the Company and its creditors, no such payments or distributions of any kind or character shall be deemed to be payments or distributions in respect of the Senior Interests;

(d) Notwithstanding any payments or distributions received by the Senior Interest Holders in respect of this Company Note, while any Bankruptcy Proceedings are pending Holder shall not be subrogated to the then existing rights of the Senior Interest Holders in respect of the Senior Interests until the Senior Interests have been paid and performed in full and in cash. If no Bankruptcy Proceedings are pending, Holder shall only be entitled to exercise any subrogation rights

that it may acquire (by reason of a payment or distribution to the Senior Interest Holders in respect of this Company Note) to the extent that any payment arising out of the exercise of such rights would be permitted under Section 1(n) of Exhibit IV to the Receivables Purchase Agreement;

(e) These Subordination Provisions are intended solely for the purpose of defining the relative rights of Holder, on the one hand, and the Senior Interest Holders on the other hand. Nothing contained in these Subordination Provisions or elsewhere in this Company Note is intended to or shall impair, as between the Company, its creditors (other than the Senior Interest Holders) and Holder, the Company's obligation, which is unconditional and absolute, to pay Holder the principal of and interest on this Company Note as and when the same shall become due and payable in accordance with the terms hereof or to affect the relative rights of Holder and creditors of the Company (other than the Senior Interest Holders);

(f) Holder shall not, until the Senior Interests have been paid and performed in full and in cash, (i) cancel, waive, forgive, or commence legal proceedings to enforce or collect, or subordinate to any obligation of the Company, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due, other than the Senior Interests, this Company Note or any rights in respect hereof or (ii) convert this Company Note into an equity interest in the Company, unless Holder shall, in either case, have received the prior written consent of the Administrator;

(g) Holder shall not, without the advance written consent of the Administrator and Secured Parties, commence, or join with any other Person in commencing, any Bankruptcy Proceedings with respect to the Company until at least one year and one day shall have passed since the Senior Interests shall have been paid and performed in full and in cash;

(h) If, at any time, any payment (in whole or in part) of any Senior Interest is rescinded or must be restored or returned by a Senior Interest Holder (whether in connection with Bankruptcy Proceedings or otherwise), these Subordination Provisions shall continue to be effective or shall be reinstated, as the case may be, as though such payment had not been made;

(i) Each of the Senior Interest Holders may, from time to time, at its sole discretion, without notice to Holder, and without waiving any of its rights under these Subordination Provisions, take any or all of the following actions: (i) retain or obtain an interest in any property to secure any of the Senior Interests; (ii) retain or obtain the primary or secondary obligations of any other obligor or obligors with respect to any of the Senior Interests; (iii) extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the Senior Interests, or release or compromise any obligation of any nature with respect to any of the Senior Interests; (iv) amend, supplement, amend and restate, or otherwise modify any Transaction Document; and (v) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of any rights or property securing any of the Senior Interests, or extend or renew for one or more periods (whether or not longer than the original period), or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such rights or property;

(j) Holder hereby waives: (i) notice of acceptance of these Subordination Provisions by any of the Senior Interest Holders; (ii) notice of the existence, creation, non-payment or non-performance of all or any of the Senior Interests; and (iii) all diligence in enforcement, collection or protection of, or realization upon, the Senior Interests, or any thereof, or any security therefor;

(k) Each of the Senior Interest Holders may, from time to time, on the terms and subject to the conditions set forth in the Transaction Documents to which such Persons are party, but without notice to Holder, assign or transfer any or all of the Senior Interests, or any interest therein; and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Interests shall be and remain Senior Interests for the purposes of these Subordination Provisions, and every immediate and successive assignee or transferee of any of the Senior Interests or of any interest of such assignee or transferee in the Senior Interests shall be entitled to the benefits of these Subordination Provisions to the same extent as if such assignee or transferee were the assignor or transferor; and

(l) These Subordination Provisions constitute a continuing offer from the holder of this Company Note to all Persons who become the holders of, or who continue to hold, Senior Interests; and these Subordination Provisions are made for the benefit of the Senior Interest Holders, and the Administrator may proceed to enforce such provisions on behalf of each of such Persons.

10. General. No failure or delay on the part of the Transferor in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No amendment, modification or waiver of, or consent with respect to, any provision of this Company Note shall in any event be effective unless (i) the same shall be in writing and signed and delivered by the Company and Holder and (ii) all consents required for such actions under the Transaction Documents shall have been received by the appropriate Persons.

11. Maximum Interest. Notwithstanding anything in this Company Note to the contrary, the Company shall never be required to pay unearned interest on any amount outstanding hereunder and shall never be required to pay interest on the principal amount outstanding hereunder at a rate in excess of the maximum nonusurious interest rate that may be contracted for, charged or received under applicable federal or state law (such maximum rate being herein called the "Highest Lawful Rate"). If the effective rate of interest which would otherwise be payable under this Company Note would exceed the Highest Lawful Rate, or if the holder of this Company Note shall receive any unearned interest or shall receive monies that are deemed to constitute interest which would increase the effective rate of interest payable by the Company under this Company Note to a rate in excess of the Highest Lawful Rate, then (i) the amount of interest which would otherwise be payable by the Company under this Company Note shall be reduced to the amount allowed by Applicable Law, and (ii) any unearned interest paid by the Company or any interest paid by the Company in excess of the Highest Lawful Rate shall be refunded to the Company. Without limitation of the foregoing, all calculations of the rate of

interest contracted for, charged or received by the Transferor under this Company Note that are made for the purpose of determining whether such rate exceeds the Highest Lawful Rate applicable to the Transferor (such Highest Lawful Rate being herein called the "Transferor's Maximum Permissible Rate") shall be made, to the extent permitted by usury laws applicable to the Transferor (now or hereafter enacted), by amortizing, prorating and spreading in equal parts during the actual period during which any amount has been outstanding hereunder all interest at any time contracted for, charged or received by the Transferor in connection herewith. If at any time and from time to time (i) the amount of interest payable to the Transferor on any date shall be computed at the Transferor's Maximum Permissible Rate pursuant to the provisions of the foregoing sentence and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to the Transferor would be less than the amount of interest payable to the Transferor computed at the Transferor's Maximum Permissible Rate, then the amount of interest payable to the Transferor in respect of such subsequent interest computation period shall continue to be computed at the Transferor's Maximum Permissible Rate until the total amount of interest payable to the Transferor shall equal the total amount of interest which would have been payable to the Transferor if the total amount of interest had been computed without giving effect to the provisions of the foregoing sentence.

12. Governing Law. THIS COMPANY NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF

THE STATE OF NEW YORK).

13. Captions. Paragraph captions used in this Company Note are for convenience only and shall not affect the meaning or interpretation of any provision of this Company Note.

IN WITNESS WHEREOF, the Company has caused this Company Note to be executed as of the date first written above.

ARCH RECEIVABLE COMPANY, LLC

By: _____
Name: _____
Title:

WARRANT AGREEMENT

Dated as of

October 5, 2016

between

ARCH COAL, INC.

and

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC,

as Warrant Agent

For 1,914,856 Series A Warrants

Table of Contents

This WARRANT AGREEMENT is dated as of October 5, 2016 (this "Agreement"), among Arch Coal, Inc., a Delaware corporation (the "Company"), and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company, as Warrant Agent (the "Warrant Agent"). All terms used but not defined in this Agreement shall have the respective meanings assigned to them in the form of Warrant Certificate attached to this Agreement as Exhibit A.

Pursuant to the Debtors' Fourth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, as confirmed by the United States Bankruptcy Court for the Eastern District of Missouri on September 13, 2016, the Company hereby issues warrants (the "Warrants") to purchase initially 1,914,856 shares of Class A Common Stock, $0.01 par value per share, of the Company (the "Common Stock"), subject to Section 13(G) of each Warrant Certificate.

The Warrants will be substantially in the form attached hereto as Exhibit A.

Each Warrant entitles the registered holder thereof (the "Holder") to receive, upon exercise thereof, a number of shares of Common Stock determined by the provisions of the relevant Warrant Certificate. Each Warrant Certificate (including any Global Warrant) shall evidence such number of Warrants as is set forth therein, subject to adjustment pursuant to the provisions of the Warrant Certificate.

The Warrants and the shares of Common Stock issuable upon exercise of the Warrants will be freely transferable by Holders that are not Affiliates of the Company, subject to any applicable restrictions in the relevant Warrant Certificate. The Company desires the Warrant Agent to act on behalf of the Company in connection with the registration, transfer, exchange, exercise and cancellation of the Warrants as provided in this Agreement and the Warrant Certificates, and the Warrant Agent is willing to so act.

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of Warrants:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions.

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with, such other Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") when used with respect to any Person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such Person, whether through the ownership of voting securities by contract or otherwise.

"Agent Members" means the securities brokers and dealers, banks and trust companies, clearing organizations and other similar organizations that are participants in the Depositary's system.

"Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York are authorized or required by law or other governmental actions to close.

"Custodian" means American Stock Transfer & Trust Company, LLC, as custodian for the Depositary, or any successor thereto.

"Definitive Warrant" means a Warrant Certificate in definitive form that is not deposited with the Depositary or with the Custodian.

"Depositary" means The Depository Trust Company, its nominees and their respective successors.

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Exercise Period" has the meaning set forth in the form of Warrant Certificate attached as Exhibit A hereto.

"Exercise Price" has the meaning set forth in the form of Warrant Certificate attached as Exhibit A hereto.

"Officer" means the Chairman of the Board, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, General Counsel, Treasurer and Secretary of the Company, any Assistant Treasurer or any Assistant Secretary of the Company, and any Executive or Senior Vice President or any Vice President (whether

or not designated by a number or numbers or word or words added before or after the title "Vice President") of the Company.

"Officer's Certificate" means a certificate signed by any Officer.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Warrant Agent, in its sole discretion. Such counsel may be an employee of or counsel to the Company or the Warrant Agent.

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

"Shares" has the meaning set forth in the form of Warrant Certificate attached as Exhibit A hereto.

"Warrant Certificate" means any registered certificate (including a Global Warrant) issued by the Company and authenticated by the Warrant Agent under this Agreement evidencing Warrants, in the form attached as Exhibit A hereto.

"Warrant Share Number" has the meaning set forth in the form of Warrant Certificate attached as Exhibit A hereto.

Section 1.02. Other Definitions.

Term	Defined in Section
"Agreement"	Recitals
"Company"	Recitals
"Common Stock"	Recitals
"Customer Identification Program"	6.10
"Global Warrant"	2.01(a)
"Holder" or "Holders"	Recitals
"Loss" or "Losses"	5.05(b)
"Registry"	2.03
"Warrant"	Recitals
"Warrant Agent"	Recitals

Section 1.03. Rules of Construction.

Unless the text otherwise requires:

(a) a defined term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with United States generally accepted accounting principles as in effect on the date hereof;

(c) "or" is not exclusive;

(d) "including" means including, without limitation; and

(e) words in the singular include the plural and words in the plural include the singular.

ARTICLE II

WARRANTS

Section 2.01. Form.

(a) Global Warrants. Except as provided in Section 2.04 or 2.05, Warrants, including Warrants issued upon any transfer or exchange thereof, shall be issued in the form of one or more permanent global Warrants in fully registered form with the global securities legend set forth in the form of Warrant Certificate attached as Exhibit A hereto (each, a "Global Warrant"), which shall be deposited on behalf of the Company with the Depositary (or, at the direction of the Depositary, with the Custodian or such other custodian as the Depositary may direct), and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Company and countersigned by the Warrant Agent as hereinafter provided.

(b) Book-Entry Provisions. This Section 2.01(b) shall apply only to a Global Warrant deposited with, at the direction of or on behalf of the Depositary.

(i) The Company shall execute and the Warrant Agent shall, in accordance with Section 2.02, countersign, either by manual or facsimile signature, and deliver one or more Global Warrants that (A) shall be registered in the name of the Depositary or the nominee of the Depositary and (B) shall be delivered by the Warrant Agent to the Depositary or pursuant to the Depositary's instructions or held by the Custodian. Each Global Warrant shall be dated the date of its countersignature by the Warrant Agent.

(ii) Agent Members shall have no rights under this Agreement with respect to any Global Warrant held on their behalf by the Depositary or by the Warrant Agent as the custodian of the Depositary or under such Global Warrant except to the extent set forth herein or in a Warrant Certificate, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (A) prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depositary or (B) impair, as between the Depositary and the Agent Members, the operation of customary practices of the Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Warrant. The rights of beneficial owners in a Global Warrant shall be exercised through the Depositary subject to the applicable procedures of the Depositary except to the extent set forth herein or in a Warrant Certificate.

(c) Definitive Securities. Except as provided in Section 2.04 or 2.05, owners of beneficial interests in Global Warrants will not be entitled to receive physical delivery of Definitive Warrants.

(d) Warrant Certificates. Warrant Certificates shall be in substantially the form attached as Exhibit A hereto and shall be typed, printed, lithographed or engraved or produced

by any combination of such methods or produced in any other manner permitted by the rules of any securities exchange on which the Warrants may be listed, all as determined by the Officer or Officers executing such Warrant Certificates, as evidenced by their execution thereof. Any Warrant Certificate shall have such insertions as are required by this Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, (i) as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement (and which letters, numbers, marks of identification, legends or endorsements do not affect the rights, duties, immunities or obligations of the Warrant Agent), (ii) as may be required to comply with this Agreement, any applicable law or any rule of any securities exchange on which the Warrants may be listed, or (iii) as may be necessary to conform to customary usage.

Section 2.02. Execution and Countersignature.

(a) Execution by the Company. At least one Officer shall sign the Warrant Certificates for the Company by manual or facsimile signature. If an Officer whose signature is on a Warrant Certificate no longer holds that office at the time the Warrant Agent countersigns the Warrant Certificate, the Warrants evidenced by such Warrant Certificate shall be valid nevertheless.

(b) Countersignature by the Warrant Agent. The Warrant Agent shall initially countersign, either by manual or facsimile signature, and deliver Warrant Certificates evidencing, in the aggregate, 1,914,856 Warrants. Each Warrant Certificate shall be dated the date of its countersignature by the Warrant Agent.

(c) Subsequent Issue of Warrant Certificates. At any time and from time to time after the execution of this Agreement, the Warrant Agent shall upon receipt of a written order of the Company signed by an Officer countersign, by either manual or facsimile signature, and issue a Warrant Certificate evidencing the number of Warrants specified in such order; *provided* that the Warrant Agent shall be entitled to receive, in connection with such countersignature of Warrants described in this Section 2.02(c), an Officer's Certificate and an Opinion of Counsel of the Company to the effect that issuance and execution of such Warrants is authorized or permitted by this Agreement and the organizational documents of the Company. Such written order of the Company shall specify the number of Warrants to be evidenced on the Warrant Certificate to be countersigned, the date on which such Warrant Certificate is to be countersigned and the number of Warrants then authorized. Each Warrant Certificate shall be dated the date of its countersignature by the Warrant Agent.

(d) Validity of Warrant Certificates. The Warrants evidenced by a Warrant Certificate shall not be valid until an authorized signatory of the Warrant Agent countersigns the Warrant Certificate either manually or by facsimile signature. Such signature shall be solely for the purpose of authenticating the Warrant Certificate and shall be conclusive evidence that the Warrant Certificate so countersigned has been duly authenticated and issued under this Agreement. Countersigned Warrant Certificates may be delivered, notwithstanding the fact that the persons or any one of them who countersigned the Warrants shall have ceased to be proper

signatories prior to the delivery of such Warrants or were not proper signatories on the date of this Agreement.

Section 2.03. Registry.

The Warrants shall be issued in registered form only. The Warrant Agent shall keep a registry (the "Registry") of the Warrant Certificates and of their transfer and exchange. The Registry shall show the names and addresses of the respective Holders and the date and number of Warrants evidenced on the face of each of the Warrant Certificates, and record all exchanges, exercise, cancellation and transfers of the Warrants. The Holder of any Global Warrant will be the Depositary or a nominee of the Depositary in whose name such Global Warrant is registered. The Warrant holdings of Agent Members will be recorded on the books of the Depositary. The beneficial interests in any Global Warrant held by customers of Agent Members will be reflected on the books and records of such Agent Members and will not be known to the Warrant Agent, to the Company or to the Depositary. Any Warrant Certificate may be surrendered for transfer, cancellation, exchange or exercise, in accordance with its terms, at the office of the Warrant Agent designated for such purpose. The Company and the Warrant Agent may deem and treat any Person in whose name a Warrant Certificate is registered in the Registry as the absolute owner of such Warrant Certificate for all purposes whatsoever and neither the Company nor the Warrant Agent shall be affected by notice to the contrary.

Section 2.04. Transfer and Exchange.

(a) Transfer and Exchange of Global Warrants.

(i) The transfer and exchange of Global Warrants or beneficial interests therein shall be effected through the book-entry system maintained by the Depositary, in accordance with this Agreement and the Warrant Certificates and the procedures of the Depositary therefor.

(ii) Notwithstanding any other provisions of this Agreement (other than the provisions set forth in Section 2.05), a Global Warrant may only be transferred as a whole, and not in part, and only by (A) the Depositary, to a nominee of the Depositary, (B) a nominee of the Depositary, to the Depositary or another nominee of the Depositary, or (C) the Depositary or any such nominee to a successor Depositary or its nominee.

(iii) In the event that a Global Warrant is exchanged and transferred for Definitive Warrants pursuant to Section 2.05, such Warrants may be exchanged only in accordance with Section 9 of the Warrant Certificate and such procedures as are substantially consistent with the provisions of this Section 2.04 and the requirements of any Warrant Certificate and such other procedures as may from time to time be adopted by the Company that are not inconsistent with the terms of this Agreement or of any Warrant Certificate.

(b) Cancellation or Adjustment of Global Warrant. At such time as all beneficial interests in a Global Warrant have been exchanged for Definitive Warrants, repurchased,

exercised or canceled, such Global Warrant shall be returned by the Depositary for cancellation or retained and canceled by the Warrant Agent. At any time prior to such cancellation, if any beneficial interest in a Global Warrant is exchanged (including, without limitation, for Definitive Warrants and/or New Warrants), repurchased, exercised or canceled, the number of Warrants represented by such Global Warrant shall be reduced and the Warrant Agent shall make an adjustment on its books and records to reflect such

reduction; *provided* that, in the case of an adjustment on account of an exercise of Warrants, the Warrant Agent shall have no duty or obligation to make such adjustment until it has received notice from the Holder of the amount thereof.

(c) Obligations with Respect to Transfers and Exchanges of Warrants.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Warrant Agent shall countersign, either by manual or facsimile signature, Global Warrants and Definitive Warrants as required pursuant to the provisions of Section 2.02 and this Section 2.04. A transferor of a Global Warrant or a Definitive Warrant shall deliver to the Warrant Agent a written instruction of transfer in the form attached to the relevant Warrant Certificate as Annex C, duly executed by the Holder thereof or by its attorney, duly authorized in writing. Additionally, prior to registration of any transfer or exchange of a Warrant, the requirements for the Warrant issued upon such transfer or exchange to be issued in a name other than the registered Holder shall be met. Such requirements include, *inter alia*, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association (at a guarantee level reasonably acceptable to the Company's transfer agent), and any other reasonable evidence of authority that may be required by the Warrant Agent. Upon satisfaction of the conditions in this clause (i), the Warrant Agent shall, in accordance with such instructions, register the transfer or exchange of the relevant Global Warrant or Definitive Warrant.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Company may require payment from a Holder of a sum sufficient to cover any transfer tax, assessments or similar governmental charge payable in connection therewith as set forth in the Warrant Certificate. The Warrant Agent shall have no duty or obligation pursuant to any Section of this Agreement requiring the payment of taxes, assessments, and/or governmental charges unless and until the Warrant Agent is satisfied that all such taxes, assessments, and/or governmental charges have been paid.

(iii) All Warrants issued upon any transfer or exchange pursuant to the terms of this Agreement shall be the valid obligations of the Company, entitled to the same benefits under this Agreement as the Warrants surrendered upon such transfer or exchange.

(d) No Obligation of the Warrant Agent.

(i) The Warrant Agent shall have no responsibility or obligation to any beneficial owner of a Global Warrant, any Agent Member or other Person with

respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Warrants or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than the Depositary) of any notice or the payment of any amount, under or with respect to such Warrants. All notices and communications to be given to the Holders and all payments to be made to Holders under the Warrants shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Warrant). Except as set forth in the Warrant Certificate, the rights of beneficial owners in any Global Warrant shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Warrant Agent may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(ii) The Warrant Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Agreement or under applicable law with respect to any transfer of any interest in any Warrant (including any transfer between or among the Agent Members or beneficial owners in any Global Warrant) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Agreement and the Warrant Certificate, and to examine the same to determine substantial compliance as to form with the express requirements hereof and thereof.

Section 2.05. Definitive Warrants.

(a) Issuance of Definitive Warrants. Beneficial interests in a Global Warrant deposited with the Depositary or with the Custodian pursuant to Section 2.01 shall be transferred to each beneficial owner thereof in the form of Definitive Warrants evidencing a number of Warrants equivalent to such owner's beneficial interest in such Global Warrant, in exchange for such Global Warrant, only if such transfer complies with Section 2.04 and (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Warrant or if at any time the Depositary ceases to be a "clearing agency" registered under the Exchange Act and, in each such case, a successor Depositary is not appointed by the Company within 90 days of such notice, (ii) the Company, in its sole discretion, notifies the Warrant Agent in writing that it elects to cause the issuance of Definitive Warrants under this Agreement in accordance with the applicable rules and procedures of the Depositary, or (iii) the Company shall be adjudged a bankrupt or insolvent or make an assignment for the benefit of its creditors or institute proceedings to be adjudicated a bankrupt or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under federal bankruptcy laws or any other similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or custodian of all or any substantial part of its property, or shall admit in writing its inability to pay or meet its debts as they mature, or if a receiver or custodian of it or all or any substantial part of its property shall be appointed, or if a public officer shall have taken charge or control of the Company or of its property or affairs, for the purpose of rehabilitation, conservation or liquidation.

(b) Surrender of Global Warrants and Exchange for Definitive Warrants. Any Global Warrant that is to be exchanged, in whole or in part, for Definitive Warrants pursuant to this Section 2.05 shall be surrendered by the Depositary to the Warrant Agent, to be so exchanged, in whole or from time to time in part, without charge, and the Warrant Agent shall countersign, either by manual or facsimile signature, and deliver to each beneficial owner of such Global Warrant (or, in the case of clause (ii) in Section 2.05(a), to each beneficial owner requesting such an exchange) in the name of such beneficial owner, Definitive Warrants evidencing a number of Warrants equivalent to such beneficial owner's beneficial interest in the Global Warrant. The Warrant Agent shall register such exchange in the Registry, and if the entire Global Warrant has been exchanged for Definitive Warrants the surrendered Global Warrant shall be canceled by the Warrant Agent.

(c) Validity of Definitive Warrants. All Definitive Warrants issued upon transfer pursuant to this Section 2.05 shall be the valid obligations of the Company, evidencing the same obligations of the Company and entitled to the same benefits under this Agreement as the Global Warrant surrendered upon such transfer.

(d) Definitive Warrant Certificates. In the event of the occurrence of any of the events specified in Section 2.05(a), the Company will promptly make available to the Warrant Agent a reasonable supply of Definitive Warrants in definitive, fully registered form.

(e) No Liability. Neither the Company nor the Warrant Agent will be liable or responsible for any registration or transfer of any Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary.

Section 2.06. Replacement Certificates.

If a mutilated Warrant Certificate is surrendered to the Warrant Agent or if the Holder of a Warrant Certificate provides evidence reasonably satisfactory to the Company and the Warrant Agent that the Warrant Certificate has been lost, destroyed or wrongfully taken, the Company shall issue and the Warrant Agent shall countersign, by either manual or facsimile signature, a replacement Warrant Certificate of like tenor and representing an equivalent number of Warrants, if the reasonable requirements of the

Warrant Agent and Section 8-405 of the Uniform Commercial Code as in effect in the State of New York are met. In the case of the Warrant Certificate that is lost, destroyed or wrongfully taken, if required by the Warrant Agent or the Company, such Holder shall furnish an indemnity sufficient in the judgment of the Company and the Warrant Agent to protect the Company and the Warrant Agent from any loss that either of them may suffer if a Warrant Certificate is replaced. The Company and the Warrant Agent may charge the Holder for their reasonable, out-of-pocket expenses in replacing a Warrant Certificate prior to issuing and delivering a replacement Warrant Certificate to such Holder. Every replacement Warrant Certificate evidences an additional obligation of the Company.

Section 2.07. Outstanding Warrants.

Subject to Section 6.02, the Warrants outstanding at any time are all Warrants evidenced on all Warrant Certificates authenticated by the Warrant Agent except for those

canceled by it and those delivered to it for cancellation. The Company shall not sell, and shall use commercially reasonable efforts to prevent any Affiliate of the Company from selling, any Warrant if the Warrant would constitute a "restricted security" (within the meaning of Rule 144 under the Securities Act) upon such resale.

If a Warrant Certificate is replaced pursuant to Section 2.06, the Warrants evidenced thereby cease to be outstanding unless the Warrant Agent and the Company receive proof satisfactory to them that the replaced Warrant Certificate is held by a bona fide purchaser.

Section 2.08. Cancellation.

In the event the Company shall purchase or otherwise acquire Definitive Warrants, the same shall thereupon be delivered to the Warrant Agent for cancellation.

The Warrant Agent and no one else shall cancel and destroy all Warrant Certificates surrendered for transfer, exchange, replacement, exercise or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Warrant Agent to deliver any canceled Warrant Certificates to the Company. The Company may not issue new Warrant Certificates to replace Warrant Certificates to the extent they evidence Warrants that have been exercised or Warrants that the Company has purchased or otherwise acquired.

Section 2.09. CUSIP Numbers.

In issuing the Warrants, the Company may use CUSIP numbers (if then generally in use) and, if so, the Warrant Agent shall use CUSIP numbers in notices as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such CUSIP numbers either as printed on the Warrant Certificates or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Warrant Certificates.

Section 2.10. Withholding and Reporting Requirements.

The Company shall comply with all applicable tax withholding and reporting requirements imposed by any governmental unit, and all distributions, including deemed distributions, pursuant to the Warrants will be subject to applicable withholding and reporting requirements. Notwithstanding any provision to the contrary, the Company will be authorized to (i) take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements, (ii) apply a portion of any cash distribution to be made under the Warrants to pay applicable withholding taxes, (iii) liquidate a portion of any non-cash distribution to be made under the Warrants to generate sufficient funds to pay applicable withholding taxes or (iv) establish any other mechanisms the Company believes are reasonable and appropriate, including requiring Holders to submit appropriate tax and withholding certifications (such as IRS Forms W-9 and the appropriate IRS Forms W-8, as applicable) and/or requiring Holders to pay the withholding tax amount to the Company in cash as a condition of receiving the benefit of any antidilution adjustment pursuant to Article IV.

Section 2.11. Proxies.

The registered Holder of a Global Warrant may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold beneficial interests through Agent Members, to take any action that a Holder is entitled to take under this Agreement or the Warrants.

ARTICLE III

EXERCISE TERMS

Section 3.01. Exercise.

The Exercise Price of each Warrant, the Warrant Share Number, the number of Warrants evidenced by any Warrant Certificate and the Exercise Period of each Warrant shall be set forth in the related Warrant Certificate. The Exercise Price of each Warrant and the Warrant Share Number are subject to adjustment pursuant to the terms set forth in the Warrant Certificate.

Section 3.02. Manner of Exercise and Issuance of Shares.

Warrants may be exercised in the manner set forth in Sections 3 and 4 of the Warrant Certificate, and upon any such exercise, if any Shares are issuable pursuant to Section 4 of the Warrant Certificate, such Shares shall be issued in the manner set forth in Section 5 of the Warrant Certificate.

Section 3.03. Covenants Relating to Common Stock Issuable Upon Warrant Exercise.

(a) Common Stock Certificates. The Warrant Agent is hereby authorized to request from time to time from any stock transfer agents of the Company those stock certificates required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Agreement and the applicable Warrant Certificate, and the Company agrees to authorize and direct such transfer agents to comply with all such requests of the Warrant Agent. The Company shall supply such transfer agents with duly executed stock certificates for such purposes and shall provide or otherwise make available any cash that may be payable upon exercise of Warrants as provided herein and in each Warrant Certificate.

(b) Common Stock Reserve. The Company hereby confirms that it previously has authorized and instructed its transfer agent and registrar for the Common Stock to create a special account for the reserve of a number of shares of Common Stock equal to the aggregate Warrant Share Number for all outstanding Warrants to be issued upon exercise of the Warrants, and such reserve account shall be maintained until the earlier of (1) the latest Expiration Time of any Warrant and (2) the time at which all Warrants have been canceled.

Section 3.04. Exercise Calculations.

To the extent applicable, the Company shall calculate and transmit to the Warrant Agent, and the Warrant Agent shall have no obligation under this Agreement to calculate, the number of Shares deliverable pursuant to any exercise of Warrants. The number of Shares to be

issued on such exercise will be determined by the Company (with written notice thereof to the Warrant Agent) as set forth in the Warrant Certificate. The Warrant Agent shall have no duty or obligation to investigate or confirm whether the Company's determination of the number of Shares to be issued on such exercise is accurate or correct.

ARTICLE IV

ANTIDILUTION PROVISIONS

Section 4.01. Antidilution Adjustments; Notice of Adjustment.

The Exercise Price and the Warrant Share Number shall be subject to adjustment from time to time as provided in Section 13 of the Warrant Certificate. Whenever the Exercise Price or the Warrant Share Number is so adjusted or is proposed to be adjusted as provided in Section 13 of the Warrant Certificate, the Company shall deliver to the Warrant Agent the notices or statements, and shall cause a copy of such notices or statements to be sent or communicated to each Holder pursuant to Section 6.03, as provided in Section 13(M) of the Warrant Certificate.

Section 4.02. Adjustment to Warrant Certificate.

The form of Warrant Certificate need not be changed because of any adjustment made pursuant to the Warrant Certificate (except as expressly provided in Section 13(G) of the Warrant Certificate), and Warrant Certificates issued after such adjustment may state the same Exercise Price and the same Warrant Share Number as are stated in the Warrant Certificates initially issued pursuant to this Agreement. The Company, however, may at any time in its sole discretion make any ministerial change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments and that does not affect the substance of the Warrant Certificate, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed. In the event of any such change, the Company shall give prompt notice thereof to all registered Holders and, if appropriate, notation thereof shall be made on all Warrant Certificates thereafter surrendered for registration of transfer or exchange.

ARTICLE V

WARRANT AGENT

Section 5.01. Appointment of Warrant Agent.

The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the provisions of this Agreement and the Warrant Agent hereby accepts such appointment. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in connection with this Agreement, except for its own gross negligence, willful misconduct, fraud or bad faith. Notwithstanding anything in this Agreement to the contrary, in no event shall the Warrant Agent be liable for special, punitive, incidental, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits),

even if the Warrant Agent has been advised of the likelihood of such loss or damage and regardless of the form of the action. The rights and obligations of the parties set forth in this Section 5.01 shall survive the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent.

Section 5.02. Rights and Duties of Warrant Agent.

(a) Agent for the Company. In acting under this Warrant Agreement and in connection with the Warrant Certificates, the Warrant Agent is acting solely as agent of the Company and does not assume any obligation of agency or trust or any relationship of agency or trust for or with any of the holders of Warrant Certificates or beneficial owners of Warrants.

(b) Counsel. The Warrant Agent may consult with counsel reasonably satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection to the Warrant Agent in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the advice of such counsel.

(c) Documents. The Warrant Agent shall be protected and shall incur no liability for or in respect of any action taken or thing suffered by it, absent gross negligence, willful misconduct or bad faith, in reliance upon any Warrant Certificate, notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper officers or other parties of the Company. The Warrant Agent shall not take any instructions or directions except those given in accordance with this Agreement.

(d) No Implied Obligations. The Warrant Agent shall be obligated to perform only such duties as are specifically set forth herein and in the Warrant Certificates, and no implied or inferred duties, responsibility or obligations of the Warrant Agent shall be read into this Agreement or the Warrant Certificates against the Warrant Agent. The Warrant Agent shall not be under any obligation to take any action hereunder that may cause it to incur any expense or liability for which it does not receive indemnity if such indemnity is reasonably requested. The Warrant Agent shall not be accountable or under any duty or responsibility for the use by the Company of any of the Warrant Certificates countersigned by the Warrant Agent and delivered by it to the Holders or on behalf of the Holders pursuant to this Agreement or for the application by the Company of the proceeds of the Warrants. The Warrant Agent shall have no duty or responsibility in the case of any default by the Company in the performance of its covenants or agreements contained herein or in the Warrant Certificates or in the case of the receipt of any written demand from a Holder with respect to such default, including any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise. The Warrant Agent shall have no duty or responsibility to ensure compliance with any applicable federal or state securities law in connection with the issuance, transfer or exchange of any Warrants under this Agreement.

(e) Not Responsible for Adjustments or Validity of Stock. The Warrant Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist that may require an adjustment of the Warrant Share Number or the Exercise Price or to calculate any such adjustment, or to make any determination with respect to the nature or extent of any adjustment when made, or with respect to the method employed, herein or in any

supplemental agreement provided to be employed, in making the same. The Warrant Agent shall not be accountable with respect to the validity or value of any Shares or of any securities or property that may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to Section 13 of the Warrant Certificate, and

it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any Shares or stock certificates upon the surrender of any Warrant Certificate for the purpose of exercise or upon any adjustment pursuant to Section 13 of the Warrant Certificate, or to comply with any of the covenants of the Company contained in the Warrant Certificate or this Agreement.

(f) Notices or Demands Addressed to the Company. If the Warrant Agent receives any notice or demand addressed to the Company by the Holder of a Warrant, the Warrant Agent shall promptly forward such notice or demand to the Company.

(g) Ambiguity. In the event the Warrant Agent reasonably believes any ambiguity or uncertainty exists hereunder or in any Warrant Certificate, notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, the Warrant Agent shall notify the Company in writing as soon as practicable, and upon delivery of such notice may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to the Company or any Holder or other Person for refraining from taking such action, unless the Warrant Agent receives written instructions signed by the Company which eliminate such ambiguity or uncertainty to the reasonable satisfaction of the Warrant Agent. Notwithstanding anything in this Agreement to the contrary, the Warrant Agent is authorized and directed hereby to comply with any orders, judgments, or decrees of any court that it believes has jurisdiction over it and, absent gross negligence, willful misconduct, fraud or bad faith, will not be liable as a result of its compliance with the same.

Section 5.03. Individual Rights of Warrant Agent.

Subject to its obligations hereunder, the Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or its affiliates or become pecuniarily interested in transactions in which the Company or its affiliates may be interested, or contract with or lend money to the Company or its affiliates or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

Section 5.04. Warrant Agent's Disclaimer.

The Warrant Agent shall not be responsible for, and makes no representation as to the validity or adequacy of, this Agreement (except the due and valid authorized execution and delivery of this Agreement by the Warrant Agent) or the Warrant Certificates (except the due countersignature of the Warrant Certificate(s) by the Warrant Agent) and it shall not be responsible for any statement in this Agreement or the Warrant Certificates other than its countersignature thereon; nor will the Warrant Agent be under any duty or responsibility to

insure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of Warrant Certificates.

Section 5.05. Compensation and Indemnity.

(a) Compensation of Warrant Agent. The Company agrees to pay the Warrant Agent the compensation to be agreed upon with the Company for all services rendered by the Warrant Agent under this Agreement and to reimburse the Warrant Agent upon request for all reasonable out-of-pocket expenses, including the reasonable and documented counsel fees and expenses, incurred by the Warrant Agent in connection with the preparation, delivery, administration, execution and amendment of this Agreement and the performance of the services rendered by the Warrant Agent under this Agreement. The Company is not obligated to reimburse any expense incurred by the Warrant Agent through gross negligence, willful misconduct, fraud or bad faith.

(b) Indemnification by the Company. The Company shall indemnify and hold harmless the Warrant Agent and its officers and directors against any loss, liability or expense (including reasonable attorneys' fees and expenses) incurred by it (each, a "Loss" and, collectively, "Losses") without gross negligence, willful misconduct, fraud or bad faith on its part arising out of or in connection with the acceptance, administration, exercise or performance of its duties under this Agreement. The Company shall further indemnify and hold the Warrant Agent harmless from and against any Loss arising out of or attributable to the Warrant Agent's acting on the written instructions of the Company, so long as the Warrant Agent so acted without gross negligence, willful misconduct, fraud or bad faith. The Warrant Agent shall notify the Company promptly of any claim for which it may seek indemnity. The costs and expenses incurred by the Warrant Agent in successfully enforcing its right of indemnification hereunder shall be paid by the Company. The Company is not obligated to indemnify the Warrant Agent against any loss or liability incurred by the Warrant Agent through willful misconduct, gross negligence, fraud or bad faith. The rights and obligations of the parties set forth in Sections 5.05(a) and (b) shall survive the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent.

Section 5.06. Successor Warrant Agent.

(a) Company to Provide and Maintain Warrant Agent. The Company agrees for the benefit of the Holders that there shall at all times be a Warrant Agent hereunder until all the Warrants have been exercised or canceled or are no longer exercisable.

(b) Resignation and Removal. The Warrant Agent may at any time resign by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective; *provided* that such date shall not be less than 90 days after the date on which such notice is given unless the Company otherwise agrees. The Warrant Agent hereunder may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the date when it shall become effective, which date shall not be less than 90 days after such notice is given unless the Warrant Agent otherwise agrees. Any removal under this Section 5.06(b) shall take effect upon the appointment by the Company as hereinafter provided of a successor Warrant Agent

(which shall be (i) a bank or trust company, (ii) organized under the laws of the United States of America or one of the states thereof, (iii) authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers, (iv) having a combined capital and surplus of at least $50,000,000 (as set forth in its most recent reports of condition published pursuant to law or to the requirements of any United States federal or state regulatory or supervisory authority) and (v) having an office in the Borough of Manhattan, the City of New York) and the acceptance of such appointment by such successor Warrant Agent.

(c) Company to Appoint Successor. In the event that at any time the Warrant Agent resigns, is removed, becomes incapable of acting, fails to perform any of its obligations hereunder or under any Warrant Certificate in accordance with the terms hereof or thereof, is adjudged bankrupt or insolvent, commences a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency or similar law, consents to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator or other similar official of the Warrant Agent or its property or affairs, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, or takes corporate action in furtherance of any such action, or a decree or order for relief by a court having jurisdiction in the premises has been entered in respect of the Warrant Agent in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, or a decree or order by a court having jurisdiction in the premises has been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator or similar official of the Warrant Agent or of its property or affairs, or any public officer takes charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, meeting the qualifications specified in Section 5.06(b), shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. In the event that a successor Warrant Agent is not appointed by the Company, a successor Warrant Agent, qualified as aforesaid, may be appointed by the Warrant Agent or the Warrant Agent may petition a court to appoint a successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and

acceptance by the successor Warrant Agent of such appointment, the Warrant Agent shall cease to be Warrant Agent hereunder; *provided* that in the event of the resignation of the Warrant Agent under this subsection (c), such resignation shall be effective on the earlier of (i) the date specified in the Warrant Agent's notice of resignation and (ii) the appointment and acceptance of a successor Warrant Agent hereunder.

(d) Successor to Expressly Assume Duties. Any successor Warrant Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment hereunder, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the rights and obligations of such predecessor with like effect as if originally named as Warrant Agent hereunder, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as Warrant Agent hereunder.

(e) Successor by Merger. Any entity into which the Warrant Agent hereunder may be merged or consolidated, or any entity resulting from any merger or consolidation to which the Warrant Agent is a party, or any entity to which the Warrant Agent sells or otherwise transfers all or substantially all of its assets and business (including with respect to the administration of this Agreement), shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that it is open for business on each Business Day and (i) (A) is organized under the laws of the United States of America or one of the states thereof, (B) is authorized under the laws of the jurisdiction of its organization to exercise corporate trust or stock transfer powers and (C) has a combined capital and surplus of at least $50,000,000 or (ii) is an Affiliate of an entity that meets the requirements set forth in clause (i).

Section 5.07. Representations of the Company.

The Company represents and warrants to the Warrant Agent that:

(a) the Company has been duly organized and is validly existing under the laws of the jurisdiction of its incorporation;

(b) this Agreement has been duly authorized, executed and delivered by the Company and is enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity; and

(c) the execution and delivery of this Agreement does not, and the issuance of the Warrants in accordance with the terms of this Agreement and the Warrant Certificates will not, (i) violate the Company's certificate of incorporation or by-laws, (ii) violate any law or regulation applicable to the Company or order or decree of any court or public authority having jurisdiction over the Company, or (iii) result in a breach of any material mortgage, indenture, contract, agreement or undertaking to which the Company is a party or by which it is bound, except in the case of (ii) and (iii) for any violations or breaches that would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Persons Benefitting.

Nothing in this Agreement is intended or shall be construed to confer upon any Person other than the Company, the Warrant Agent, the Holders and the owners of a beneficial interest in any Global Warrant any right, remedy or claim under or by reason of this Agreement or any part hereof.

Section 6.02. Amendment.

This Agreement and the Warrants may be amended by the parties hereto without the consent of any Holder for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein or therein or adding or changing any other provisions with respect to matters or questions arising under this Agreement or the Warrants as the Company, acting in good faith, and the Warrant Agent may deem necessary or desirable; *provided* that such amendment shall not adversely affect the rights of any of the Holders in any material respect. Any amendment or supplement to this Agreement or the Warrants, or any waiver hereunder or thereunder, in each case, that has an adverse effect on the interests of any of the Holders or owners of a beneficial interest in a Global Warrant in any material respect shall require the written consent of the Holders of a majority of the then outstanding Warrants. Notwithstanding anything herein to the contrary and without limitation of the immediately foregoing sentence, the consent of each Holder affected thereby shall be required for any amendment or supplement pursuant to which (i) the Exercise Price would be increased, the Warrant Share Number would be decreased or the kind or amount of other property issuable upon exercise of the Warrants would be changed or decreased, as applicable (in each case, other than pursuant to adjustments provided for in Section 13 of the Warrant Certificate), (ii) the time period during which the Warrants are exercisable would be shortened, (iii) any change adverse to such Holder would be made to the antidilution provisions set forth in Article IV of this Agreement or Section 13 of the Warrant Certificate (including all definitions used therein) (excluding any amendment following a Reorganization, pursuant to Section 13(G) of the Warrant Certificate), (iv) such Holder's right to exercise the Warrants and receive Shares upon such exercise, or the ability of any Holder or Agent Member (on behalf of itself or any beneficial owner) to enforce such right, would otherwise be materially impaired, or (v) the percentage of Holders required to amend the Warrants or this Agreement or grant a waiver thereunder or hereunder would be reduced. In determining whether the Holders of the required number of Warrants have concurred in any direction, waiver or consent, Warrants owned by the Company or by any Affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Warrant Agent shall be protected in relying on any such direction, waiver or consent, only Warrants that the Warrant Agent knows are so owned shall be so disregarded. Also, subject to the foregoing, only Warrants outstanding at the time shall be considered in any such determination. The Company and the Warrant Agent may set a record date for any such direction, waiver or consent and only the Holders as of such record date shall be entitled to make or give such direction, waiver or consent. The Warrant Agent shall have no duty to determine whether any such amendment or supplement would have an effect on the rights or interests of the holders of the Warrants. Upon receipt by the Warrant Agent of an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the execution of the amendment or supplement have been complied with and such execution is permitted by this Agreement and the Warrant Certificate, the Warrant Agent shall join in the execution of such amendment or supplement; *provided* that the Warrant Agent may, but shall not be obligated to, execute any such amendment or supplement which affects the rights or changes or increases the duties or obligations of the Warrant Agent. Promptly following execution of any amendment or supplement to this Agreement or the Warrant Certificate, the Company shall send a copy thereof to the Warrant Agent and cause such document to be sent or communicated to the Warrantholders and holders

of a beneficial interest in a Global Warrant in the manner set forth in Section 21 of the Warrant Certificate; *provided* that failure to deliver such copy to the Warrant Agent or otherwise deliver such document to all Warrantholders or holders of a beneficial interest in a Global Warrant or any defect therein shall not affect the validity of such

amendment or supplement. As a condition precedent to the Warrant Agent's execution of any such amendment or supplement, the Company shall deliver to the Warrant Agent an Officer's Certificate that states that the proposed amendment or supplement is in compliance with the terms of this Section 6.02.

Section 6.03. Notices.

Any notice or communication shall be in writing and delivered in person, by certified or registered mail, or nationally-recognized courier, or by facsimile or e-mail transmission, if acceptable to the parties, addressed as follows:

if to the Company:

Arch Coal, Inc.
City Place One
St. Louis, MO 63141
Attention: General Counsel
Telephone: (314) 994-2700
Facsimile: (314) 994-2734

with a copy to:

Brian M. Resnick
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Telephone: (212) 450-4213
Facsimile: (212) 701-5213

if to the Warrant Agent:

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Attention: Corporate Actions
Telephone: (718) 921-8200

The Company or the Warrant Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to the Holder at the Holder's address as it appears on the Registry and shall be sufficiently given if so mailed within the time prescribed. Any notice to the owners of a beneficial interest in a Global Warrant shall be distributed through the Depositary in accordance with the procedures of the Depositary.

Communications to such owners shall be deemed to be effective at the time of dispatch to the Depositary.

Failure to provide a notice or communication to a Holder or owner of a beneficial interest in a Global Warrant or any defect in it shall not affect its sufficiency with respect to other Holders or owners of a beneficial interest in a Global Warrant. If a notice or communication is provided in the manner provided above, it is duly given, whether or not the intended recipient actually receives it.

Section 6.04. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

Section 6.05. Successors.

All agreements of the Company in this Agreement and the Warrants shall bind its successors and permissible assigns. All agreements of the Warrant Agent in this Agreement shall bind its successors and permissible assigns.

Section 6.06. Multiple Originals; Counterparts.

The parties may sign any number of copies of this Agreement. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Agreement. A signature to this Agreement transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

Section 6.07. Inspection of Agreement.

A copy of this Agreement shall be made available at all reasonable times for inspection by any registered Holder or owner of a beneficial interest in a Global Warrant at the office of the Warrant Agent (or successor warrant agent) designated for such purpose.

Section 6.08. Table of Contents.

The table of contents and headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 6.09. Severability.

The provisions of this Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Agreement in any jurisdiction.

Section 6.10. Customer Identification Program.

Each Person that is a party hereto acknowledges that the Warrant Agent is subject to the customer identification program ("Customer Identification Program") requirements under the USA PATRIOT Act and its implementing regulations, and that the Warrant Agent must obtain, verify and record information that allows the Warrant Agent to identify each such Person. Accordingly, prior to accepting an appointment hereunder, the Warrant Agent may request information from any such Person that will help the Warrant Agent to identify such Person, including without limitation, as applicable, such Person's physical address, tax identification number, organizational documents, certificate of good standing or license to do business. Each Person that is a party hereto agrees that the Warrant Agent cannot accept an appointment hereunder unless and until the Warrant Agent verifies each such Person's identity in accordance with the Customer Identification Program requirements.

Section 6.11. Confidentiality.

The Warrant Agent and the Company agree that all books, records, information and data pertaining to the business of the other party, including inter alia, personal, non-public Warrantholder information, which are exchanged or received pursuant to the negotiation or the carrying out of this Agreement, including the fees for services, shall remain confidential, and shall not be voluntarily disclosed to any other person, except as may be required by law, including, without limitation, pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

Section 6.12. Force Majeure.

Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Warrant Agreement to be duly executed as of the date first written above.

ARCH COAL, INC.

by /s/ Robert G. Jones
Name: Robert G. Jones
Title: Senior Vice President — Law, General Counsel and Secretary

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC,
as Warrant Agent

by /s/ Paula Caroppoli
Name: Paula Caroppoli
Title: Senior Vice President

EXHIBIT A

FORM OF SERIES A WARRANT

FORM OF SERIES A WARRANT

[Global Warrant Legend]

[UNLESS THIS GLOBAL WARRANT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO ARCH COAL, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY WARRANT CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE WARRANT AGREEMENT REFERRED TO ON THE REVERSE HEREOF.]

NO AFFILIATE OF ARCH COAL, INC. THAT OWNS THIS SECURITY (OR ANY INTEREST HEREIN) MAY SELL THIS SECURITY (OR ANY INTEREST HEREIN) IF UPON SUCH RESALE THIS SECURITY (OR SUCH INTEREST) WOULD CONSTITUTE A "RESTRICTED SECURITY" WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

[GLOBAL][DEFINITIVE] WARRANT
representing

SERIES A WARRANTS

to acquire
shares of
Common Stock
of
ARCH COAL, INC.

No. [ ] CUSIP No.: 039380 118

1. Definitions. Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated. Any capitalized terms used but not defined herein that are defined in the Warrant Agreement shall have the meanings set forth in the Warrant Agreement.

"*Affiliate*" shall have the meaning ascribed to it in the Warrant Agreement.

"*Agent Members*" shall have the meaning ascribed to it in the Warrant Agreement.

"*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

"*Black Scholes Payment*" means, for any Warrant, the lesser of (A) (i) the fair value of such Warrant as determined by the Valuation Bank, based on Black Scholes option pricing inputs selected within one month prior to the public announcement of the relevant Repurchase Reorganization, *multiplied by* (ii) the Black Scholes Proportion; *provided* that the volatility input used to determine such fair value in clause (i) shall be the lesser of (x) 50% and (y) the 180-day historical volatility of the Common Stock as shown at the time of determination on Bloomberg or, if such information is not available, as determined in a commercially reasonably manner by the Valuation Bank and (B) (x) the Maximum Payment Amount, *multiplied by* (y) 59.287452%, *multiplied by* (z) the Black Scholes Proportion.

"*Black Scholes Proportion*" means a fraction, (x) the numerator of which is the aggregate Fair Market Value of all consideration other than Reporting Stock received by holders of Common Stock comprising the Exchange Property in the relevant Repurchase Reorganization and (y) the denominator of which is the sum of (a) the aggregate Fair Market Value of the Reporting Stock (if any) received as consideration by holders of Common Stock comprising the Exchange Property in the relevant Repurchase Reorganization and (b) the aggregate Fair Market Value of all consideration other than Reporting Stock received by holders of Common Stock comprising the Exchange Property in the relevant Repurchase Reorganization.

"*Board of Directors*" means the board of directors of the Company.

"*Business Day*" shall have the meaning ascribed to it in the Warrant Agreement.

"*Capital Stock*" means (A) with respect to any Person that is a corporation or company, any and all shares, interests, participations or other equivalents (however designated) of capital or capital stock of such Person and (B) with respect to any Person that is not a corporation or company, any and all partnership or other equity interests in such Person.

"*Charter*" means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

"*Common Stock*" means the Company's Class A Common Stock, $0.01 par value per share, subject to Section 13(G).

"*Company*" means Arch Coal, Inc., a Delaware corporation.

"*Confirmation Order*" means the Order Confirming Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code of Arch Coal, Inc., et al., Chapter 11 Case No. 16-40120-705 dated as of September 13, 2016.

"*Continuing Reorganization*" means (x) any Reorganization that is consummated on or after October 5, 2021, (y) any Reorganization that is consummated prior to October 5, 2021 in which Reporting Stock accounts for 90% or more of the Fair Market Value of the relevant Exchange Property or (z) for any Warrant, any Elective Reorganization in respect of which the relevant Warrantholder elects (or is deemed to have elected) for such Warrant to be subject to Section 13(G).

"*Custodian*" shall have the meaning ascribed to it in the Warrant Agreement.

"*Definitive Warrant*" means a Warrant Certificate in definitive form that is not deposited with the Depositary or with the Custodian.

"*Depositary*" means The Depository Trust Company, its nominees and their respective successors.

"*Determination Date*" means, in respect of any exercise of Warrants, the relevant Exercise Date for such exercise.

"*Elective Reorganization*" means any Reorganization that is consummated prior to October 5, 2021 in which Reporting Stock accounts for less than 90% of the Fair Market Value of the relevant Exchange Property.

"*Exchange*" means the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded.

"*Exchange Act*" means the U.S. Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"*Exchange Property*" means, with respect to any Reorganization, the cash, securities or other property that the Common Stock is converted into, is exchanged for or becomes the right to receive, in each case, in such Reorganization.

"*Exercise Date*" shall have the meaning ascribed to it in Section 3.

"*Exercise Notice*" means a notice in the form attached hereto as Annex B delivered by the Warrantholder to the Warrant Agent in accordance with Section 6.03 of the Warrant Agreement to exercise the Warrant.

"*Exercise Period*" shall have the meaning ascribed to it in Section 3.

"*Exercise Price*" means $57.00 per Share subject to any adjustment or adjustments in accordance with Section 13.

"*Expiration Time*" shall have the meaning ascribed to it in Section 3.

"*Fair Market Value*" means:

(i) in the case of shares of stock that are listed on a Principal Exchange on the day as of which Fair Market Value is being determined, the daily volume-weighted average price of such stock as reported in composite transactions for United States exchanges and quotation systems for such determination date, as displayed under the heading "Bloomberg VWAP" on the applicable Bloomberg page for such shares in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such determination date (or, if such volume-weighted average price is unavailable, the Fair Market Value of such shares as determined pursuant to clause (ii) below); *provided* that, with respect to any determination of Fair Market Value pursuant to this clause (i), the Company, in its good faith determination, shall make appropriate adjustments to such daily volume-weighted average price to account for any adjustments to the Exercise Price and Warrant Share Number that become effective, or any event requiring any adjustments to the Exercise Price and Warrant Share Number where the ex-date, record date, effective date, expiration date or issuance date, as the case may be, of the event occurs, on such determination date;

(ii) in the case of securities not covered by (i) above, the Fair Market Value of such securities shall be determined by the Valuation Bank, using one or more valuation methods that the Valuation Bank in its best professional judgment determines to be most appropriate, assuming such securities are fully distributed and are to be sold in an arm's-length transaction and there was no compulsion on the part of any party to such sale to buy or sell and taking into account all relevant factors;

(iii) in the case of cash, the amount thereof; and

(iv) in the case of other property, the Fair Market Value of such property shall be determined by the Valuation Bank, using one or more valuation methods that the Valuation Bank in its best professional judgment determines to be most appropriate, assuming such property is to be sold in an arm's-length transaction and there was no compulsion on the part of any party to such sale to buy or sell and taking into account all relevant factors.

"*Global Warrant*" means a Warrant Certificate in global form that is deposited with the Depositary or with the Custodian.

"*Market Disruption Event*" means (i) a failure by the Exchange to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m. New York City time on any day on which the Exchange is open for trading for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements

in price exceeding limits permitted by the Exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"*Maximum Payment Amount*" means (I) prior to the first anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet), $23.50, (II) on or after the first anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet) and prior to the second anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet), $20.89, (III) on or after the second anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet) and prior to the third anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet), $18.28 and (IV) on or after the third anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet) and prior to the fifth anniversary of the Plan Effective Date (as such term is defined in the Plan Term Sheet), $15.67.

"*Net Settlement*" shall have the meaning ascribed to it in Section 4(A).

"*New Warrants*" shall have the meaning ascribed to it in Section 13(H).

"*Person*" shall have the meaning ascribed to it in the Warrant Agreement.

"*Physical Settlement*" shall have the meaning ascribed to it in Section 4(A).

"*Plan Term Sheet*" means the "Plan Term Sheet," In re: Arch Coal, Inc., et al., Case No. 16-40120, agreed to by (i) Arch Coal Inc. and its subsidiaries that are debtors in the relevant chapter 11 proceedings, (ii) holders of more than 66 2/3% of the outstanding principal amount of loans under the credit facility under the Credit Agreement dated as of June 14, 2011, as amended, restated, supplemented or otherwise modified from time to time, among Arch Coal Inc., Wilmington Trust, N.A., as successor administrative agent, the lenders, and the other agents and parties thereto, and (iii) the official committee of unsecured creditors appointed in the relevant chapter 11 cases and certain of its members in their individual capacities.

"*Principal Exchange*" means each of The New York Stock Exchange, The NASDAQ Global Market and The NASDAQ Global Select Market (or any of their respective successors).

"*Registry*" shall have the meaning ascribed to it in the Warrant Agreement.

"*Reorganization*" means any consolidation, merger, statutory share exchange, business combination or similar transaction with a third party, any sale, lease or other transfer to a third party of substantially all of the consolidated assets of the Company and its Subsidiaries, or any recapitalization, reclassification or transaction that results in a change of the Common Stock (other than as described in Section 13(A)), in each case, in which the Common Stock is converted into, is exchanged for or becomes the right to receive cash, securities or other property.

"*Reporting Stock*" means common stock listed on a U.S. national or regional securities exchange or common stock of a company that provides publicly available financial reporting, and holds management calls regarding the same, in each case, no less than quarterly.

"*Repurchase Reorganization*" means, for any Warrant, any Elective Reorganization in respect of which the relevant Warrantholder elects for such Warrant to be subject to Section 13(H).

"*SEC*" means the U.S. Securities and Exchange Commission.

"*Securities Act*" means the U.S. Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"*Settlement Date*" shall have the meaning ascribed to it in Section 5.

"*Shares*" shall have the meaning ascribed to it in Section 2.

"*Spin-Off*" shall have the meaning ascribed to it in Section 13(D).

"*Subsidiary*" means, with respect to any Person, any corporation, partnership, joint venture, limited liability company or other entity (x) of which such Person or a subsidiary of such Person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such Person and/or one or more subsidiaries thereof.

"*Trading Day*" means a day on which (i) no Market Disruption Event occurs and (ii) trading in the Common Stock occurs on the Exchange; *provided* that if the Common Stock is not so listed or traded, "Trading Day" means a Business Day.

"*Transfer Agent*" means American Stock Transfer & Trust Company, LLC, as transfer agent of the Company, and any successor transfer agent.

"*Unit of Exchange Property*" means, with respect to any Reorganization, the type and amount of Exchange Property that the holder of one share of Common Stock is entitled to receive in such Reorganization.

"*Valuation Bank*" means an independent, nationally recognized investment bank reasonably selected by the Company.

"*Valuation Period*" shall have the meaning ascribed to it in Section 13(D).

"*Warrant*" means a right to acquire a number of shares of Common Stock calculated pursuant to Section 4, which is designated as a Series A Warrant. References herein to "Warrant" shall include the Global Warrant where the context requires. For the avoidance of doubt, "Warrant" does not include any other warrants.

"*Warrant Agent*" shall have the meaning ascribed to it in Section 18.

"*Warrant Agreement*" shall have the meaning ascribed to it in Section 18.

"*Warrant Certificate*" means a registered certificate evidencing Warrants.

"*Warrantholder*" means a registered owner of Warrants as set forth in the Registry.

"*Warrant Share Number*" means one, as subsequently adjusted from time to time pursuant to the terms of this Warrant Certificate and the Warrant Agreement.

2. Number of Shares; Exercise Price. This certifies that, for value received, [Cede & Co.][1][_____][2], and any of its registered assigns, is the registered owner of [the number of Warrants set forth on Annex A hereto][3][____ Warrants][4], each of which entitles the Warrantholder, upon exercise thereof pursuant to Section 3, to acquire from the Company a number of fully paid and nonassessable shares of Common Stock (each a "*Share*" and collectively the "*Shares*") calculated pursuant to Section 4. The Warrant Share Number and the Exercise Price are subject to adjustment as provided herein, and unless otherwise specified, all references to "Warrant Share Number" and "Exercise Price" herein shall be deemed to include any such adjustment or series of adjustments.

3. Exercise of Warrant; Term. Subject to Section 2, to the extent permitted by applicable laws and regulations, each Warrant is exercisable by the relevant Warrantholder, at any time or from time to time during the Exercise Period by (i) the surrender of such Warrant to the Warrant Agent and the delivery to the Warrant Agent of the Exercise Notice annexed hereto, duly completed and executed (or to the Company or to such other office or agency of the Company in the United States as the Company may designate by notice in writing to the Warrantholders pursuant to Section 21), together with payment for transfer taxes as set forth in Section 8 and (ii) if such Warrantholder validly elects Physical Settlement in accordance with Section 4(A), paying to the Company the applicable Exercise Price. The "*Exercise Period*" shall commence upon the execution and delivery of this Warrant Certificate by the Company on the date hereof and shall continue up to, and including, the Expiration Time. The "*Expiration Time*" shall be 5:00 p.m. New York City time on the seventh anniversary of the date of execution and delivery of this Warrant Certificate or, if such day is not a Business Day, the next succeeding day that is a Business Day. The "*Exercise Date*" shall be the date on which a Warrantholder surrenders the Warrant and delivers an Exercise Notice in conformity with this Section 3 and, if applicable, pays the Exercise Price in conformity with this Section 3 (unless such surrender, delivery and payment (if applicable) occur after 5:00 p.m. New York City time on a Business Day or on a date that is not a Business Day, in which event the Exercise Date shall be the next following Business Day). In the case of a Global Warrant, any person with a beneficial interest in such Global Warrant shall effect compliance with the requirements of this Section 3 through the relevant Agent Members in accordance with the procedures of the Depositary.

In the case of a Global Warrant, whenever some but not all of the Warrants represented by such Global Warrant are exercised in accordance with the terms thereof and of the Warrant Agreement, such Global Warrant shall be surrendered by the Warrantholder to the Warrant Agent, which shall cause an adjustment to be made to Annex A to such Global Warrant so that the number of Warrants represented thereby will be equal to the number of Warrants theretofore represented by such Global Warrant less the number of Warrants then exercised. The Warrant Agent shall thereafter promptly return such Global Warrant to the Warrantholder or its nominee or custodian. In the case of a Definitive Warrant, whenever some but not all of the Warrants represented by such Definitive Warrant are exercised in accordance with the terms thereof and of the Warrant Agreement, the Warrantholder shall be entitled, at the request of such Warrantholder, to receive from the Company within a reasonable time, and in any event not exceeding five Business Days, a new Definitive Warrant in substantially identical form for the number of Warrants equal to the number of Warrants theretofore represented by such Definitive Warrant less the number of Warrants then exercised.

---

1 Include for Global Warrant.
2 Include for Definitive Warrant.
3 Include for Global Warrant.
4 Include for Definitive Warrant.

If this Warrant Certificate shall have been exercised in full, the Warrant Agent shall promptly cancel such certificate following its receipt thereof from the Warrantholder or the Depositary, as applicable.

Notwithstanding anything in this Warrant Certificate to the contrary, in the case of Warrants evidenced by a Global Warrant, any Agent Member may, without the consent of the Warrant Agent or any other person, on its own behalf and on behalf of any beneficial owner for which it is acting, enforce, and may institute and maintain any

suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, its right to exercise, and to receive Shares for, its Warrants as provided in the Global Warrant, and to enforce the Warrant Agreement.

A Warrantholder shall be deemed to own and have all of the rights associated with any Shares or other securities or property to which it is entitled pursuant to this Warrant Certificate as of the close of business on the relevant Determination Date upon the exercise of the Warrants in accordance with this Section 3 and Section 5 below.

The Exercise Price in connection with any Physical Settlement of a Warrant may be paid either by wire transfer of immediately available funds to an account designated by the Company or by certified or official bank check or bank cashier's check payable to the order of the Company or, in respect of a Global Warrant, otherwise in accordance with the applicable procedures of the Depositary.

4. Settlement.

(A) Notwithstanding any provisions herein to the contrary, a Warrantholder that elects to exercise a Warrant shall elect to either (i) pay the applicable Exercise Price in respect of such Warrant to the Company ("*Physical Settlement*") or (ii) net settle such Warrant in accordance with Section 4(C) in lieu of paying the Exercise Price ("*Net Settlement*"), by marking the applicable box in the relevant Exercise Notice or, in respect of a Global Warrant, otherwise in accordance with the applicable procedures of the Depositary.

(B) In the event that a Warrantholder validly elects Physical Settlement in respect of any exercise of any Warrants evidenced by this Warrant Certificate in accordance with Sections 3 and 4(A) hereof, the Warrantholder shall receive, and the Company shall issue to such Warrantholder in accordance with Section 5 below, a number of Shares for each Warrant so exercised equal to the Warrant Share Number (as of the Determination Date).

(C) In the event that Net Settlement applies in respect of any exercise of any Warrants evidenced by this Warrant Certificate in accordance with Sections 3 and 4(A) hereof, the Warrantholder shall receive, and the Company shall issue to such Warrantholder in accordance with Section 5 below, a number of Shares for each Warrant so exercised equal to the greater of (x) zero and (y) "X" as determined pursuant to the following formula:

$$X = Y \times \frac{(A - B)}{A}$$

Where:

Y = the Warrant Share Number (as of the Determination Date);

A = the Fair Market Value of one share of the Common Stock (as of the Determination Date); and

B = the Exercise Price (as of the Determination Date).

The Company shall make all calculations under this Section 4, and the Warrant Agent shall have no duty or obligation to verify or confirm the Company's calculations.

5. Issuance of Shares; Authorization; Listing. Shares issued upon the exercise of Warrants evidenced by this Warrant Certificate shall be (i) issued in such name or names as the exercising Warrantholder may designate and (ii) delivered by the Transfer Agent to such Warrantholder or its nominee or nominees (A) if the Shares are delivered through the facilities of the Depositary, via book-entry transfer crediting the account of such Warrantholder (or the relevant Agent Member for the benefit of such Warrantholder) through the Depositary's DWAC system (if the Transfer Agent participates in such system), or (B) otherwise in certificated form by physical delivery to the address specified by the Warrantholder in the Exercise Notice. The Company shall use its commercially reasonable efforts to cause its Transfer Agent to be a participant in the Depositary's DWAC system. The Company shall cause the number of full Shares to which such Warrantholder shall be entitled to be so delivered by the Transfer Agent within a reasonable time, and in any event on or prior to the fourth Business Day after the applicable Determination Date (such date of delivery, the "*Settlement Date*").

The Company hereby represents, warrants and covenants that any Shares issued upon the exercise of Warrants evidenced by this Warrant Certificate in accordance with the provisions of Sections 3, 4 and 5 will be duly and validly authorized and issued, fully paid and nonassessable and free from all liens and charges (other than liens or charges created by a Warrantholder). The Company agrees that the Shares so issued will be deemed to have been issued to a Warrantholder for all purposes as of the close of business on the applicable Determination Date, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Shares may not be actually delivered on such date. The Company will at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of providing for the exercise of Warrants evidenced by this Warrant Certificate, the aggregate Warrant Share Number for all Warrants evidenced by this Warrant Certificate. The Company will procure, at its sole expense, the listing of the Shares issuable upon exercise of the Warrants evidenced by this Warrant Certificate, subject to issuance or notice of issuance, on all principal stock exchanges on which the Common Stock is then listed or traded. The Company will use its reasonable best efforts to ensure that the Shares may be issued without violation of any law or regulation applicable to the Company or of any requirement applicable to the Company of any securities exchange on which the Shares are listed or traded.

6. No Fractional Shares or Scrip. No fractional Shares or scrip representing fractional Shares shall be issued upon any exercise of Warrants evidenced by this Warrant Certificate. In lieu of any fractional Share to which a Warrantholder would otherwise be entitled upon an exercise of Warrants, such Warrantholder shall be entitled to receive a cash payment equal to the value of such fractional Share based on the Fair Market Value of the Common Stock as of the applicable Determination Date. The number of full Shares that shall be issuable upon an exercise of Warrants by a Warrantholder at any time shall be computed on the basis of the aggregate number of Shares which may be issuable pursuant to the Warrants being exercised by that Warrantholder at that time. The beneficial owners of the Warrants and the Warrantholder, by their acceptance hereof, expressly agree to receive cash in lieu of any fractional Share in accordance with this Section 6 and hereby waive their right to receive a physical certificate representing such fractional Share upon exercise of any Warrant.

Whenever a payment for fractional Shares is to be made by the Warrant Agent under any section of this Warrant Certificate or the Warrant Agreement, the Company shall (i) provide to the Warrant Agent in reasonable detail the facts related to such payments and the prices and/or formulas utilized in calculating such payments, and (ii) provide sufficient monies to the Warrant Agent in the form of fully collected funds to make such payments.

7. No Rights as Stockholders; Transfer Books. Warrants evidenced by this Warrant Certificate do not entitle the Warrantholder or the owner of any beneficial interest in such Warrants to any voting rights or other rights as a stockholder of the Company prior to the applicable Determination Date. The Company will at no time close its transfer books against transfer of the Warrants in any manner that interferes with the timely transfer and exercise of the Warrants.

8. Charges, Taxes and Expenses. Issuance of Shares in certificated or book-entry form to a Warrantholder upon the exercise of Warrants evidenced by this Warrant Certificate shall be made without charge to the Warrantholder for any documentary, stamp or similar issue or transfer taxes (other than any such taxes due because

the Warrantholder requests such Shares to be issued in a name other than the Warrantholder's name) or other incidental expense in respect of the issuance of such Shares, all of which such taxes, if any, and expenses shall be paid by the Company. The Warrantholder shall pay to the Company a sum sufficient to cover any documentary, stamp or similar issue or transfer taxes due because the Warrantholder requests Shares to be issued in a name other than the Warrantholder's name, and the Company may refuse to deliver any such Shares until it receives a sum sufficient to pay such taxes.

9. Transfer/Assignment. Subject to compliance with applicable securities laws and the requirements set forth in the Warrant Agreement, this Warrant Certificate and all rights hereunder are transferable, in whole or in part, upon the books of the Company (or an agent duly appointed by the Company) by the registered holder hereof in person or by duly authorized attorney, and one or more new Warrant Certificates shall be made and delivered by the Company, of the same tenor and date as this Warrant Certificate but registered in the name of one or more transferees, upon surrender of this Warrant Certificate, duly endorsed, to the office or agency of the Company described in Section 3. All expenses and other charges payable in connection with the preparation, execution and delivery of the new Warrant Certificate pursuant to this Section 9 shall be paid by the Company, except the Warrantholder of the old Warrant Certificate surrendered for transfer shall pay to the Company a sum sufficient to cover any documentary, stamp or similar issue or transfer tax due because the name of the Warrantholder of the new Warrant Certificate issued upon such transfer is different from the name of the Warrantholder of the old Warrant Certificate surrendered for transfer.

If this Warrant Certificate is a Global Warrant, then so long as the Global Warrant is registered in the name of the Depositary, (a) the holders of beneficial interests in the Warrants evidenced thereby shall have no rights under this Warrant Certificate with respect to the Global Warrant held on their behalf by the Depositary or the Custodian, and (b) the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of the Global Warrant for all purposes whatsoever, except, in each case, to the extent set forth herein. Accordingly, any such owner's beneficial interest in the Global Warrant will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or the Agent Members, and neither the Company nor the Warrant Agent shall have any responsibility with respect to such records maintained by the Depositary or the Agent Members. Notwithstanding the foregoing, nothing herein shall (i) prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by

the Depositary or (ii) impair, as between the Depositary and the Agent Members, the operation of customary practices governing the exercise of the rights of a holder of a beneficial interest in any Warrant. Except as otherwise may be provided in this Warrant Certificate or the Warrant Agreement, the rights of beneficial owners in a Global Warrant shall be exercised through the Depositary subject to the applicable procedures of the Depositary. Any holder of the Global Warrant shall, by acceptance of the Global Warrant, agree that transfers of beneficial interests in the Global Warrant may be effected only through a book-entry system maintained by the Depositary, and that ownership of a beneficial interest in the Warrants represented thereby shall be required to be reflected in book-entry form.

A Global Warrant shall be exchanged for Definitive Warrants, and Definitive Warrants may be transferred or exchanged for a beneficial interest in a Global Warrant, only at such times and in the manner specified in the Warrant Agreement. The holder of a Global Warrant may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold beneficial interests in such Global Warrant through Agent Members, to take any action that a Warrantholder is entitled to take under a Warrant or the Warrant Agreement.

10. Exchange of Warrants. This Warrant Certificate is exchangeable, upon the surrender hereof by the Warrantholder to the Warrant Agent, for a new Warrant Certificate or Warrant Certificates of like tenor and representing the same aggregate number of Warrants.

11. Compliance with Law. The Warrants are issued in reliance upon the exemption from the registration requirements of Section 5 of the Securities Act provided by section 1145 of the Bankruptcy Code. To the extent the Company determines that the exemption from registration provided under section 1145 of the Bankruptcy Code is not available with respect to any issuance or transfer of Warrants, the Warrant Certificates representing such Warrants may be stamped or otherwise imprinted with a legend, and the Registry may include a restrictive notation with respect to such Warrants, in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH.

Any legend or restrictive notation referenced in this Section 11 shall be removed from the Warrant Certificates or Registry at any time after the restrictions described in such legend or restrictive notation cease to be applicable; *provided* that the Company may request from any Warrantholder opinions, certificates or other evidence that such restrictions have ceased to be applicable before removing such legend or restrictive notation.

12. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding day that is a Business Day.

13. Adjustments and Other Rights. The Exercise Price and the Warrant Share Number shall be subject to adjustment from time to time as set forth in this Section 13; *provided* that no single event shall give rise to an adjustment under more than one subsection of this Section 13 (other than in the case of a dividend or other distribution of different types of property, in which case Section 13(A), 13(B), 13(C) or 13(D) shall apply to the appropriate parts of each such dividend or distribution); *provided*

further that any issuance of Common Stock upon exercise of the Warrants shall not itself give rise to any adjustment under this Section 13.

(A) Adjustments upon Certain Transactions. The Exercise Price and Warrant Share Number shall be adjusted pursuant to the formulas below in the event the Company (i) pays a dividend or makes any other distribution with respect to its Common Stock solely in shares of its Common Stock, (ii) subdivides or reclassifies its outstanding shares of Common Stock into a greater number of shares or (iii) combines or reclassifies its outstanding shares of Common Stock into a smaller number of shares. Such adjustments shall become effective (x) in the case of clause (i) above, at the open of business on the ex-date for such dividend or distribution or (y) in the case of clause (ii) or (iii) above, at the open of business on the effective date of such event. In the event that a dividend or distribution described in clause (i) above is not so paid or made, the Exercise Price and the Warrant Share Number shall be readjusted, effective as of the date when the Board of Directors determines not to make such dividend or distribution, as the case may be, to be the Exercise Price and the Warrant Share Number that would be in effect if such dividend or distribution had not been declared.

$$Ua = Ub \times \frac{Oa}{Ob}$$

$$Pa = Pb \times \frac{Ob}{Oa}$$

Where:

Ub = Warrant Share Number before the adjustment

Ua = Warrant Share Number after the adjustment

Pb = Exercise Price before the adjustment

Pa = Exercise Price after the adjustment

Ob = Number of shares of Common Stock outstanding immediately before the transaction in question

Oa = Number of shares of Common Stock outstanding immediately after the transaction in question

(B) Certain Rights, Options and Warrants. The Exercise Price and Warrant Share Number shall be adjusted pursuant to the formulas below in the event the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than in connection with a shareholder rights plan) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Fair Market Values of one share of Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date of such issuance; *provided* that the Exercise Price shall not be increased (and Warrant Share Number shall not be decreased) as a result of this Section 13(B). Such adjustments shall be made

successively whenever any such rights, options or warrants are issued and shall become effective at the open of business on the ex-date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Exercise Price and the Warrant Share Number shall be readjusted to be the Exercise Price and the Warrant Share Number that would then be in effect had the adjustment with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. In the event that such rights, options or warrants are not so issued, the Exercise Price and the Warrant Share Number shall be readjusted to be the Exercise Price and the Warrant Share Number that would then be in effect if such ex-date had not occurred. For purposes of this Section 13(B), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Fair Market Values of one share of Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account the Fair Market Value of any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof.

$$Ua = Ub \times \frac{Ob + X}{Ob + Y}$$

$$Pa = Pb \times \frac{Ob + Y}{Ob + X}$$

Where:

Ub = Warrant Share Number before the adjustment

Ua = Warrant Share Number after the adjustment

Pb = Exercise Price before the adjustment

Pa = Exercise Price after the adjustment

Ob = Number of shares of Common Stock outstanding immediately before the transaction in question

X = Number of shares of Common Stock issuable pursuant to such rights, options or warrants

Y = Number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Fair Market Values of one share of Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date of the issuance of such rights, options or warrants

(C) Certain Dividends and Distributions. If the Company dividends or distributes shares of securities, evidences of indebtedness, assets, cash, rights, options or warrants (other than (i) dividends, distributions or issuances for which an adjustment is made pursuant to Section 13(A) or

Section 13(B) and (ii) Spin-Offs as to which the provisions of Section 13(D) below shall apply) to all or substantially all holders of the Common Stock, the Exercise Price and Warrant Share Number shall be adjusted pursuant to the formulas below. Such adjustments shall become effective at the open of business on the ex-date for such dividend or distribution. In the event that such dividend or distribution is not so paid or made, the Exercise Price and the Warrant Share Number shall be readjusted, effective as of the date when the Board of Directors determines not to make such dividend or distribution, as the case may be, to be the Exercise Price and the Warrant Share Number that would be in effect if such dividend or distribution had not been declared.

$$Ua = Ub \times \frac{M}{M-D}$$

$$Pa = Pb \times \frac{M-D}{M}$$

Where:

Ub = Warrant Share Number before the adjustment

Ua = Warrant Share Number after the adjustment

Pb = Exercise Price before the adjustment

Pa = Exercise Price after the adjustment

M = Average of the Fair Market Values of one share of Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the ex-date for such dividend or distribution

D = Fair Market Value of such dividend or distribution made per share of Common Stock as of the ex-date; *provided* that if such Fair Market Value is determined by reference to the actual or when-issued trading market for any securities, such determination shall consider the prices in such market over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding such ex-date

(D) Spin-Offs. If the Company pays a dividend or makes any other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "*Spin-Off*"), the Exercise Price and Warrant Share Number shall be adjusted pursuant to the formulas below. Such adjustments shall become effective at the close of business on the last Trading Day of the 10 consecutive Trading Day period beginning on, and including, the ex-date for such Spin-Off (the "*Valuation Period*").

$$Ua = Ub \times \frac{D + M}{M}$$

$$Pa = Pb \times \frac{M}{D + M}$$

Where:

Ub = Warrant Share Number before the adjustment

Ua = Warrant Share Number after the adjustment

Pb = Exercise Price before the adjustment

Pa = Exercise Price after the adjustment

M = Average of the Fair Market Values of one share of Common Stock over the Valuation Period

D = Average of the Fair Market Values of such Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the Valuation Period

If the Determination Date for any exercise of Warrants occurs during the Valuation Period, the reference in the definition of "Valuation Period" to "10" shall be deemed replaced with such lesser number of Trading Days as have elapsed between the ex-date for such Spin-Off and such Determination Date in determining the Exercise Price and Warrant Share Number.

(E) Tender and Exchange Offers. If a publicly-announced tender or exchange offer made by the Company or any of its Subsidiaries for the Common Stock (other than a Reorganization) shall be consummated, to the extent that the cash and Fair Market Value of any other consideration included in the payment per share of Common Stock exceeds the average of the Fair Market Values of one share of Common Stock over the 10 consecutive Trading Day period ending on, and including, the tenth Trading Day immediately following the date on which such tender or exchange offer is consummated, then the Exercise Price and the Warrant Share Number shall be adjusted pursuant to the formulas below; *provided* that the Exercise Price shall not be increased (and Warrant Share Number shall not be decreased) as a result of this Section 13(E). Such adjustments shall be determined at the close of business on the tenth Trading Day immediately following the date on which such tender or exchange offer is consummated, but shall become effective as of the date on which such tender or exchange offer expires.

$$Ua = Ub \times \frac{(Oa \times M) + E}{Ob \times M}$$

$$Pa = Pb \times \frac{Ob \times M}{(Oa \times M) + E}$$

Where:

Ub = Warrant Share Number before the adjustment

Ua = Warrant Share Number after the adjustment

Pb = Exercise Price before the adjustment

Pa = Exercise Price after the adjustment

M = Average of the Fair Market Values of one share of Common Stock over the 10 consecutive Trading Day period ending on, and including, the tenth Trading Day immediately following the date on which such tender or exchange offer is consummated

E = Aggregate Fair Market Value of all cash and any other consideration paid or payable for shares of Common Stock in such tender or exchange offer

Ob = Number of shares of Common Stock outstanding immediately before giving effect to such tender or exchange offer

Oa = Number of shares of Common Stock outstanding immediately after giving effect to such tender or exchange offer

If the Determination Date for any exercise of Warrants occurs on or after the date on which such tender or exchange offer expires and prior to the tenth Trading Day immediately following the date on which such tender or exchange offer is consummated, references in this Section 13(E) to "tenth Trading Day immediately following the date on which such tender or exchange offer is consummated" shall be deemed replaced by references to such Determination Date and references in this Section 13(E) to "10" shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date on which such tender or exchange offer is consummated and such Determination Date, in each case, in determining the Exercise Price and Warrant Share Number.

(F) Elective Reorganizations. On or prior to the fifth Business Day immediately following the occurrence of any Elective Reorganization, the Company shall notify each Warrantholder and the Warrant Agent of such occurrence and the related Black-Scholes Payment payable per Warrant pursuant to Section 13(H). Upon the occurrence of any Elective Reorganization, each Warrantholder shall have the right, on or prior to the tenth Business Day immediately following such occurrence, to elect for such Elective Reorganization to be (x) deemed to be and treated as a Continuing Reorganization, in which case, in connection with such Elective Reorganization, the Warrants held by such Warrantholder shall be governed by Section 13(G) or (y) deemed to be and treated as a Repurchase Reorganization, in which case, in connection with such Elective Reorganization, the Warrants held by such Warrantholder shall be governed by Section 13(H). If any Warrantholder has not made the election described in the immediately preceding sentence or any Warrantholder exercises its Warrants, in each case, on or prior to the tenth Business Day immediately following the occurrence of any Elective Reorganization, such Warrantholder shall be deemed to have elected for such Elective Reorganization to be deemed to be and treated as a Continuing Reorganization.

In the case of any Reorganization that is consummated prior to October 5, 2021 in which holders of Common Stock may make an election as between different types of Exchange Property, for purposes of determining whether such Reorganization is an Elective Reorganization, the Exchange Property shall be deemed to be comprised of (x) the weighted average of the types and amounts of

consideration received by the holders of Common Stock that affirmatively make such an election or (y) if less than 5% of the holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock.

(G) Continuing Reorganizations. In the case of any Continuing Reorganization, then, following the effective time of such Continuing Reorganization, a Warrantholder's right to receive Shares upon exercise of the Warrants evidenced by this Warrant Certificate shall be converted into the right to exercise such Warrants to acquire, with respect to each Share that would have otherwise been deliverable hereunder, one Unit of Exchange Property; *provided* that if the Exchange Property consists solely of cash, upon the consummation of such Continuing Reorganization, each Warrantholder shall receive, and the Company shall deliver to such Warrantholder, in respect of each Warrant such Warrantholder holds, at the same time and upon the same terms as holders of Common Stock receive the cash in exchange for their shares of Common Stock, an amount of cash equal to the greater of (i) (x) the amount of cash that such Warrantholder would have received if such Warrantholder owned, as of the record date for such Continuing Reorganization, a number of shares of Common Stock equal to the Warrant Share Number in effect on such record date, *minus* (y) the Exercise Price in effect on such record date *multiplied by* the Warrant Share Number in effect on such record date and (ii) $0, and upon the Company's delivery of such cash (if any) in respect of such Warrant, such Warrant shall be deemed to have been exercised in full and canceled. With respect to any exercise of Warrants following the effective time of such Continuing Reorganization, the number of Units of Exchange Property issuable upon exercise of a Warrant shall be calculated pursuant to Section 4; *provided* that, with respect to each Determination Date following such Continuing Reorganization, each reference in Section 4 to a "Share" or a "share of Common Stock" shall be deemed to refer to a Unit of Exchange Property.

In the case of any Continuing Reorganization in which holders of Common Stock may make an election as between different types of Exchange Property, a Warrantholder shall be deemed to have elected to receive upon exercise of the Warrants (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (y) if less than 5% of the holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock. The Company shall not consummate any Continuing Reorganization unless the Company first shall have made appropriate provision to ensure that applicable provisions of this Warrant Certificate (including, without limitation, the applicable provisions of this Section 13) shall immediately after giving effect to such Continuing Reorganization be assumed by and binding on the other party to such Continuing Reorganization (or the surviving entity, successor, parent company and/or issuer of the Exchange Property, as appropriate) and applicable to any Exchange Property deliverable upon the exercise of Warrants, pursuant to a customary assumption agreement. Any such assumption agreement shall also include any amendments to this Warrant Certificate necessary to effect the changes to the terms of the Warrants described in this Section 13(G) and preserve the intent of the provisions of this Warrant Certificate (including, without limitation, the adjustment provisions in this Section 13). The provisions of this Section 13(G) shall similarly apply to successive Continuing Reorganizations.

The Company shall notify the Warrant Agent of any proposed Reorganization reasonably prior to the consummation thereof so as to provide the Warrantholders with a reasonable opportunity to confirm compliance with the terms hereof and, if they elect, to exercise the Warrants in accordance with the terms and conditions hereof prior to consummation of such Reorganization, and the Company shall cause such notice to be sent or communicated to the Warrantholders and holders of a beneficial interest in a Global Warrant in the manner set forth in Section 21 hereof; *provided* that in the case of a transaction which requires notice to be given to the holders of the Common Stock, the Warrant Agent and the

Warrantholders and holders of a beneficial interest in a Global Warrant shall be provided the same notice given to the holders of the Common Stock.

(H) Repurchase Reorganizations. On or prior to the fifteenth Business Day immediately following the occurrence of any Repurchase Reorganization, the Company shall, upon delivery of the related Warrant Certificate to the Company (x) pay each applicable Warrantholder an amount of cash per Warrant equal to the Black Scholes Payment and (y) to the extent any portion of Exchange Property in respect of such Repurchase Reorganization is comprised of Reporting Stock, exchange such Warrants for new warrants and related warrant certificates (the "*New Warrants*") with terms consistent with the terms set forth in this Warrant Certificate and issued under a warrant agreement with terms consistent with the Warrant Agreement, as if Section 13(G) applied to such Warrants; *provided* that (1) each New Warrant shall relate to a number (which, for the avoidance of doubt, may be less than one) of shares of Reporting Stock that a holder of one share of Common Stock received in the relevant Repurchase Reorganization, *multiplied by* the Warrant Share Number and (2) the "Exercise Price" of the New Warrants shall be equal to the Exercise Price of the Warrants evidenced by this Warrant Certificate, *multiplied by* one *minus* the Black Scholes Proportion. For the avoidance of doubt, following the occurrence of any Repurchase Reorganization, each applicable Warrantholder shall not be entitled to any payment or delivery, or other rights, with respects to its Warrants, other than as set forth in the immediately preceding sentence. No Warrants to which this Section 13(H) applies may be exercised during the period beginning on the date that the relevant Warrantholder elects for the relevant Elective Reorganization to be deemed to be and treated as a Repurchase Reorganization and ending on, and including, the fifteenth Business Day immediately following the occurrence of such Elective Reorganization (or, if later, the date on which such Warrantholder delivers the related Warrant Certificate to the Company).

The provisions of Section 13(G) above and this Section 13(H) are subject, in all cases, to any applicable requirements under the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder. Where there is any inconsistency between the requirements of the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder and the requirements of Section 13(G) above or this Section 13(H), the requirements of the Securities Act and the Exchange Act and the respective rules and regulations promulgated thereunder shall supersede.

(I) Record Owners. Notwithstanding this Section 13 or any other provision of this Warrant Certificate or the Warrant Agreement, if an adjustment to the Warrant Share Number and the Exercise Price becomes effective on the ex-date for any dividend, distribution or other event, and a Warrantholder that has exercised its Warrants on or after such ex-date and on or prior to the related record date would be treated as the record owner of the shares of Common Stock due upon exercise as of the related Exercise Date as described in Section 3 based on an adjusted Warrant Share Number and Exercise Price for the dividend or distribution corresponding to such ex-date, then, notwithstanding the Warrant Share Number and Exercise Price adjustment provisions in this Section 13, the Warrant Share Number and Exercise Price adjustment relating to the dividend or distribution corresponding to such ex-date shall not be made for such exercising Warrantholder. Instead, such Warrantholder shall be treated as if such Warrantholder were the record owner of the shares of Common Stock without giving effect to the adjustment in question and participate in the related dividend, distribution or other event giving rise to such adjustment.

(J) Certain Other Events. The Company may make decreases in the Exercise Price and/or increases in the Number of Warrants as the Board of Directors deems advisable in good faith in order to avoid or diminish any income tax to holders of the Common Stock resulting from any dividend

or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(K) Shareholder Rights Plans. If the Company has a shareholder rights plan in effect upon any exercise of Warrants, each share of Common Stock issued upon such exercise shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such exercise shall bear such legends, if any, in each case as may be provided by the terms of any such shareholder rights plan, as the same may be amended from time to time. However, if, prior to any exercise of Warrants, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable shareholder rights plan, the Exercise Price and Warrant Share Number shall be adjusted at the time of separation as if the Company made a distribution of the type for which an adjustment is made pursuant to Section 13(C), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(L) Rounding of Calculations; Minimum Adjustments. All calculations under this Section 13 shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Section 13 to the contrary notwithstanding, no adjustment in the Exercise Price or the Warrant Share Number shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a share of Common Stock, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a share of Common Stock, or more, or upon exercise of a Warrant if it shall earlier occur.

(M) Notice of Adjustment. Whenever the Warrant Share Number, the number of shares of stock or property other than Common Stock issuable upon the exercise of the Warrants or the Exercise Price is adjusted, or the type of securities or property to be delivered upon exercise of the Warrants is changed, as herein provided, the Company shall deliver to the Warrant Agent a notice of such adjustment or adjustments and shall deliver to the Warrant Agent a statement setting forth the Warrant Share Number, the number and type of shares of stock or property other than Common Stock issuable upon the exercise of a Warrant and the Exercise Price after such adjustment, setting forth a brief statement of the facts requiring such adjustment and setting forth the computation by which such adjustment was made, and the Company shall cause such notice and statement to be sent or communicated to the Warrantholders and holders of a beneficial interest in a Global Warrant in the manner set forth in Section 21 hereof. Any failure by the Company to deliver such notice or statement shall not affect the validity of the relevant adjustments.

(N) Notice of Action. In the event that the Company shall propose to take any action of the type described in this Section 13 (but only if the action of the type described in this Section 13 would result in an adjustment in the Exercise Price or the Warrant Share Number or a change in the type of securities or property to be delivered upon exercise of a Warrant), the Company shall deliver to the Warrant Agent a notice and shall cause such notice to be sent or communicated to the Warrantholders and holders of a beneficial interest in a Global Warrant in the manner set forth in Section 21 hereof, which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Exercise Price and the number, kind or class of shares or other securities or property which shall be deliverable upon exercise of a Warrant. In the case of any action which would require the fixing of a record date, such notice shall be given at least 10 days prior to the date so fixed, and in case of all other action, such notice shall be given at least 15 days prior to the

taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(O) Adjustment Rules. If an adjustment in the Exercise Price made hereunder would reduce the Exercise Price to an amount below $0.01 then such adjustment in the Exercise Price made hereunder shall reduce the Exercise Price to $0.01 and not lower.

(P) Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 13, the Company shall take any action which may be necessary, including obtaining regulatory, New York Stock Exchange, NASDAQ Global Market, NASDAQ Global Select Market or other applicable national securities exchange or stockholder approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all Shares that a Warrantholder is entitled to receive upon exercise of a Warrant pursuant to Section 4, after giving effect to the adjustment that would be made under this Section 13.

14. Notice of Dividends and Distributions. At any time when the Company declares any dividend or other distribution on the Common Stock and the Common Stock is not listed on a national securities exchange, it shall give notice to the Warrant Agent of any such declaration not less than 15 days prior to the related record date for payment of the dividend or distribution so declared and shall cause such notice to be sent or communicated to the Warrantholders and holders of a beneficial interest in a Global Warrant in the manner set forth in Section 21 hereof.

15. No Impairment. The Company will not, by amendment of its Charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant Certificate and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholders.

16. Governing Law. **This Warrant Certificate and the Warrants evidenced hereby will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.**

17. Binding Effect; Countersignature by Warrant Agent. This Warrant Certificate shall be binding upon any successors or assigns of the Company. This Warrant Certificate shall not be valid until an authorized signatory of the Warrant Agent (as defined below) or its agent as provided in the Warrant Agreement (as defined below) countersigns this Warrant Certificate. Such signature shall be solely for the purpose of authenticating this Warrant Certificate and shall be conclusive evidence that this Warrant Certificate has been countersigned under the Warrant Agreement.

18. Warrant Agreement; Amendments. This Warrant Certificate is issued under and in accordance with a Warrant Agreement dated as of October 5, 2016 (the "*Warrant Agreement*"), between the Company and American Stock Transfer & Trust Company, LLC (the "*Warrant Agent*," which term includes any successor Warrant Agent under the Warrant Agreement), and is subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the beneficial owners of the Warrants and the Warrantholders consent by acceptance hereof. The Warrant Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a statement of the respective rights, limitations of rights, duties and

obligations of the Company, the Warrant Agent and the Warrantholders and beneficial owners of the Warrants. A copy of the Warrant Agreement may be obtained for inspection by the Warrantholders upon written request to the Warrant Agent at the address of the Warrant Agent (or successor warrant agent) set forth in the Warrant Agreement. The Warrant Agreement and this Warrant Certificate may be amended and supplemented and the observance of any term of the Warrant Agreement or this Warrant Certificate may be waived only to the extent provided in the Warrant Agreement or this Warrant Certificate.

19. Prohibited Actions. The Company agrees that it will not take any action which would entitle the Warrantholders to an adjustment of the Exercise Price if the aggregate Warrant Share Number after such action for the Warrants evidenced by this Warrant Certificate, together with all shares of Common Stock then outstanding and all shares of Common Stock then issuable upon the exercise of, or underlying, all outstanding options, warrants, conversion and other rights (without duplication), would exceed the total number of shares of Common Stock then authorized by its Charter.

20. Reports to Warrantholders. In the event that the shares of Common Stock underlying the Warrants are deregistered or become otherwise not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will provide to the Warrantholders, on a continuous basis for so long as any Warrants remain outstanding, any and all quarterly and annual financial and other information with respect to the Company and its Subsidiaries as is provided to the holders of the Common Stock, in each case, in the form in which such information is so provided to the holders of the Common Stock (which may include, without limitation, posting such information to the Company's public website or a password-protected website created by the Company for such purpose).

21. Notices. Any notice or communication mailed to the Warrantholders shall be mailed to each Warrantholder at the Warrantholder's address as it appears in the Registry and shall be sufficiently given if so mailed within the time prescribed. Any notice to holders of a beneficial interest in a Global Warrant shall be distributed through the Depositary in accordance with the procedures of the Depositary. Communications to such holders shall be deemed to be effective at the time of dispatch to the Depositary.

IN WITNESS WHEREOF, the Company has caused this Warrant Certificate to be duly executed by a duly authorized officer. This Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

Dated: [_____]

ARCH COAL, INC.

By: _____
Name:
Title:

Countersigned by:

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC, as Warrant Agent

By: _____
Authorized Signatory

[SIGNATURE PAGE TO WARRANT CERTIFICATE**]**

ANNEX A

[Annex A to Global Warrant][5]

The initial number of Warrants represented by this Global Warrant is [____].

The following decreases in the number of Warrants represented by this Global Warrant have been made as a result of the exercise, cancellation, exchange or redemption of certain Warrants represented by this Global Warrant:

Date of Exercise/ Cancellation/ Exchange of Warrants	Number of Warrants Exercised/ Canceled/ Exchanged	Total Number of Warrants Represented Hereby Following Such Exercise/ Cancellation/ Exchange	Notation Made by Warrant Agent/Custodian

[5] Include for Global Warrant.

ANNEX B

FORM OF EXERCISE NOTICE

(TO BE EXECUTED ONLY UPON EXERCISE OF SERIES A WARRANTS)

DATE: _____, 20__

TO: American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Attention: Corporate Actions

RE: Election to Purchase Common Stock

The undersigned registered holder of [_____] Series A Warrants irrevocably elects to exercise the number of Series A Warrants set forth below represented by the Global Warrant (or, in the case of a Definitive Warrant, the Warrant Certificate enclosed herewith), and surrenders all right, title and interest in the number of Series A Warrants exercised hereby to the Company, and directs that the shares of Common Stock or other securities or property delivered upon exercise of such Series A Warrants, and any interests in the Global Warrant or Definitive Warrant representing unexercised Series A Warrants, be registered or placed in the name and at the address specified below and delivered thereto.

Number of Series A Warrants: _____

Warrantholder: _____
By: _____
Name: _____
Title: _____

Settlement: ☐ Physical Settlement and payment of $_____ by wire transfer of immediately available funds

☐ Physical Settlement and payment of $_____ by certified or official bank or bank cashier's check

☐ Net Settlement

Signature guaranteed by*:

_____

* The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatever, and must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level reasonably acceptable to the Company's transfer agent.

Securities and/or check to be issued to:

If in book-entry form through the Depositary:

Depositary Account Number: _____

Name of Agent Member: _____

If in definitive form:

Social Security Number
or Other Identifying Number: _____

Name: _____

Street Address: _____

City, State and Zip Code: _____

Any unexercised Series A Warrants evidenced by the exercising Warrantholder's interest in the Global Warrant or Definitive Warrant, as the case may be, to be issued to:

If in book-entry form through the Depositary:

Depositary Account Number: _____

Name of Agent Member: _____

If in definitive form:

Social Security Number
or Other Identifying Number: _____

Name: _____

Street Address: _____

City, State and Zip Code: _____

ANNEX C

Form of Assignment

For value received, the undersigned registered Warrantholder of the within Warrant Certificate hereby sells, assigns and transfers unto the Assignee(s) named below (including the undersigned with respect to any Series A Warrants constituting a part of the Series A Warrants evidenced by the within Warrant Certificate not being assigned hereby) all of the right, title and interest of the undersigned under the within Warrant Certificate with respect to the number of Series A Warrants set forth below and does

irrevocably constitute and appoint [ ], the undersigned's attorney, to make such transfer on the books of the Company maintained for the purpose, with full power of substitution in the premises.

Name of Assignees	Address	Number of Warrants	Social Security Number or other Identifying Number

Dated:

Holder: _____
By: _____
Name: _____
Title: _____

Signature guaranteed by*:

_____

* The signature must correspond with the name as written upon the face of the within Warrant Certificate in every particular, without alteration or enlargement or any change whatever, and must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level reasonably acceptable to the Company's transfer agent.

FORM OF INDEMNIFICATION AGREEMENT

Arch Coal, Inc. (Delaware corporation)

This Indemnification Agreement (this "**Agreement**"), made and entered into as of the __ day of ____, 20__, by and between Arch Coal, Inc. a Delaware corporation (the "**Company**") and _____ ("**Indemnitee**").

W I T N E S S E T H:

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself.

WHEREAS, the By-Laws of the Company provide that the Company shall indemnify and advance expenses to all directors and officers of the Company in the manner set forth therein and to the fullest extent permitted by applicable law, and the Company's Certificate of Incorporation provides for limitation of liability for directors. In addition, Indemnitee may be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("**DGCL**") . The By-Laws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons.

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and By-Laws of the Company and any resolutions adopted pursuant thereto and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

WHEREAS, Indemnitee does not regard the protection available under the Company's Certificate of Incorporation and By-Laws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director of the Company without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

(a) As used in this Agreement:

"**Change of Control**" means: (i) there shall be consummated (A) any consolidation, merger, or share exchange of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of the Company's common stock would be converted into cash, securities or other property, other than a merger of the Company in which the holders of the Company's common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company, or (ii) the stockholders of the Company shall approve any plan or proposal for the liquidation or dissolution of the Company, or (iii) at any time during a period of two (2) consecutive years, the Continuing Directors shall cease for any reason to constitute at least a majority of the members of the Board.

"**Continuing Director**" means (i) each director who was in office at the beginning of any consecutive two (2) year period or (ii) any new director whose election or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the Continuing Directors then in office.

"**Corporate Status**" means the status of a person who is or was a director, officer, trustee, general partner, managing member, fiduciary, board of directors' committee member, employee or agent of the Company or of any other Enterprise.

"**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

"**Enterprise**" means the Company and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, board of directors' committee member, employee or agent.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Expenses**" means all direct and indirect costs (including attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses) reasonably incurred in connection with (i) prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding or (ii) establishing or enforcing a right to indemnification under this Agreement, the Company's By-Laws, applicable law or otherwise. Expenses also shall include Expenses incurred in connection

with any appeal resulting from any Proceeding, including the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. For the avoidance of doubt, Expenses, however, shall not include any Liabilities.

"**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement or of other indemnitees under similar indemnification agreements) or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"**Liabilities**" means any losses or liabilities, including any judgments, fines, excise taxes and penalties, penalties and amounts paid in settlement, arising out of or in connection with any Proceeding (including all interest, assessments and other charges paid or payable in connection with or in respect of any such judgments, fines, excise taxes and penalties, penalties or amounts paid in settlement).

"**Proceeding**" means any actual or alleged, threatened, pending or completed action, derivative action, suit, claim, counterclaim, cross claim, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative or regulatory hearing or any other actual, threatened or completed proceeding, whether civil (including intentional and unintentional tort claims), criminal, administrative, regulatory or investigative, including any appeal therefrom, and whether instituted by or on behalf of the Company or any other party, or any inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit or other proceeding hereinabove listed in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of any Corporate Status of Indemnitee, or by reason of any action taken (or failure to act) by him or her or of any action (or failure to act) on his or her part while serving in any Corporate Status.

(b) For the purposes of this Agreement:

References to "Company" shall include, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee, or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, then Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

Reference to "other enterprise" shall include employee benefit plans; references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

Reference to "including" shall mean "including, without limitation," regardless of whether the words "without limitation" actually appear, references to the words "herein," "hereof" and "hereunder" and other words of similar import shall refer to this Agreement as a whole and not to any particular paragraph, subparagraph, section, subsection or other subdivision.

ARTICLE 2
SERVICES BY INDEMNITEE

Section 2.01. *Services By Indemnitee.* Indemnitee hereby agrees to serve or continue to serve, at the will of the Company's shareholders in the case of service as a director, or at the will of the Company in the case of service as an officer, as a director or officer of the Company, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed.

ARTICLE 3
INDEMNIFICATION

Section 3.01. *General.* (a) The Company hereby agrees to and shall indemnify Indemnitee and hold Indemnitee harmless from and against any and all Expenses and Liabilities, in either case, actually and reasonably incurred by Indemnitee or on Indemnitee's behalf by reason of Indemnitee's Corporate Status, to the fullest extent permitted by applicable law. The Company's indemnification obligations set forth in this Section 3.01 shall apply (i) in respect of Indemnitee's past, present and future service in any Corporate Status and (ii) regardless of whether Indemnitee is serving in any Corporate Status at the time any such Expense or Liability is incurred.

For purposes of this Agreement, the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

(i) to the fullest extent permitted by any provision of the DGCL, or the corresponding provision of any successor statute, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

(b) *Witness Expenses*. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in connection therewith.

(c) *Expenses as a Party Where Wholly or Partly Successful*. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law, to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her in connection therewith. If Indemnitee is not wholly successful in such Proceeding, but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in

connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 3.02. *Exclusions.* Notwithstanding any provision of this Agreement and unless Indemnitee ultimately is successful on the merits with respect to any such claim, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for (i) an accounting of short-swing profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law or (ii) any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, in each case as a violation of the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or

(b) except as otherwise provided in Sections 6.01(e), prior to a Change of Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee (other than any cross claim or counterclaim asserted by the Indemnitee), including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

ARTICLE 4
ADVANCEMENT OF EXPENSES; DEFENSE OF CLAIMS

Section 4.01. *Advances.* Notwithstanding any provision of this Agreement to the contrary, the Company shall advance any Expenses actually and reasonably incurred by Indemnitee in connection with any Proceeding within thirty (30) days after the receipt by the Company of each statement requesting such advance from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay such amounts and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed.

Section 4.02. *Repayment of Advances or Other Expenses.* Indemnitee agrees that Indemnitee shall reimburse the Company for all Expenses advanced by the Company pursuant to Section 4.01, in the event and only to the extent that it shall be determined by final non-appealable judgment or other final non-appealable adjudication under the provisions of any applicable law (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee is not entitled to be indemnified by the Company for such Expenses.

Section 4.03. *Defense of Claims.* The Company will be entitled to participate in the Proceeding at its own expense. The Company shall be entitled to assume the defense of any Proceeding with counsel consented to by Indemnitee (such consent not to be unreasonably delayed or withheld) upon the delivery by the Company to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, consent to such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to such Proceeding; *provided* that (i) Indemnitee shall have the right to employ separate counsel in respect of any Proceeding at Indemnitee's expense and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized in writing by the Company or (B) Indemnitee shall have reasonably concluded upon the advice of counsel that there is a conflict of interest between the Company and Indemnitee in the conduct of the defense of such Proceeding, then in each such case the fees and expenses of Indemnitee's counsel shall be at the Company's expense. The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent, such consent not to be unreasonably withheld. Indemnitee shall not settle any action, claim or Proceeding (in whole or in part) without the Company's prior written consent, such consent not to be unreasonably withheld.

ARTICLE 5
PROCEDURES FOR NOTIFICATION OF AND DETERMINATION OF ENTITLEMENT TO INDEMNIFICATION

Section 5.01. *Notification; Request For Indemnification.* (a) As soon as reasonably practicable after receipt by Indemnitee of written notice that he is a party to or a participant (as a witness or otherwise) in any Proceeding or of any other matter in respect of which Indemnitee intends to seek indemnification or advancement of Expenses hereunder, Indemnitee shall provide to the Company written notice thereof, including the nature of and the facts underlying the Proceeding. The omission by Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise.

(b) To obtain indemnification under this Agreement, Indemnitee shall deliver to the Company a written request for indemnification, including therewith such information as is reasonably available to Indemnitee and reasonably necessary to determine Indemnitee's entitlement to indemnification hereunder. Such request(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Indemnitee's entitlement to indemnification shall be determined according to Section 5.02 of this Agreement and applicable law.

Section 5.02. *Determination of Entitlement.* (a) Where there has been a written request by Indemnitee for indemnification pursuant to Section 5.01(b), then as soon as is reasonably practicable (but in any event not later than 60 days) after final disposition of the relevant Proceeding, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change of Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change of Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within thirty (30) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by

the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification).

(b) If entitlement to indemnification is to be determined by Independent Counsel pursuant to Section 5.02(a)(ii), such Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. If entitlement to indemnification is to be determined by Independent Counsel pursuant to Section 5.02(a)(i)(C) (or if Indemnitee requests that such selection be made by the Board), such Independent Counsel shall be selected by the Company in which case the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within 20 days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 5.01(b) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 5.02(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 6.01(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel serving under this Agreement.

Section 5.03. *Presumptions and Burdens of Proof; Effect of Certain Proceedings.* (a) In making any determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 5.01(b) of this

Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of any person, persons or entity to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by any person, persons or entity that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 5.02 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within the sixty (60) day period referred to in Section 5.02(a), the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification , absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is in good faith reliance on the records or books of account of any Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of such Enterprise in the course of their duties, or on the advice of legal counsel for such Enterprise or on information or records given or reports made to such Enterprise by an independent certified public accountant or by an appraiser or other expert selected by such Enterprise. The provisions of this Section 5.03(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of any Enterprise shall not be imputed to Indemnitee for purposes of determining any right to indemnification under this Agreement.

ARTICLE 6
REMEDIES OF INDEMNITEE

Section 6.01. *Adjudication or Arbitration.* (a) In the event of any dispute between Indemnitee and the Company hereunder as to entitlement to indemnification or advancement of Expenses (including where (i) a determination is made pursuant to Section 5.02 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 4.01 of this Agreement, (iii) payment of indemnification pursuant to Section 3.01 of this Agreement is not made within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification, (iv) no determination as to entitlement to indemnification is timely made pursuant to Section 5.02 of this Agreement and no payment of indemnification is made within thirty (30) days after entitlement is deemed to have been determined pursuant to Section 5.03(b)) or (v) a contribution payment is not made in a timely manner pursuant to Section 8.04 of this Agreement, then Indemnitee shall be entitled to an adjudication by a court of his or her entitlement to such indemnification, contribution or advancement. Alternatively, in such case, Indemnitee, at his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 5.02(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 6.01 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 6.01 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 5.02(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 6.01, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 4.02 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination shall have been made pursuant to Section 5.02(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 6.01, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 6.01 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within thirty (30) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are reasonably incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company (or otherwise for the enforcement, interpretation or defense of his or her rights) under this Agreement or any other agreement, including any other indemnification, contribution or advancement agreement, or any provision of the Company's Certificate of Incorporation or By-laws now or hereafter in effect or (ii) recovery or advances under any directors' and officers' liability insurance policy maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, contribution, advancement or insurance recovery, as the case may be.

ARTICLE 7
DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

Section 7.01. *D&O Liability Insurance.* To the extent that the Company maintains a policy or policies of insurance providing liability insurance for directors and officers of the Company in their capacities as such (and for any capacity in which any director or officer of the Company serves any other Enterprise at the request of the Company), in respect of any actual or alleged acts or omissions occurring while serving in such capacity, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any other director or officer under such policy or policies.

Section 7.02 *Evidence of Coverage.* Upon request by Indemnitee, the Company shall provide copies of all policies of insurance maintained in accordance with Section 7.01 of this Agreement. The Company shall promptly notify Indemnitee of any changes in such insurance coverage.

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Nonexclusivity of Rights.* The rights of indemnification, contribution and advancement of Expenses as provided by this Agreement shall

not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 8.02. *Insurance and Subrogation.* (a) If, at the time the Company receives notice of a claim hereunder, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(b) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(c) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided) hereunder if and to the extent that Indemnitee has actually received such payment under any insurance policy or other indemnity provision.

Section 8.03 The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, board of directors' committee member, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such Enterprise.

Section 8.04. *Contribution.* To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a

result of the event(s) and/or transaction(s) giving rise to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 8.05. *Amendment.* This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the parties hereto. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit, restrict or reduce any right of Indemnitee under this Agreement in respect of any act or omission, or any event occurring, prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, (i) permits greater indemnification, contribution or advancement of Expenses than would be afforded currently under the Company's By-Laws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change or (ii) limits rights with respect to indemnification, contribution or advancement of Expenses, it is the intent of the parties hereto that the rights with respect to indemnification, contribution or advancement of Expenses in effect prior to such change shall remain in full force and effect to the extent permitted by applicable law.

Section 8.06. *Waivers.* The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term only by a writing signed by the party against which such waiver is to be asserted. Unless otherwise expressly provided herein, no delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 8.07. *Entire Agreement.* This Agreement and the documents referred to herein constitute the entire agreement between the parties hereto with respect to the indemnification that the Indemnitee is entitled to under this Agreement, and any other prior or contemporaneous oral or written understandings or agreements with respect to the

matters covered hereby are superseded by this Agreement, provided that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and By-laws of the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 8.08. *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or

unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 8.09. *Notices.* All notices, requests, demands and other communications under this Agreement shall be in writing (which may be by facsimile transmission). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt. The address for notice to a party is as shown on the signature page of this Agreement, or such other address as any party shall have given by written notice to the other party as provided above.

Section 8.10. *Binding Effect.* (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouses, heirs, and executors, administrators, personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all, or a substantial part of the business or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(c) The indemnification, contribution and advancement of Expenses provided by, or granted pursuant to this Agreement shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, administrators, legatees and assigns of such a person.

Section 8.11. *Governing Law.* This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance

with, the laws of the State of Delaware, without regard to its conflict of laws rules.

Section 8.12. *Consent To Jurisdiction.* Except with respect to any arbitration commenced by Indemnitee pursuant to Section 6.01(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 8.13. *Headings.* The Article and Section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 8.14. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 8.15. *Use of Certain Terms.* As used in this Agreement, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular paragraph, subparagraph, section, subsection, or other subdivision. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered to be effective as of the date first above written.

ARCH COAL, INC.

By: _____
Name:
Title:

Address:
Facsimile:
Attention:

With a copy to:

Address:
Facsimile:
Attention:

INDEMNITEE

Address:
Facsimile:

With a copy to:

Address:
Facsimile:
Attention:

Exhibit 99.1

NEWS FROM ARCH COAL
FOR IMMEDIATE RELEASE

Arch Coal Successfully Completes Financial Restructuring and Emerges from Chapter 11

Equity to trade on NYSE under the symbol ARCH

ST. LOUIS, October 5, 2016 — Arch Coal, Inc. (NYSE: ARCH) today announced that it has successfully completed its financial restructuring and emerged from court protection, with new equity that will trade on the New York Stock Exchange under the ticker symbol ARCH.

“Today marks the beginning of a new era for Arch Coal,” said John W. Eaves, Arch’s chief executive officer. “We are extremely pleased with what we have accomplished during our highly expeditious restructuring process, and are eager to move forward with our compelling plan for value creation. I am confident we have all the pieces in place for long-term success — an extraordinary workforce, cost-competitive assets, a high-quality reserve base, a clean balance sheet and an excellent management team.”

Arch emerges as the leading producer of metallurgical coal and the second largest producer of thermal coal in the United States, with a streamlined portfolio of large, modern, low-cost mines. Arch’s operations have a proven track record of generating cash through all phases of the market cycle, with significant upside in rising price environments.

Arch is emerging with more than $300 million of cash on its balance sheet and a debt level of just $363 million, consisting of a new term loan and capital leases. The company’s total debt is just 7% of what it was prior to restructuring. Cash requirements are expected to be modest, with projected capital spending of $55 million in 2017 and projected debt service of approximately $33 million. In addition, the company has third-party surety bonds in place covering 100% of its reclamation bonding requirements.

“We are particularly pleased to be emerging in a resurgent metallurgical market, and look forward to similar strengthening in thermal coal markets in the months ahead,” Eaves said. “With our enhanced financial foundation and top-tier assets, we believe we are exceptionally well-positioned to capitalize on both.”

“We are enthusiastic about Arch’s promising future and the potential to drive sustainable value creation for our shareholders,” Eaves continued. “I would like to extend my deepest appreciation to Arch’s employees, who have been instrumental in achieving this excellent outcome. Looking ahead, we will continue our efforts to manage costs rigorously, provide superior service to our customers and strengthen relationships with our business partners, while demonstrating the same unwavering commitment to mine safety and environmental protection that has become a hallmark of our great company.”

U.S.-based Arch Coal, Inc. is a top coal producer for the global steel and power generation industries, reliably serving customers worldwide. Its network of large-scale, low-cost mining complexes and high-

---

quality metallurgical and thermal reserves are located in the most strategic coal supply basins in the United States. For more information, visit www.archcoal.com.

Forward-Looking Statements

This press release contains “forward-looking statements” — that is, statements related to future, not past, events. In this context, forward-looking statements often address our expected future business and financial performance, and often contain words such as “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” or “will.” Forward-looking statements by their nature address matters that are, to different degrees, uncertain. For us, uncertainties arise from coal market conditions, general economic conditions, weather conditions, natural gas prices, competition in our industry, production capacity, availability of surety bonds, and matters other matters specific to our business, all of which are difficult to predict and many of which are beyond our control. Uncertainties may also arise from changes in the demand for and pricing of 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. No representations or warranties are made by us as to the accuracy of any such 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.

CONTACTS:

Media:

Logan Bonacorsi
Arch Coal
314/994-2766

Michael Freitag / Andrew Siegel / Aaron Palash
Joele Frank, Wilkinson Brimmer Katcher
212/355-4449
