

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION**

In re:

Cambrian Holding Company, Inc., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-51200-GRS

(Jointly Administered)

Honorable Gregory R. Schaaf

**NOTICE OF FILING OF DOCUMENTS  
PURSUANT TO RULE 4001-2(B)**

PLEASE TAKE NOTICE that Deutsche Bank AG, London Branch, Tennenbaum Opportunities Partners V, LP and Tennenbaum Opportunities Fund VI, LLC (collectively, the “Term Lenders”), as an accommodation to the Debtors for their compliance with Local Bankruptcy Rule 4001-2(b), submit the following attached and referenced exhibits evidencing perfection by which an interest of the Term Lenders in the cash collateral was created or perfected (the “Cash Collateral Documents”):<sup>2</sup>

**Exhibits**

Exhibit A-1: Amendment Agreement No. 6 to Term Credit and Guaranty Agreement and Amendment No. 1 to Pledge and Security Agreement

Exhibit A-2: Pledge and Security Agreement

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<sup>1</sup> The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): Cambrian Holding Company, Inc. (8203), Cambrian Coal LLC (3394), Apex Energy, Inc. (3455), C.W. Augering, Inc. (2875), Marshall Resources, Inc. (9735), PLM Holding Company LLC (7427), Bear Branch Coal LLC (0674), Clintwood Elkhorn Mining LLC (6910), Gatliff Coal LLC (5768), Perry County Coal LLC (4382), Ray Coal LLC (0981), Whitaker Coal LLC (8270), Pike-Letcher Land LLC (8952), Premier Elkhorn Coal LLC (8951), Raven Rock Development LLC (1351), Rich Mountain Coal LLC (1974), S.T. & T. Leasing, Inc. (0340), T.C. Leasing, Inc. (7705), and Shelby Resources, LLC (5085).

<sup>2</sup> Local Bankruptcy Rule 4001-2(b) requires the Debtors to file the Collateral Documents in connection with their *Motion for Entry of Interim and Final Orders: (I) Authorizing Post-Petition Secured Financing Pursuant to Sections 105, 361, 362, 363, 364 and 503(b) of the Bankruptcy Code; (II) Authorizing the Debtors to Use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code; (III) Providing Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, and 363 of the Bankruptcy Code; (IV) Modifying the Automatic Stay Pursuant to Section 362(D) of the Bankruptcy Code; (V) Scheduling a Final Hearing; and (VI) Providing Related Relief* [Docket No. 26].

- Exhibit B: Amendment No. 5 to ABL Credit and Guaranty Agreement and Third Amendment to Intercreditor Agreement [filed by Richmond Hill Capital Partners, LP and Essex Equity Joint Investment Vehicle, LLC (“Richmond Hill”) in Case No. 19-51200-grs, at Docket No. 29-3, as Exhibit B]
- Exhibit C-1: Amended and Restated Intercreditor Agreement [filed by Richmond Hill in Case No. 19-51200-grs, at Docket No. 29-4, as Exhibit C-1]
- Exhibit C-2: First Amendment to Amended and Restated Intercreditor Agreement [filed by Richmond Hill in Case No. 19-51200-grs, at Docket No. 29-5, as Exhibit C-2]
- Exhibit C-3: Second Amendment to Amended and Restated Intercreditor Agreement [filed by Richmond Hill in Case No. 19-51200-grs, at Docket No. 29-6, as Exhibit C-3]
- Exhibit D: Pledge Account Agreement [filed by Richmond Hill in Case No. 19-51200-grs, at Docket No. 29-7, as Exhibit D]
- Exhibit E: Control Agreement for Deposit Accounts [filed by Richmond Hill in Case No. 19-51200-grs, at Docket No. 29-8, as Exhibit E]
- Exhibit F: UCC Financing Statements

The Term Lenders reserve their rights to update or supplement the Cash Collateral Documents. For the avoidance of doubt, the Cash Collateral Documents listed above and attached hereof include only certain documents and filings evidencing and related to the perfection of Term Lenders’ interest in the cash collateral. The Term Lenders have interests in other assets of the Debtors that are not evidenced by the Cash Collateral Documents.

Dated: June 19, 2019

Respectfully submitted,

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*Counsel to the Term Lenders*

**CERTIFICATE OF SERVICE**

I certify that on June 19, 2019, This *Notice of Filing of Documents Pursuant to Rule 4001-2(b)* was electronically filed with the Clerk of Court using the CM/ECF system, which will cause a notification of such filing (NEF) to be sent to all registered users.

/s/ April A. Wimberg  
April A. Wimberg

**EXHIBIT A-1**

**AMENDMENT AGREEMENT NO. 6 TO TERM CREDIT AND GUARANTY AGREEMENT  
AND AMENDMENT NO. 1 TO PLEDGE AND SECURITY AGREEMENT**

This AMENDMENT AGREEMENT NO. 6 TO TERM CREDIT AND GUARANTY AGREEMENT AND AMENDMENT NO. 1 TO PLEDGE AND SECURITY AGREEMENT, dated as of September 21, 2015 (this "Agreement"), is by and among BEECH FORK PROCESSING, INC., a Kentucky corporation, and EAGLE COAL COMPANY, INC., a Kentucky corporation (together, the "Existing Borrowers"), CAMBRIAN COAL CORPORATION, a Kentucky corporation, and SHELBY RESOURCES, LLC, a Kentucky limited liability company (together, the "New Borrowers"), and collectively with the Existing Borrowers, the "Borrower Group", and each individually, a "Borrower"), the "Guarantors" executing this Agreement on the signature pages hereto in such capacity, the Lenders executing this Agreement on the signature pages hereto in such capacity (the "Lenders") and DEUTSCHE BANK TRUST COMPANY AMERICAS, in its capacity as Administrative Agent (the "Administrative Agent") and Collateral Agent (the "Collateral Agent") under the Credit Agreement referred to below.

**RECITALS:**

**WHEREAS**, the Existing Borrowers, the "Guarantors" party thereto, the lenders party thereto, Deutsche Bank Securities Inc., as Sole Bookrunner and Lead Arranger, the Administrative Agent and the Collateral Agent are parties to a Term Credit and Guaranty Agreement dated as of July 10, 2013, as amended by the Waiver and Amendment, dated as of September 3, 2014, as further amended by Amendment Agreement No. 1, dated as of October 31, 2014, as further amended by Amendment Agreement No. 2, dated as of November 12, 2014, as further amended by Amendment Agreement No. 3, dated as of December 19, 2014, as further amended by Amendment Agreement No. 4, dated as of March 18, 2015, and as further amended by Amendment Agreement No. 5, dated as of May 22, 2015 (as further amended, restated, modified and otherwise supplemented and in effect on the date hereof, the "Credit Agreement");

**WHEREAS**, the Existing Borrowers have requested that, in accordance with the provisions of the Credit Agreement, the Lenders approve the amendments to the Credit Agreement and the Pledge and Security Agreement set forth below, in accordance with the terms hereof;

**WHEREAS**, each of the New Borrowers desires to join the Credit Agreement as a "Borrower" thereunder;

**WHEREAS**, each of the Subsidiaries of Cambrian Coal Corporation signatory hereto, including TECO Coal LLC, a Kentucky limited liability company, and each of its Subsidiaries (the "New Guarantors" and, together with the New Borrowers, the "New Credit Parties") desires to join the Credit Agreement as a "Guarantor" thereunder;

**WHEREAS**, each of the New Credit Parties desires to join the Pledge and Security Agreement as a "Grantor" thereunder; and

**WHEREAS**, the parties hereto desire to evidence such amendments by executing this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

**SECTION 1. Definitions.** Except as otherwise defined in this Agreement, terms defined in the Credit Agreement or Pledge and Security Agreement are used herein as defined therein. This Agreement

shall constitute a Credit Document for all purposes of the Amended Credit Agreement and the other Credit Documents.

SECTION 2. Amendments to Credit Agreement. Immediately after giving effect to this Agreement upon satisfaction of the conditions set forth in Section 9 of this Agreement, the Credit Agreement, and the Schedules, Appendices and Exhibits thereto, are amended and restated in their entirety as set forth in the form attached as Exhibit A hereto. The Credit Agreement as so amended and restated is referred to herein as the “Amended Credit Agreement”.

SECTION 3. Amendments to Pledge and Security Agreement. Immediately after giving effect to this Agreement upon satisfaction of the conditions set forth in Section 9 of this Agreement, the Pledge and Security Agreement, and the Schedules and Exhibits thereto, are hereby amended and restated in their entirety as set forth in the form of Exhibit B hereto. The Pledge and Security Agreement as so amended and restated is referred to herein as the “Amended Pledge and Security Agreement”.

SECTION 4. Consent to Amended and Restated Intercreditor Agreement. Each of the Lenders hereby authorizes and directs the Administrative Agent and the Collateral Agent to enter into an amendment and restatement of the Intercreditor Agreement in the form attached as Exhibit C hereto.

SECTION 5. Joinder of New Borrowers. Each New Borrower hereby agrees that by its execution and delivery hereof, such New Borrower becomes a “Borrower” and a member of the Borrower Group under the Amended Credit Agreement and each applicable Credit Document and agrees to be bound by all of the terms thereof with the same force and effect as if originally named therein as a “Borrower”.

SECTION 6. Joinder of New Guarantors. Pursuant to Section 5.10 of the Credit Agreement, in lieu of delivering a Counterpart Agreement, each New Guarantor hereby:

(a) agrees, that by its execution and delivery hereof, such New Guarantor becomes a “Guarantor” and a “Credit Party” under the Amended Credit Agreement and agrees to be bound by all of the terms thereof with the same force and effect as if originally named therein as a “Guarantor” and a “Credit Party”; and

(b) agrees to irrevocably and unconditionally guaranty the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) and in accordance with Section 7 of the Amended Credit Agreement.

SECTION 7. Pledge Supplement. Each New Credit Party hereby agrees that by its execution and delivery hereof, such New Credit Party becomes a “Grantor” under the Amended Pledge and Security Agreement and agrees to be bound by all of the terms and conditions thereof with the same force and effect as if originally named therein as a Grantor. Each of the New Credit Parties hereby confirms the grant to the Collateral Agent set forth in the Amended Pledge and Security Agreement of, and does hereby grant to the Collateral Agent, a security interest in, all of such New Credit Party’s right, title and interest in, to and under all Collateral (as defined in the Amended Pledge and Security Agreement) , in each case whether now or hereafter existing or in which such New Credit Party now has or hereafter acquires an interest and wherever the same may be located, to secure the Secured Obligations (as defined in the Amended Pledge and Security Agreement). Each New Credit Party represents and warrants that the Schedules to the Amended Pledge and Security Agreement attached hereto as Exhibit B accurately

and completely set forth all additional information with respect to such New Credit Party required to be provided pursuant to the Amended Pledge and Security Agreement.

SECTION 8. Release of Pevler Coal Sales Company, etc.

(a) Immediately after giving effect to this Agreement upon satisfaction of the conditions set forth in Section 9 of this Agreement, Pevler Coal Sales Company, Inc. (“Pevler”) shall be released from its obligations under the Credit Documents and the Collateral Agent is hereby authorized and directed to execute such additional instruments of release, including terminations of Liens granted by Pevler under the Collateral Documents, as Pevler may reasonably request.

(b) Immediately after giving effect to this Agreement upon satisfaction of the conditions set forth in Section 9 of this Agreement, the Share Pledge Agreement (as defined in the Credit Agreement as in effect immediately prior to the Sixth Amendment Date) shall automatically terminate and be of no further force or effect, without any further action by any party hereto or thereto, and the Collateral Agent shall promptly return to the Existing Borrowers the share certificates and all stock powers and related documents held pursuant to the Share Pledge Agreement.

SECTION 9. Conditions to Effectiveness. The effectiveness of this Agreement is subject to the satisfaction (or waiver by the Lenders) of each of the following conditions:

(a) The Administrative Agent and Lenders shall have received a counterpart signature page of this Agreement duly executed by the Borrower Group (including the New Borrowers), the Guarantors (including the New Guarantors), the Lenders party to the Credit Agreement, the Collateral Agent and the Administrative Agent;

(b) All representations and warranties set forth in Section 10 of this Agreement shall be true and correct;

(c) The Borrower Group shall have paid all fees, charges and disbursements due under the Credit Documents and related fee letters, including all fees, charges and disbursements of the Administrative Agent and of advisors to the Lenders incurred to date in connection with this Agreement and the other Credit Documents; and

(d) Each of the conditions set forth in Section 3 of the Amended Credit Agreement shall have been satisfied.

The parties hereto agree that this Agreement became effective on September 21, 2015.

SECTION 10. Representations and Warranties of the Credit Parties. To induce the Lenders and the Administrative Agent to enter into this Agreement, each of the Credit Parties and the New Credit Parties represents and warrants to the Administrative Agent and the Lenders that, after giving effect to this Agreement (including Section 11):

(a) No Default or Event of Default has occurred and is continuing or would result from the entry into this Agreement.

(b) The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate, limited liability company or partnership action, as applicable, on the part of each Credit Party and New Credit Party; this Agreement has been duly executed and delivered by each Credit Party and New Credit Party; and this Agreement constitutes a valid and binding agreement of each Credit

Party, enforceable against each Credit Party and New Credit Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general equitable principles relating to enforceability (whether enforcement is sought by proceedings in equity or at law).

SECTION 11. Waiver. As of the date hereof, upon satisfaction of the conditions precedent set forth in Section 9 hereof, and in reliance upon the representations and warranties of the Credit Parties and New Credit Parties set forth in the Amended Credit Agreement and in this Agreement, and notwithstanding anything to the contrary contained in the Amended Credit Agreement or any other Credit Document, the Administrative Agent, the Collateral Agent and the Lenders hereby waive any and all Defaults and Events of Default existing immediately prior to giving effect to this Agreement. The foregoing waiver shall be limited precisely as written and shall not be deemed or otherwise construed to constitute a waiver of any other Default or Event of Default hereafter arising or to prejudice any right, power or remedy which the Administrative Agent or any Lender or may have in the future under or in connection with the Amended Credit Agreement or any other Credit Document (after giving effect to this Agreement), all of which rights, powers and remedies are hereby expressly reserved by the Administrative Agent and Lenders.

SECTION 12. Ratification of Obligations. Each Credit Party and New Credit Party (a) confirms its obligations (including, without limitation, any guarantee obligations) under each Credit Document, (b) confirms that its obligations under the Amended Credit Agreement are entitled to the benefits of the grants, pledges and guarantees, as applicable, set forth in the Credit Documents, (c) confirms that its obligations under the Amended Credit Agreement constitute Obligations and (d) agrees that this Agreement shall constitute a Credit Document for all purposes of the Amended Credit Agreement and the other Credit Documents. Each party, by its execution of this Agreement, hereby confirms that the Obligations shall remain in full force and effect, and such Obligations shall continue to be entitled to the benefits of the collateral grant set forth in the Collateral Documents.

SECTION 13. Release of Lender Liability; No Reliance.

(a) In consideration of, among other things, the waiver provided for in Section 11 of this Agreement each Credit Party (including each New Credit Party) and Pevler, on behalf of themselves and their Subsidiaries and their successors and assigns (the "Borrower Parties"), jointly and severally releases, acquits and forever discharges the Administrative Agent and each Lender (collectively, the "Lender Parties"), and their respective subsidiaries, parents, affiliates, officers, directors, employees, agents, attorneys, successors and assigns, both present and former (collectively, the "Lenders' Affiliates") from any and all manner of actions, causes of action, suits, debts, controversies, damages, judgments, executions, claims (including without limitation crossclaims, counterclaims and rights of set-off and recoupment) and demands whatsoever, whether known or unknown, whether now existing or hereafter arising, whether asserted or unasserted, in contract, tort, law or equity which the Credit Parties or any other Borrower Party has or may have against any of the Lender Parties and/or the Lenders' Affiliates by reason of any action, failure to act, matter or thing whatsoever arising from or based on facts occurring prior to the date hereof, including but not limited to any claim or defense that relates to, in whole or in part, directly or indirectly, (i) the making or administration of the Loans, including without limitation, any such claims and defenses based on fraud, mistake, duress, usury or misrepresentation, or any other claim based on so-called "lender liability theories", (ii) any covenants, agreements, duties or obligations set forth in the Credit Documents, (iii) any actions or omissions of any of the Lender Parties and/or the Lenders' Affiliates in connection with the initiation or continuing exercise of any right or remedy contained in the Credit Documents or at law or in equity, (iv) lost profits, (v) loss of business opportunity, (vi) increased financing costs, (vii) increased legal or other administrative fees, or (viii) damages to business reputation.



(b) In entering into this Agreement, each of the Credit Parties, New Credit Parties, Guarantors, and New Guarantors have consulted with and been represented by counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Lender Parties or Lenders' Affiliates and hereby agrees and acknowledges that the validity and effectiveness of the release set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity thereof. The provisions of this Section 13 shall survive the termination of the Credit Agreement and the other Credit Documents and payment in full of all amounts owing thereunder.

SECTION 14. Miscellaneous.

(a) Except as specifically amended in this Agreement, the Credit Documents shall remain unchanged and unwaived and shall remain in full force and effect and are hereby ratified and confirmed.

(b) Except as expressly set forth in this Agreement, the execution, delivery and performance of this Agreement shall not constitute a waiver or amendment of any other provision of, or operate as a waiver of any right, power or remedy of any Lender or any Agent under the Credit Agreement, which is ratified and reaffirmed in all respects and shall continue in full force and effect as expressly waived and amended by this Agreement.

(c) Sections 9, 10.3, 10.11, 10.14, 10.15, 10.16, 10.17 and 10.19 of the Credit Agreement are hereby incorporated, *mutatis mutandis*, by reference as if such sections were set forth in full herein.

(d) The Lenders hereby consent to the execution, delivery and performance of this Agreement by the Administrative Agent and Collateral Agent and direct the Administrative Agent and the Collateral Agent to execute this Agreement.

(e) The parties hereto agree that any failure by any member of the Borrower Group or any Guarantor or New Guarantor to comply with any of its covenants or agreements hereunder shall be an immediate Event of Default.

[Signature pages to follow]

EXHIBIT A

Form of Amended Credit Agreement

**TERM CREDIT AND GUARANTY AGREEMENT**

**dated as of July 10, 2013**

**and**

**amended by the Waiver and Amendment, dated as of September 3, 2014, Amendment Agreement No. 1, dated as of October 31, 2014, Amendment Agreement No. 2, dated as of November 12, 2014, Amendment Agreement No. 3, dated as of December 19, 2014, Amendment Agreement No. 4, dated as of March 18, 2015, and Amendment Agreement No. 5, dated as of May 22, 2015, and**

**as restated in full by Amendment Agreement No. 6 to Term Credit and Guaranty Agreement and Amendment No. 1 to Pledge and Security Agreement, dated as of September 21, 2015**

**among**

**CAMBRIAN COAL CORPORATION  
BEECH FORK PROCESSING, INC.,  
EAGLE COAL COMPANY, INC.,  
SHELBY RESOURCES, LLC,**

**as Borrowers,**

**CERTAIN SUBSIDIARIES OF EACH BORROWER,  
as Guarantors,**

**LENDERS PARTY HERETO,  
as Lenders,**

**DEUTSCHE BANK SECURITIES INC.,  
as Sole Bookrunner and Lead Arranger,**

**and**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Administrative Agent and Collateral Agent**

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**\$51,745,025.93 Term Loan**

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<b>EXHIBITS:</b>	A	Funding Notice
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	C	Compliance Certificate
	D	Assignment Agreement
	E	Certificate re Non-Bank Status
	F-1	Sixth Amendment Date Certificate
	F-2	Solvency Certificate
	G	Counterpart Agreement
	H	Pledge and Security Agreement
	J	Global Intercompany Note
	K	Intercreditor Agreement
	L	Incumbency Certificate
	M	Initial Operating and Capital Budget



## TERM CREDIT AND GUARANTY AGREEMENT

This **TERM CREDIT AND GUARANTY AGREEMENT**, dated as of July 10, 2013 and as previously amended by the Waiver and Amendment, dated as of September 3, 2014, Amendment Agreement No. 1, dated as of October 31, 2014, Amendment Agreement No. 2, dated as of November 12, 2014, Amendment Agreement No. 3, dated as of December 19, 2014, Amendment Agreement No. 4, dated as of March 18, 2015, and Amendment Agreement No. 5, dated as of May 22, 2015, and as restated in full by Amendment Agreement No. 6, dated as of September 21, 2015 is entered into by and among **CAMBRIAN COAL CORPORATION**, a Kentucky corporation, **BEECH FORK PROCESSING, INC.**, a Kentucky corporation, **EAGLE COAL COMPANY, INC.**, a Kentucky corporation, **SHELBY RESOURCES, LLC**, a Kentucky limited liability company (each a “**Borrower**” and collectively, the “**Borrower Group**”), **CERTAIN SUBSIDIARIES OF EACH BORROWER**, as Guarantors, the Lenders party hereto from time to time, **DEUTSCHE BANK TRUST COMPANY AMERICAS** (“**Deutsche Bank Trust Company Americas**”), as Administrative Agent (together with its permitted successors in such capacity, “**Administrative Agent**”) and as Collateral Agent (together with its permitted successor in such capacity, “**Collateral Agent**”), and **DEUTSCHE BANK SECURITIES INC.**, as Sole Bookrunner and Lead Arranger (in such capacity, “**Arranger**”).

### RECITALS:

**WHEREAS**, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

**WHEREAS**, the Borrowers and the Guarantors are the owners or operators of certain coal mining and related operations described on Schedule 1.1 (the “**Projects**”);

**WHEREAS**, Lenders have agreed to extend certain term Loans to Borrower Group, in an aggregate principal amount not to exceed \$51,745,025.93, the proceeds of which will be used for: (i) the repayment of certain indebtedness, (ii) the general corporate purposes of the Credit Parties and (iii) the payment of fees, costs and expenses incurred in connection with the TECO Transactions.

**WHEREAS**, on the Closing Date, the Lenders extended term Loans in an aggregate principal amount of \$43,500,000 and as of the Sixth Amendment Date the Lenders have agreed to (i) extend additional term Loans to the Borrower Group in an aggregate principal amount not to exceed \$12,500,000 and (ii) make certain additional amendments as set forth herein.

**WHEREAS**, each Borrower has agreed to secure all of its Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on all of its assets (other than the ABL Collateral, in which each Borrower shall grant a second priority lien to the Collateral Agent, and other than the Excluded Collateral), including a pledge of all of the Equity Interests of each of its Domestic Subsidiaries; and

**WHEREAS**, Guarantors have agreed to guarantee the obligations of each Borrower hereunder and to secure their respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their respective assets

(other than the ABL Collateral, in which each Guarantor shall grant a second priority lien to the Collateral Agent, and other than the Excluded Collateral), including a pledge of all of the Equity Interests of each of their respective Domestic Subsidiaries.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

## **SECTION 1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

“**ABL Agreement**” means the ABL Credit and Guaranty Agreement, dated as of July 10, 2013, among the Borrowers, the Guarantors, Deutsche Bank AG New York Branch as administrative agent, collateral agent and issuing bank and the lenders party thereto, as it may be amended, restated, supplemented or otherwise modified from time to time, as permitted under the terms thereof, of this Agreement and of the Intercreditor Agreement, including pursuant to the Fourth Amendment to the ABL Agreement.

“**ABL Collateral**” means, collectively, all of the right, title and interest of any Credit Party in, to and under the following: (i) all Accounts (other than intercompany Indebtedness of Borrower Group and their respective Subsidiaries and Accounts which constitute Proceeds (as defined in the UCC) of Collateral that does not constitute ABL Collateral); (ii) all Inventory; (iii) all Chattel Paper (as defined in the UCC), Documents (as defined in the UCC), General Intangibles (as defined in the UCC) (other than Equity Interests in Borrower Group and their respective Subsidiaries and Intellectual Property (other than set forth in clause (vii) below)) and Commercial Tort Claims (as defined in the UCC), in each case, solely to the extent evidencing or governing any of the items referred to in the preceding clauses (i) and (ii); (iv) all Instruments (as defined in the UCC) solely to the extent evidencing or governing any of the items referred to in the preceding clauses (i) through (iii); (v) Deposit Accounts, other than Asset Sale Proceeds Deposit Accounts, and all Cash, checks and other property held therein or credited thereto, but excluding any cash consisting of proceeds of Term Loan Collateral; (vi) all Cash Equivalents; (vii) all Supporting Obligations (as defined in the UCC) and Letter-of-Credit Rights (as defined in the UCC) relating to any of the items referred to in the preceding clauses (i) through (vi); (viii) all books and records pertaining to the foregoing; (ix) all Intellectual Property to the extent attached to or necessary to sell the foregoing; (x) to the extent not otherwise expressly included or excluded in clauses (i) through (ix), all Proceeds (as defined in the UCC), substitutions, replacements, accessions and products of any and all of the foregoing and (xi) solely with respect to the RH Loan, the TECO PP&E Collateral (as defined in the Intercreditor Agreement) and any additional Collateral arising under the foregoing clauses (vii) through (ix) pertaining thereto; in each case other than Excluded Collateral.

“**ABL Collateral Agent**” means the collateral agent under the ABL Agreement.

“**ABL Lenders**” means each lender under the ABL Agreement.

“**Acquisition Consideration**” means the purchase consideration for any Permitted Acquisition and all other payments by any Borrower or any of its Subsidiaries in

exchange for, or as part of, or in connection with, any Permitted Acquisition, whether paid in cash or by exchange of Equity Interests or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business.

“**Additional Term Loan Commitment**” means the commitment of a Lender to make or otherwise fund a new Loan hereunder as of the Sixth Amendment Date and “**Additional Term Loan Commitments**” means such commitments of all Lenders in the aggregate. The amount of each Lenders’ Additional Term Loan Commitment, if any, is set forth on Appendix A. The aggregate Additional Term Loan Commitments as of the Sixth Amendment Date are \$12,500,000.

“**Adjusted Eurodollar Rate**” means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate *per annum* obtained by dividing (i)(a) the rate *per annum* equal to the rate determined by Administrative Agent to be the offered rate which appears on the page of the Reuters Screen which displays an average British Bankers Association Interest Settlement Rate (such page currently being LIBOR01 page) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) does not appear on such page or service or if such page or service shall cease to be available, the rate *per annum* equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service which displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available, the rate *per annum* equal to the offered quotation rate to first class banks in the London interbank market by Deutsche Bank Trust Company Americas for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement; provided, however, that notwithstanding the foregoing, the Adjusted Eurodollar Rate shall at no time be less than 1.00% *per annum*.

“**Administrative Agent**” as defined in the preamble hereto.

“**Adverse Proceeding**” means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Borrower or any of its Subsidiaries,

threatened against or affecting Borrower Group or any of their respective Subsidiaries or any property of Borrower Group or any of their respective Subsidiaries.

“**Affected Lender**” as defined in Section 2.14(b).

“**Affected Loans**” as defined in Section 2.14(b).

“**Affiliate**” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 20% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“**Agent**” means each of (i) Administrative Agent, (ii) Collateral Agent and (iii) any other Person appointed under the Credit Documents to serve in an agent or similar capacity.

“**Agent Affiliates**” as defined in Section 10.1(b)(iii).

“**Aggregate Amounts Due**” as defined in Section 2.13.

“**Aggregate Payments**” as defined in Section 7.2.

“**Agreement**” means this Term Credit and Guaranty Agreement, dated as of July 10, 2013 and as previously amended by the Waiver and Amendment, dated as of September 3, 2014, Amendment Agreement No. 1, dated as of October 31, 2014, Amendment Agreement No. 2, dated as of November 12, 2014, Amendment Agreement No. 3, dated as of December 19, 2014, Amendment Agreement No. 4, dated as of March 18, 2015, and Amendment Agreement No. 5, dated as of May 22, 2015, and as restated in full by Amendment Agreement No. 6 to Term Credit and Guaranty Agreement and Amendment No. 1 to Pledge and Security Agreement, dated as of September 21, 2015, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Applicable Cash Rate**” means (i) with respect to the period commencing on the Sixth Amendment Date and ending on the last day of the Fiscal Quarter ending March 31, 2016, 8% *per annum* and (ii) with respect to each subsequent period, 12% *per annum*.

“**Applicable Make-Whole Amount**” means an amount equal to the present value of the amount of interest that would have been paid (including any PIK Interest) on the principal amount of the Loans being prepaid or repaid following acceleration on such date for the period from and including such prepayment or repayment to but excluding the date that is the 1-year anniversary of the Sixth Amendment Date assuming an interest rate of 11% Cash Interest *per annum* and 3% PIK Interest *per annum* (calculated on the basis of actual days elapsed over a year of 360 days and using a discount rate equal to the Treasury Rate as of such payment date plus 50 basis points); provided that if the application of such prepayment to the Installments

pursuant to Section 2.11(a) or 2.11(b) would reduce any remaining Installment due prior to the 1-year anniversary of the Sixth Amendment Date, the preceding calculation of interest that would have been paid on the repaid or prepaid amount of principal shall take into account any portion of such principal which would have been payable as an Installment prior to the 1-year anniversary of the Sixth Amendment Date and calculate interest on such portion only to such date.

**“Applicable Margin”** means 10% *per annum*.

**“Applicable PIK Rate”** means (i) with respect to the period commencing on the Sixth Amendment Date and ending with the last day of the Fiscal Quarter ending March 31, 2016, 7% *per annum* and (ii) with respect to each subsequent period, 3% *per annum*.

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

**“Appraisal”** means, with respect to any equipment and machinery owned by the Credit Parties, an appraisal of the value thereof performed by Weir International, Darco Energy Management Corporation, Pikeville, KY or another appraiser reasonably acceptable to the Requisite Lenders and performed in accordance with Uniform Standards of Professional Appraisal Practice.

**“Approved Electronic Communications”** means any notice, demand, communication, information, document or other material that any Credit Party provides to Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Agents or Lenders by means of electronic communications pursuant to Section 10.1(b).

**“Approved Regional Bank”** means any of the commercial banks listed on Schedule 4 hereto; provided that an Approved Regional Bank shall be deemed removed from Schedule 4 hereto on and after the date the Agent informs the Borrower Group in writing that such bank no longer represents an acceptable credit risk in the Requisite Lenders’ sole discretion.

**“Arranger”** as defined in the preamble hereto.

“**Asset Sale**” means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicense), transfer or other disposition to, or any exchange of property with, any Person (other than any Borrower or any Guarantor), in one transaction or a series of transactions, of all or any part of Borrower Group’s or any of their respective Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Equity Interests of any of Borrower Group’s Subsidiaries, other than (i) inventory sold, leased or licensed out in the ordinary course of business, (ii) sales of coal pursuant to Coal Supply Contracts entered into in accordance with the terms hereof (excluding any such sales, leases or licenses out by operations or divisions discontinued or to be discontinued) and (iii) sales of assets for fair market value and at an aggregate purchase price not to exceed \$250,000 each calendar year.

“**Asset Sale Proceeds Deposit Account**” as defined in Section 2.10(a).

“**Assignment Agreement**” means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent.

“**Assignment Effective Date**” as defined in Section 10.6(b).

“**Authorized Officer**” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer or treasurer of such Person; provided that the secretary or assistant secretary of such Person shall have delivered an incumbency certificate to Administrative Agent as to the authority of such Authorized Officer.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Base Rate**” means, for any day, a rate *per annum* equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (iii) the sum of (a) the Adjusted Eurodollar Rate (after giving effect to any Adjusted Eurodollar Rate “floor”) that would be payable on such day for a Eurodollar Rate Loan with a one-month interest period plus (b) the difference, if any, between the Applicable Margin for Eurodollar Rate Loans and the Applicable Margin for Base Rate Loans. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

“**Base Rate Loan**” means a Loan bearing interest at a rate determined by reference to the Base Rate.

“**Beneficiary**” means each Agent and each Lender.

“**Black Lung Act**” means the Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901, et seq., the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801, et seq., the Black Lung Benefits Revenue Act of 1977, Pub. L. No. 95-227, 92 Stat. 11 (1978), the Black

Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95 (1978), and the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, Pub. L. No. 97-119, 95 Stat. 1643 (1981), in each case as amended.

“**Black Lung Liabilities**” means any liability or benefit obligations related to black lung claims and benefits under the Black Lung Act, and occupational pneumoconiosis, silicosis or other lung disease liabilities and benefits arising under Mining Law.

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

“**Borrower**” and “**Borrower Group**” as defined in the preamble hereto.

“**Business Day**” means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term “**Business Day**” means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“**Cambrian Group**” means Shelby Resources, LLC and Cambrian Coal Corporation and its Subsidiaries, other than TECO Coal LLC and its Subsidiaries.

“**Capital Expenditures**” means, for any period, expenditures (including expenditures in connection with Capital Leases during such period) made by (or on behalf of) the Borrowers or other Credit Parties to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding repairs) during such period computed in accordance with GAAP (other than such expenditures paid out of casualty insurance proceeds), provided that so long as no Lock-Up Event has occurred and is continuing, there shall be excluded from “Capital Expenditures” mine development costs (including, without limitation, costs associated with the “face up” of a new mine and costs of road building) in an aggregate amount not to exceed \$1,500,000 for any individual mine and not to exceed \$4,000,000 in aggregate in any calendar year. As used in this definition, “mine” means any mine (including all related equipment and Material Contracts) that is or will become Term Loan Collateral pursuant to the terms of the Credit Documents.

“**Capital Lease**” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“**Cash**” means money, currency or a credit balance in any demand or Deposit Account.

“**Cash Equivalents**” means, as at any date of determination, any of the following: (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case

maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances issued or accepted by any Lender, any Approved Regional Bank or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$1,000,000,000; and (v) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than \$5,000,000,000, and (c) has the highest rating obtainable from either S&P or Moody's; provided, however, that Cash Equivalents shall not include any accounts or letters of credit which serve as collateral for any reclamation performance bond for any Credit Party.

**"Cash Interest"** means interest payable hereunder other than PIK Interest.

**"Certificate re Non-Bank Status"** means a certificate substantially in the form of Exhibit E.

**"Change of Control"** means (i) the Sponsors shall fail to own, collectively, directly or indirectly more than 50% on a fully diluted basis of the voting and economic interest in the Equity Interests (excluding any Equity Interests issued pursuant to any warrants granted to any of the Lenders) of any Borrower; or (ii) any "change of control" or similar event under the ABL Agreement or any other Material Indebtedness shall occur.

**"Closing Date"** means the date on which the initial Loans hereunder were extended, which date was July 10, 2013.

**"Co-Borrower"** means each of Beech Fork Processing, Inc., Eagle Coal Company, Inc., Shelby Resources, LLC and Cambrian Coal Corporation.

**"Coal Supply Contracts"** means the coal supply contracts in full force and effect as of the Sixth Amendment Date and each other additional agreement in respect of sales of coal supply entered into after the Sixth Amendment Date by any Credit Party.

**"Collateral"** means the Term Loan Collateral and the ABL Collateral.

**"Collateral Agent"** as defined in the preamble hereto, including in its capacity as Mortgagee (as defined in each Mortgage and Mortgage Amendment).

**"Collateral Documents"** means the Pledge and Security Agreement, the Pledged Account Agreement, the Mortgages, the Mortgage Amendments, the Intellectual Property Security Agreements, the Landlord Consent and Collateral Access Agreements, the Intercreditor Agreement and all other instruments, documents and agreements delivered by or on behalf of any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to



grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

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

“**Consolidated Adjusted EBITDA**” means, for any period, an amount determined for Borrower Group and their respective Subsidiaries on a consolidated basis equal to (i) Consolidated Net Income, plus, to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for (a) consolidated interest expense/accretion, (b) provisions for taxes based on income, (c) total depreciation/depletion expense, (d) total amortization expense, (e) non-Cash employee or director compensation expense in the form of Equity Interests of a Borrower, and other non-Cash charges reducing Consolidated Net Income (excluding mine reclamation obligations and any such non-Cash charge to the extent that it represents (x) an accrual or reserve for potential Cash charge in any future period or amortization of a prepaid Cash charge that was paid in a prior period or (y) a bad debt expense, write-down or write off of any other right to receive payment) and (f) customary and reasonable fees, commissions and other expenses in connection with the preparation and negotiation of the Credit Documents and the documents related to the TECO Transaction and the consummation of the transactions contemplated thereby, minus (ii) other non-Cash gains increasing Consolidated Net Income for such period (excluding, to the extent increasing Consolidated Net Income, mine reclamation obligations and any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period).

“**Consolidated Capital Expenditures**” means, for any period, the aggregate of all Capital Expenditures or other expenditures that should in accordance with GAAP be capitalized of Borrower Group and their respective Subsidiaries during such period determined on a consolidated basis that, reflected in the consolidated statement of cash flows of Borrower Group and their respective Subsidiaries; provided that Consolidated Capital Expenditures shall not include (i) any expenditures made with proceeds of Subordinated Indebtedness or (ii) any expenditures for replacements and substitutions for fixed assets, capital assets or equipment to the extent made with Net Insurance/Condemnation Proceeds invested pursuant to Section 2.10(b) or with Net Asset Sale Proceeds invested pursuant to Section 2.10(a).

“**Consolidated Current Assets**” means, as at any date of determination, the total assets of a Person and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

“**Consolidated Current Liabilities**” means, as at any date of determination, the total liabilities of a Person and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

“**Consolidated Excess Cash Flow**” means, for any period, an amount (if positive) equal to:

(i) the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, plus, (b) to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts set forth in clauses (c), (d) and (e) of the definition of “Consolidated Adjusted EBITDA”, plus (c) the Consolidated Working Capital Adjustment, minus

(ii) the sum, without duplication, of (a) the amounts for such period paid from internally generated Cash of (1) Installment payments on the Loans, (2) installment payments with respect to Indebtedness permitted pursuant to Section 6.1(h), Section 6.1(k) or Section 6.1(n), and (3) Consolidated Capital Expenditures permitted to be made under the Credit Documents for such period, plus (b) other non-Cash gains increasing Consolidated Net Income for such period (excluding any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period, minus

(iii) the sum, without duplication, of (a) any mine development costs permitted pursuant to this Agreement, plus (b) any expenditures for replacements and substitutions for fixed assets, capital assets or equipment to the extent made with Net Insurance/Condemnation Proceeds invested pursuant to Section 2.10(b) or with Net Asset Sale Proceeds invested pursuant to Section 2.10(a), to the extent that such proceeds increase Consolidated Net Income for such period.

“**Consolidated Fixed Charges**” means, for any four-Fiscal Quarter period, the sum, without duplication, of the amounts determined for Borrower Group and their respective Subsidiaries on a consolidated basis equal to (i) Consolidated Interest Expense, (x) with respect to the Loans, for the four-Fiscal Quarter period beginning on such date of calculation (calculated using the expected principal balance of the Loans for such period taking into account scheduled principal amortization payments required to be made during such period) and (y) with respect to the Loans (as defined in the ABL Agreement) and any other Indebtedness not described in the foregoing clause (x), for the four-Fiscal Quarter period ending on such date of calculation, (ii) scheduled payments of principal on Consolidated Total Debt, (x) with respect to the Loans, for the four-Fiscal Quarter period beginning on such date of calculation (calculated using the actual principal balance of the Loans for such period taking into account scheduled principal amortization payments required to be made during such period) and (y) with respect to the Loans (as defined in the ABL Agreement) and any other Indebtedness not described in the foregoing clause (x), for the four-Fiscal Quarter period ending on such date of calculation, but excluding any scheduled payments of principal of such Loans or Indebtedness on the final maturity date thereof (subject to the requirements of the Intercreditor Agreement), (iii) Consolidated Capital Expenditures, (iv) the portion of taxes based on income actually paid in cash and provisions for cash income taxes (including pursuant to Section 6.4(c)), less (v) regularly scheduled payments of principal and interest paid in connection with (A) the finance of insurance premiums with respect to insurance policies required pursuant to Section 5.5 and incurred in the ordinary course of business in an aggregate principal amount of Indebtedness not to exceed \$12,000,000 and (B) equipment operating leases and (vi) any capital expenditures for the acquisition of operating lease buyouts set forth on Schedule 1.2; provided that the aggregate amount of such expenditures does not exceed \$3,000,000.

“**Consolidated Interest Expense**” means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Borrower Group and their respective Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Borrower Group and their respective Subsidiaries, including all commissions and discounts and other fees and charges owed with respect to letters of credit, but excluding, however, any PIK Interest, any other amount not payable in Cash and any amounts referred to in Section 2.7(a) or (b) hereof or Section 2.9 of the ABL Agreement payable on or before the Sixth Amendment Date.

“**Consolidated Net Income**” means, for any period, (i) the net income (or loss) of Borrower Group and their respective Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary of Borrower Group) in which any other Person (other than Borrower Group or any of their respective Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Borrower Group or any of their respective Subsidiaries by such Person during such period, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Borrower Group or is merged into or consolidated with Borrower Group or any of their respective Subsidiaries or that Person’s assets are acquired by Borrower Group or any of their respective Subsidiaries, (c) the income of any Subsidiary of Borrower Group to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, (e) the income (or loss) attributable to the early extinguishment of Indebtedness and (f) (to the extent not included in clauses (a) through (e) above) any net extraordinary gains or net extraordinary losses.

“**Consolidated Total Debt**” means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Borrower Group and their respective Subsidiaries, or, if higher, the par value or stated face amount of all such Indebtedness (other than zero coupon Indebtedness) determined on a consolidated basis in accordance with GAAP, but not including: (i) Indebtedness consisting of guarantees (but only to the extent that the amount of the Indebtedness to which such guarantee relates is included in the calculation of Consolidated Total Debt) and (ii) reclamation obligations and surety bonds of the Credit Parties (a) in existence on the Sixth Amendment Date and set forth on Schedule 2, or (b) arising after the Sixth Amendment Date in connection with the ongoing operations of the Credit Parties and consistent with past practice and, in each case, any letters of credit or other security relating thereto.

“**Consolidated Working Capital Adjustment**” means, as at any date of determination, the excess (if any) of Consolidated Current Liabilities of Borrower Group and their respective Subsidiaries over Consolidated Current Assets of Borrower Group and their respective Subsidiaries; provided that, for purposes of calculating Consolidated Current Liabilities, reductions in accounts payable to less than 30 days outstanding shall not be included; and provided, further, that Consolidated Current Liabilities for any period which includes the Sixth Amendment Date shall give effect to all reductions in Consolidated Current Liabilities made with the proceeds of the Loans as though such reductions occurred at the beginning of such

period. In calculating the Consolidated Working Capital Adjustment there shall be excluded the effect of reclassification during such period of current assets to long term assets and current liabilities to long term liabilities.

“**Continuing Debt**” means all Indebtedness set forth on Schedule 5.1.

“**Contractual Obligation**” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“**Contributing Guarantors**” as defined in Section 7.2.

“**Counterpart Agreement**” means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Credit Party pursuant to Section 5.10.

“**Credit Document**” means any of this Agreement, the Notes, if any, the Collateral Documents, and all other documents, certificates, instruments, engagement letters or other agreements executed and delivered by or on behalf of a Credit Party for the benefit of any Agent or any Lender in connection herewith on or after the Closing Date.

“**Credit Party**” means each Borrower and Guarantor party hereto from time to time.

“**Cure Amount**” as defined in Section 8.2.

“**Cure Date**” as defined in Section 8.2.

“**Cure Right**” as defined in Section 8.2.

“**Cure Securities**” as defined in Section 8.2.

“**Debt Service Coverage Ratio**” means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period then ending, to (ii) Consolidated Fixed Charges for such four-Fiscal Quarter period; provided that, for purposes of this definition, until the end of the first four full Fiscal Quarters after the Sixth Amendment Date, the applicable Consolidated Adjusted EBITDA for any determination date shall be equal to the annualized Consolidated Adjusted EBITDA for the period from January 1, 2016 through the end of the applicable Fiscal Quarter.

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

“**Declined Proceeds**” as defined in Section 2.12(g).

“**Default**” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“**Deposit Account**” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“**Deutsche Bank Trust Company Americas**” as defined in the preamble hereto.

“**Disqualified Equity Interests**” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments or dividends in cash, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations.

“**Dollars**” and the sign “\$” mean the lawful money of the United States of America.

“**Domestic Subsidiary**” means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

“**Earn Out Indebtedness**” as defined in Section 6.1(c).

“**Eligible Assignee**” means any Person (other than a natural Person or, prior to the occurrence and continuance of a Lock-Up Event or an Event of Default, an Excluded Assignee), that is (i) a Lender, an affiliate of any Lender or a Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), or (ii) a commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business; provided that no Credit Party or Affiliate of a Credit Party shall be an Eligible Assignee unless such Credit Party or Affiliate is purchasing 100% of the outstanding Loans at such time.

“**Employee Benefit Plan**” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Borrower Group, any of their respective Subsidiaries or any of their respective ERISA Affiliates.

“**Environmental Claim**” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional

or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law or Mining Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment or (iv) in connection with the Reclamation, or alleged need for Reclamation, of any future, current, former or abandoned mines for which any of the members of the Borrower Group are responsible under any Environmental Law or Mining Law.

**“Environmental Laws”** means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) pollution or protection of the environment, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Borrower Group or any of their respective Subsidiaries or any Facility or Real Estate Asset.

**“Environmental or Mining Governmental Authorization”** means any Governmental Authorization required for coal mining or Reclamation or otherwise required under Environmental Law or Mining Law.

**“Equity Interests”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

**“ERISA Affiliate”** means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of a Borrower or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of such Borrower or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Borrower or such Subsidiary and with respect to liabilities arising after such period for which such Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

**“ERISA Event”** means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan

(excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Borrower, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code.

**“Eurodollar Rate Loan”** means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

**“Event of Abandonment”** means a formal, public announcement by any Borrower or any of its Subsidiaries of a decision to abandon or indefinitely defer, or the abandonment of, the operation of any material portion of the Projects for any reason and such abandonment is inconsistent with the Operating and Capital Budget and prudent mining operations with respect to the Projects and could reasonably be expected to cause a Material Adverse Effect, as determined by Administrative Agent; provided, however, that delays in

operation of the Projects solely caused by the failure of any Governmental Authority to provide in a timely manner a Governmental Authorization that was properly and timely applied for in a timely manner shall not constitute an “Event of Abandonment.”

“**Event of Default**” means each of the conditions or events set forth in Section 8.1.

“**Event of Taking**” means any taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action or threat of any such action of or proceeding by any Governmental Authority or other Person relating to all or any part of the Projects.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“**Excluded Assignee**” means any (i) entity identified on Appendix C and (ii) any bona fide competitor of the Borrowers identified in writing to the Agent from time to time and noticed to the Lenders; provided that no such notice shall apply with retroactive effect.

“**Excluded Collateral**” means (i) the Excluded Assets (as defined in the Pledge and Security Agreement) and (ii) any and all interests owned or otherwise held at any time by any Credit Party in any real property, other than any such interests in real property that constitute Material Real Estate Assets, and any such interests in real property that are otherwise contemplated to be mined as part of the current five (5) year mine plans of the Borrowers and the Guarantors.

“**Facility**” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Borrower Group or any of their respective Subsidiaries or any of their respective predecessors or Affiliates in connection with a Project.

“**Fair Share**” as defined in Section 7.2.

“**Fair Share Contribution Amount**” as defined in Section 7.2.

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue Code (effective as of the Closing Date) and any regulations promulgated thereunder.

“**Federal Funds Effective Rate**” means for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that, (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 charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.



“**Financial Covenants**” means the covenants set forth in Section 6.7(b), (c) and (d).

“**Financial Officer**” means with respect to any Borrower, the Chief Executive Officer, President, Chief Financial Officer, Vice President of Finance, Treasurer or Assistant Treasurer of such Borrower authorized to execute notices, reports and other documents on behalf of the Credit Parties required hereunder. The Borrowers may amend such list of individuals from time to time by giving written notice of such amendment to the Administrative Agent.

“**Financial Officer Certification**” means, with respect to the financial statements for which such certification is required, the certification of the Chief Financial Officer of the applicable Borrower that such financial statements fairly present, in all material respects, the financial condition of Borrower Group and their respective Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“**Fixed-Rate Loan**” means a Loan bearing interest at a rate determined by reference to the sum of the Applicable Cash Rate and the Applicable PIK Rate.

“**First Priority**” means, with respect to any Lien purported to be created in any Term Loan Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

“**Fiscal Quarter**” means a fiscal quarter of any Fiscal Year.

“**Fiscal Year**” means the fiscal year of Borrower Group and their respective Subsidiaries ending on December 31 of each calendar year.

“**Flood Certificate**” means a “Standard Flood Hazard Determination Form” of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

“**Flood Program**” means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

“**Flood Zone**” means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

“**Forced Liquidation Value**” means the amount estimated by Weir International, Darco Energy Management Corporation – Pikeville, Ky., or any other nationally recognized appraisal firm acceptable to the Requisite Lenders in their sole discretion which is the most probable price expressed in terms of currency in Dollars which the subject underground and surface mobile equipment and fixtures (excluding prep plants and mineral reserves) constituting Term Loan Collateral owned by the Credit Parties could typically realize at a properly advertised and conducted public auction sale, held under forced sale conditions, with the seller obligated to

sell, and under present day economic trends, as of the effective date of the appraisal report, such report to be in form and substance satisfactory to the Administrative Agent.

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**Fourth Amendment to ABL Agreement**” that certain Amendment No. 4 to ABL Credit and Guaranty Agreement and Amendment No. 1 to Pledge and Security Agreement dated as of September 21, 2015 among the Credit Parties, the Lenders party thereto and the Administrative Agent.

“**Fraudulent Transfer Law**” as defined in Section 2.19(a).

“**Funding Borrower**” as defined in Section 2.19(b).

“**Funding Guarantors**” as defined in Section 7.2.

“**Funding Notice**” means a notice substantially in the form of Exhibit A.

“**GAAP**” means, subject to the provisions of Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

“**Global Intercompany Note**” means a promissory note substantially in the form of Exhibit J evidencing Indebtedness owed among Credit Parties and their Subsidiaries.

“**Governmental Authority**” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“**Governmental Authorization**” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“**Grantor**” as defined in the Pledge and Security Agreement.

“**Guaranteed Obligations**” as defined in Section 7.1.

“**Guarantor**” means each Subsidiary of Borrower Group that has executed this Agreement as a Guarantor hereunder.

“**Guaranty**” means the guaranty of each Guarantor set forth in Section 7.

“**Hazardous Materials**” means any chemical, pollutant, contaminant, material, substance or waste, which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to health and safety or to the indoor or outdoor environment, including any polychlorinated biphenyls, asbestos or any asbestos-containing materials, radon or

any other radioactive materials, petroleum, crude oil or any fraction thereof, coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization material.

**“Hazardous Materials Activity”** means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Historical Financial Statements”** means as of the Sixth Amendment Date, (a) the audited consolidated financial statements of each of Beech Fork Processing Inc., Cambrian Coal Corporation (excluding TECO Coal LLC and its Subsidiaries) and Eagle Coal Company and their respective Subsidiaries for the Fiscal Year 2014, consisting of balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Year; (b) the audited financial statements of TECO Coal LLC and its Subsidiaries, for the Fiscal Years 2012, 2013 and 2014, consisting of balance sheets and related consolidated statements of income, stockholders’ equity and cash flow for such Fiscal Year; (c) the unaudited financial statements of each of Beech Fork Processing Inc., Cambrian Coal Corporation (excluding TECO Coal LLC and its Subsidiaries), Eagle Coal Company and Shelby Resources, LLC and their respective Subsidiaries for the Fiscal Quarters ended March 31, 2015 and June 30, 2015, consisting of balance sheets and related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Quarters; and (d) the unaudited financial statements of TECO Coal LLC and its Subsidiaries, for the Fiscal Quarters ended March 31, 2015 and June 30, 2015, consisting of balance sheets and related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Quarters, and, in the case of clauses (a) and (c), certified by a Financial Officer of the Borrowers that they fairly present, in all material respects, the financial condition of such member of the Borrower Group and their respective Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

**“Increased-Cost Lenders”** as defined in Section 2.18.

**“Indebtedness”** means, as applied to any Person, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services, including any earn-out obligations (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar

written instrument; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) Disqualified Equity Interests; (viii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; and (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes or otherwise. For the avoidance of doubt, operating leases, trade payables and accrued expenses incurred in the ordinary course of business which are due less than six months from the date of incurrence of the obligation in respect thereof and are not represented by a note or similar written instrument shall not be considered Indebtedness.

**“Indemnified Liabilities”** means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of one firm of counsel for each Agent and one for each other Indemnitee and, if a potential or actual conflict of interest exists, one additional counsel to each affected Indemnitee and, if necessary, of one firm of special counsel and one firm of local counsel in any relevant jurisdiction for each Agent and one for each other Indemnitee, in each case, in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, whether such proceeding was commenced by or against an Indemnitee, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws and/or Mining Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders’ agreement to make Loans, the syndication of the credit facilities provided for herein or the use or intended use of the proceeds thereof, any amendments, waivers or consents with respect to any provision of this Agreement or any of the other Credit Documents, or any enforcement of any of the Credit

Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the commitment letter (and any related fee or engagement letter) delivered by any Agent or any Lender to Borrower Group with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity, Reclamation or Black Lung Liabilities relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Borrower Group or any of their respective Subsidiaries.

“**Indemnitee**” as defined in Section 10.3(a).

“**Installment**” as defined in Section 2.8.

“**Intellectual Property**” as defined in the Pledge and Security Agreement.

“**Intellectual Property Asset**” means, at the time of determination, any interest (fee, license or otherwise) then owned by any Credit Party in any Intellectual Property.

“**Intellectual Property Security Agreements**” has the meaning assigned to that term in the Pledge and Security Agreement.

“**Intercreditor Agreement**” means the Amended and Restated Intercreditor Agreement to be entered into as of the Sixth Amendment Date, among Borrower Group, each other Credit Party from time to time party thereto, the Collateral Agent and the ABL Collateral Agent, substantially in the form of Exhibit K.

“**Interest Payment Date**” means with respect to (i) any Loan that is a Base Rate Loan, the last Business Day of March, June, September and December of each year, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan; and (ii) any Loan that is a Eurodollar Rate Loan and all Loans after the Sixth Amendment Date, the last day of each Interest Period applicable to such Loan and the Maturity Date.

“**Interest Period**” means, (i) with respect to any Loan outstanding prior to the Sixth Amendment Date, an interest period of one, two or three months, as selected by any Borrower in its most recently provided notice of conversion, given with respect thereto, which commenced on the day on which the immediately preceding Interest Period (as defined in this Agreement immediately prior to the effectiveness of the Sixth Amendment) expired; provided, (a) if such Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that began 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 a calendar month, but not beyond the Maturity Date; and (ii) on and after the Sixth Amendment Date, (a) with respect to the Loans outstanding prior to the Sixth Amendment Date, an interest period commencing on the last day of the Interest Period outstanding and described in clause (i) of this definition and ending on the first Fiscal Quarter end date thereafter (the “**Initial Interest Period End Date**”); (b) with respect to the Loans extended on the Sixth Amendment Date, an interest

period commencing on the Sixth Amendment Date and ending on the Initial Interest Period End Date; and (c) with respect to all Loans after the Initial Interest Period End Date, an interest period commencing on the expiration date of the prior Interest Period and ending on the next Fiscal Quarter end date.

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

“**Interim Period**” means the period from the Sixth Amendment Date through the last day of the Fiscal Quarter ending March 31, 2016.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended to the Closing Date and from time to time hereafter, and any successor statute.

“**Investment**” means (i) any direct or indirect purchase or other acquisition by Borrower Group or any of their respective Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Borrower Group from any Person (other than any Guarantor), of any Equity Interests of such Person; (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Borrower Group or any of their respective Subsidiaries to any other Person (other than any Guarantor), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (iv) all investments consisting of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes or otherwise. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

“**Joint Venture**” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided that, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

“**Landlord Consent and Collateral Access Agreement**” means, with respect to any Leasehold Property, a letter, certificate or other instrument in writing from the lessor under the related lease, pursuant to which, among other things, the landlord consents to the granting of a Mortgage or Mortgage Amendment, as applicable, on such Leasehold Property by the Credit Party tenant, such Landlord Consent and Collateral Access Agreement to be in form and substance acceptable to the Requisite Lenders in their reasonable discretion.

“**Lead Borrower**” means Cambrian Coal Corporation.

“**Leasehold Property**” means any leasehold interest of any Credit Party as lessee or sub-lessee under any lease or sub-lease of real property located in Martin, Johnson, Floyd, Lawrence, Letcher, Pike or Perry County, Kentucky or Buchanan or Wise County, Virginia (or

in such other Counties as any Credit Party shall acquire a leasehold interest after the Sixth Amendment Date) and used in connection with the Projects, other than any such leasehold interest designated from time to time by the Requisite Lenders in their sole discretion as not being required to be included in the Collateral.

“**Lender**” means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

“**Leverage Ratio**” means the ratio, as of the last day of any Fiscal Quarter, of (i) the aggregate outstanding principal Consolidated Total Debt of the Borrower Group as of such day (net of unrestricted Cash and Cash Equivalents) plus an amount equal to the Consolidated Working Capital Adjustment (as determined for the Fiscal Quarter ending on such date), to the extent a negative number to (ii) Consolidated Adjusted EBITDA for the four Fiscal Quarter period ending on such date; provided that, for purposes of this definition, until the end of the first four Fiscal Quarters after the Sixth Amendment Date, the applicable Consolidated Adjusted EBITDA for any determination date shall be equal to the annualized Consolidated Adjusted EBITDA for the period from January 1, 2016 through the end of the applicable Fiscal Quarter.

“**Lien**” means (i) any lien, mortgage, deed of trust, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

“**Liquidity**” means, as of any date of determination, the sum of (i) the aggregate amount of unrestricted Cash and Cash Equivalents maintained by Borrower Group as of such date and (ii) the lesser of (x) the aggregate Revolving Commitments (as defined in the ABL Agreement) as of such date and (y) the Borrowing Base (as defined in the ABL Agreement) as of such date, in the case of each of (x) and (y), as reduced by the amount of all outstanding Revolving Loans (as defined in the ABL Agreement) and Letters of Credit (as defined in the ABL Agreement) as of such date.

“**Loan**” means the Loan made by the Lenders to the Borrowers pursuant to Section 2.1(a), including the Loans made on the Closing Date, the Loans made on the Sixth Amendment Date and including amounts added to the principal of such Loans by capitalization of interest or fees.

“**Lock-Up Event**” means (i) the Net Forced Liquidation Value (based on the most recent Appraisal) is less than or equal to 50% of the aggregate outstanding principal amount of the Loans, (ii) the Debt Service Coverage Ratio is less than or equal to (a) with respect to the any determination after the expiration of the Interim Period (*i.e.*, after March 31, 2016), but prior to June 30 2016, 1.35 to 1.00, (ii) with respect to any determination on or after June 30, 2016, but prior to March 31, 2017, 1.45 to 1.00 and (iii) with respect to any Fiscal Quarter thereafter, 1.85

to 1.00 or (iii) the aggregate amount of obligations secured by Liens permitted pursuant to Section 6.2(b) exceeds \$5,000,000.

“**Management Compensation**” as defined in Section 6.16.

“**Margin Stock**” as defined in Regulation U.

“**Material Adverse Effect**” means a material adverse effect on and/or material adverse developments with respect to (i) the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower Group and their respective Subsidiaries taken as a whole; (ii) the ability of any Credit Party to fully and timely perform its Obligations; (iii) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

“**Material Contract**” means (i) each Coal Supply Contract, (ii) each Sales Agency Agreement, (iii) each contract set forth on Schedule 4.16, (iv) each mining lease involving Material Real Estate Assets and (v) any other contract or other arrangement to which any Borrower or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“**Material Governmental Authorizations**” as defined in Section 4.25.

“**Material Indebtedness**” means any Indebtedness (other than Indebtedness in respect of equipment financing) in an aggregate principal amount in excess of \$500,000.

“**Material Real Estate Asset**” means (a) any fee-owned Real Estate Asset having a fair market value in excess of \$1,000,000 as of the date of the acquisition thereof, (b) any Leasehold Property, in each case, that (i) includes significant coal reserves, (ii) includes a haul road servicing any Credit Party’s mining operations in connection with the Projects or (iii) includes any material improvements, and (c) any Real Estate Asset listed on Schedule 3.1(f) or on Annex I to Schedule 5.18 attached hereto.

“**Maturity Date**” means the earlier of (a) the second anniversary of the Sixth Amendment Date, and (b) the date on which all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

“**MCEG**” means Beech Fork Processing, Inc. and its Subsidiaries and Eagle Coal Company, Inc. and its Subsidiaries.

“**Mining Financial Assurances**” means any and all surety bonds or escrow agreements and any payment or prepayments made with respect to, or certificates of deposit or other sums or assets required to be posted by the Borrower under Mining Law for Reclamation or otherwise.

“**Mining Laws**” means any and all current or future foreign or domestic, federal, state or local (or any other subdivision) statutes, ordinances, orders, rules, regulations,



judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to surface or subsurface mining operations and activities. Mining Laws shall include, but not be limited to, the Federal Coal Leasing Amendments Act; the Surface Mining Control and Reclamation Act; all other applicable land reclamation and use statutes and regulations; the Federal Mine Safety Act of 1977; the Black Lung Act; and the Coal Industry Retiree Health Benefits Act of 1992; each as amended, and any comparable state and local laws or regulations.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgage**” means a Mortgage in a form reasonably acceptable to the Requisite Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“**Mortgage Amendment**” means an amendment to those existing mortgages entered into as of July 10, 2013 by each of Middlefork Land Company, Inc., Czar Coal Corporation, Beech Fork Processing, Inc. and Matrix Energy, LLC and in favor of Collateral Agent, as each may be further amended, restated, supplemented or otherwise modified from time to time.

“**Multiemployer Plan**” means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“**Narrative Report**” means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Borrower Group and their respective Subsidiaries in the form prepared for presentation to senior management thereof for the applicable month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

“**Net Asset Sale Proceeds**” means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of milestone payment), but only as and when so received) received by any Borrower or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by such Borrower or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

“**Net Forced Liquidation Value**” means Forced Liquidation Value net of the costs of liquidation which may include, without limitation, marketing, advertising, sale site

preparation, removal supervision, accounting, travel, labor expenses, and all other costs of liquidation.

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

“**Non-Consenting Lender**” as defined in Section 2.18.

“**Non-Public Information**” means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Borrower or its Affiliates or their Securities.

“**Non-US Lender**” as defined in Section 2.16(c).

“**Note**” means a promissory note in the form of Exhibit B, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Notice of Intent to Cure**” as defined in Section 8.2.

“**Obligation Aggregate Payments**” as defined in Section 2.19(b).

“**Obligation Fair Share**” as defined in Section 2.19(b).

“**Obligation Fair Share Contribution Amount**” as defined in Section 2.19(b).

“**Obligation Fair Share Shortfall**” as defined in Section 2.19(b).

“**Obligations**” means all obligations of every nature of each Credit Party, including obligations from time to time owed to the Agents (including former Agents), Lenders or any of them, under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

“**Obligee Guarantor**” as defined in Section 7.7.

“**Operating and Capital Budget**” means (i) with respect to the Fiscal Year in which the Sixth Amendment Date occurs, the budget attached hereto as Exhibit M, and (ii) with respect to each Fiscal Year thereafter, a budget, prepared and certified by the Borrower Group,

and approved in accordance with Section 5.1(i) hereto, of Operation and Maintenance Expenses and Permitted Capital Expenditures expected to be incurred by the Borrower Group and their respective Subsidiaries during the relevant fiscal year to which such budget applies.

**“Operation and Maintenance Expenses”** means, for any period, the sum, computed without duplication, of the following: (a) general and administrative expenses plus (b) expenses for operating the Projects and maintaining them in good repair and operating condition payable during such period plus (c) insurance costs payable during such period plus (d) applicable sales and excise taxes, including, without limitation, taxes for the severance of minerals (if any) payable by a Credit Party with respect to sales of coal generated by the Projects during such period plus (e) franchise taxes payable by a Credit Party during such period plus (f) property taxes payable by a Credit Party during such period plus (g) costs and fees and collateral attendant to obtaining and maintaining in effect the Governmental Authorizations payable during such period, including, without limitation, reclamation performance bonding plus (h) legal, accounting and other professional fees attendant to any of the foregoing items payable during such period plus (i) any fees and expenses of the Secured Parties during such period not included in Consolidated Fixed Charges plus (j) any Permitted Capital Expenditures incurred during such period in accordance with the then-current Operating and Capital Budget plus (k) payments for the purchase of coal in the ordinary course of business, plus (l) royalties and other rentals payable to a lessor of any Leasehold Property; provided that amounts payable to any lessor that is an Affiliate of the Borrower Group are on market terms and consistent with past practices and the regional location of the property. Operation and Maintenance Expenses shall exclude, to the extent included: (i) payments of any kind with respect to Restricted Junior Payments during such period, (ii) depreciation for such period, (iii) any Capital Expenditures except Permitted Capital Expenditures made during such period that are properly chargeable to fixed capital accounts for such period in accordance with GAAP and (iv) any payments of any kind with respect to restoring any Project during such period. Notwithstanding the foregoing, for the purpose of calculating the Debt Service Coverage Ratio, Operation and Maintenance Expenses shall not include the actual cash expenditures for items (c), (e) and (f) above, but shall instead include the appropriate accrual for such items to the extent the same are reflected as accrual items in the Operating and Capital Budget.

**“Organizational Documents”** means (i) with respect to any corporation or company, its certificate, memorandum or articles of incorporation, organization or association, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such Organizational Document shall only be to a document of a type customarily certified by such governmental official.

**“Other Taxes”** means any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or from the execution,

delivery or enforcement of, or otherwise with respect to, this Agreement or any other Credit Document.

“**Parent Plans**” as defined in Section 4.20(b).

“**Participant Register**” as defined in Section 10.6(g)(i).

“**PATRIOT Act**” as defined in Section 3.1(q).

“**PBGC**” means the Pension Benefit Guaranty Corporation or any successor thereto.

“**Pension Plan**” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

“**Permitted ABL Debt**” means the Indebtedness secured by the ABL Collateral incurred by Borrower Group pursuant to the ABL Agreement and permitted under Section 6.1(l) hereof.

“**Permitted Acquisition**” means any acquisition, directly or indirectly, by any Borrower or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided that,

(i) immediately prior to, and after giving effect thereto, the Interim Period has expired and no Lock-Up Event shall have occurred and be continuing or would result therefrom;

(ii) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(iii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iv) in the case of the acquisition of Equity Interests, all of the Equity Interests (except for any such Securities in the nature of directors’ qualifying shares required pursuant to applicable law) acquired or otherwise issued, directly or indirectly, by such Person or any newly formed Subsidiary of a Borrower in connection with such acquisition shall be owned, directly or indirectly, 100% by such Borrower or a Subsidiary thereof, and such Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of such Borrower, each of the actions set forth in Sections 5.10 and/or 5.11, as applicable;

(v) Borrower Group and their respective Subsidiaries shall be in compliance with the financial covenant set forth in Section 6.7 on a pro forma basis after giving effect to such acquisition as of the last day of the Fiscal Quarter most recently ended;

(vi) Borrower shall have delivered to Administrative Agent (A) at least 10 Business Days prior to such proposed acquisition (or such shorter period as may be agreed by Administrative Agent), (i) a Compliance Certificate evidencing compliance with Section 6.7 as required under clause (iv) above and (ii) all other relevant financial information with respect to such acquired assets, including the aggregate consideration for such acquisition and any other information required to demonstrate compliance with Section 6.7 and (B) promptly upon request by Administrative Agent, (i) a copy of the purchase agreement related to the proposed Permitted Acquisition (and any related documents reasonably requested by Administrative Agent) and (ii) quarterly and annual financial statements of the Person whose Equity Interests or assets are being acquired for the twelve (12) month period immediately prior to such proposed Permitted Acquisition, including any audited financial statements that are available; and

(vii) any Person or assets or division as acquired in accordance herewith (y) shall be in same business or lines of business in which the acquiring Borrower and/or its Subsidiaries are engaged as of the Sixth Amendment Date or similar or related businesses and (z) shall have generated positive cash flow for the four-quarter period most recently ended prior to the date of such acquisition.

**“Permitted Capital Expenditures”** means Capital Expenditures that are specified for such purpose in the applicable Operating and Capital Budget.

**“Permitted Indebtedness”** means the Indebtedness permitted pursuant to Section 6.1.

**“Permitted Investments”** means the Investments permitted pursuant to Section 6.6.

**“Permitted Issuer Restructuring”** means, with respect to a Borrower, a transaction substantially as described under the caption “Issuer Restructuring” in the Warrant Term Sheet attached as Annex III to Schedule 5.18 hereof in connection with Warrants issued by such Borrower; provided that as of the effective date of such transaction (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties specified in Sections 4.3, 4.4 and 4.6 hereof are true and correct in all material respects with respect to the applicable Borrower and its Subsidiaries involved in such transaction as if made on the effective date of such transaction.

**“Permitted Liens”** means each of the Liens permitted pursuant to Section 6.2.

**“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**“PIK Interest”** means interest calculated by reference to the Applicable PIK Rate.

“**PIK Interest Payment Date**” means each Interest Payment Date occurring on or after the Sixth Amendment Date.

“**Platform**” as defined in Section 5.1(p).

“**Pledge and Security Agreement**” means the Pledge and Security Agreement executed as of July 10, 2013, as restated on the Sixth Amendment Date substantially in the form of Exhibit H, and as further amended, restated, supplemented or otherwise modified from time to time.

“**Pledged Account Agreement**” means the Pledged Account Agreement dated as of the Closing Date among Inez Deposit Bank, each Credit Party party thereto, the ABL Collateral Agent and Collateral Agent, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

“**Prime Rate**” means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation’s thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“**Principal Office**” means, for Administrative Agent, such Agent’s “Principal Office” as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Borrower Group, Administrative Agent and each Lender.

“**Pro Rata Share**” means with respect to all payments, computations and other matters relating to the Loan of any Lender, the percentage obtained by dividing (a) the Term Loan Exposure of that Lender by (b) the aggregate Term Loan Exposure of all Lenders.

“**Projections**” as defined in Section 4.8.

“**Projects**” as defined in the Recitals hereto.

“**Public Lenders**” means Lenders that do not wish to receive Non-Public Information with respect to Borrower Group, their respective Subsidiaries or their Securities.

“**Real Estate Asset**” means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property located in Martin, Johnson, Floyd, Lawrence, Letcher, Pike or Perry County, Kentucky or Buchanan or Wise County, Virginia and used in connection with the Projects.

“**Reclamation**” means the reclamation and restoration of land, water and any future, current or former mines, and any other environment affected by such mines, as required pursuant to any Mining Law.

“**Record Document**” means, with respect to any Leasehold Property, (i) the lease evidencing such Leasehold Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leasehold Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to Collateral Agent.

“**Recorded Leasehold Interest**” means a Leasehold Property with respect to which a Record Document has been recorded in all places necessary or desirable, in Collateral Agent’s reasonable judgment, to give constructive notice of such Leasehold Property to third-party purchasers and encumbrancers of the affected real property.

“**Register**” as defined in Section 2.4(b).

“**Regulation D**” means Regulation D of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” means Regulation T of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” means Regulation U of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Reinvestment Deferred Amount**” means the aggregate Net Asset Sale Proceeds received by Borrower Group or any of their respective Subsidiaries that are not applied to prepay the Loans pursuant to Section 2.10(a) as a result of the delivery of a Reinvestment Notice.

“**Reinvestment Notice**” means a written notice executed by a Financial Officer stating that (i) no Lock-Up Event, Default or Event of Default has occurred and is continuing, (ii) the Borrower (directly or indirectly through a Subsidiary) intends and expects to use all or a specified portion of Net Asset Sale Proceeds to purchase or repair long-term productive assets of the general type used in the business of Borrower Group and (iii) after giving effect to such use the Borrower Group will be in pro forma compliance with the financial covenants contained in Section 6.7.

“**Reinvestment Prepayment Amount**” means the Reinvestment Deferred Amount less any amount expended prior to the relevant Reinvestment Prepayment Date to purchase or repair long-term productive assets of the general type used in the business of Borrower Group.

“**Reinvestment Prepayment Date**” means the earlier of (i) the date occurring ninety days after receipt of Net Asset Sale Proceeds and (ii) the date on which Borrower Group shall have determined not to purchase or repair long-term productive assets of the general type

used in the business of Borrower Group with all or any portion of the relevant Reinvestment Deferred Amount.

“**Rejection Notice**” as defined in Section 2.12(g).

“**Related Fund**” means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“**Replacement Lender**” as defined in Section 2.18.

“**Requisite Lenders**” means Lenders having more than 50% of all Loans outstanding.

“**Restricted Junior Payment**” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of any Borrower or any of their respective Subsidiaries (or any direct or indirect parent of any Borrower) now or hereafter outstanding, except a dividend payable solely in shares of stock of such Borrower or Subsidiary to the holders of that class of stock; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of any Borrower or any of its Subsidiaries (or any direct or indirect parent thereof) now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of any Borrower or any of its Subsidiaries (or any direct or indirect parent of any Borrower) now or hereafter outstanding; (iv) management or similar fees payable to any of the Sponsors or any of their respective Affiliates, other than payments under any of the arrangements described on Schedule 6.11 and (v) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to any Earn Out Indebtedness or any unsecured, subordinated or subordinated Lien Indebtedness.

“**RH Loan**” means any loan made by a Lender to the Borrowers pursuant to Section 2.1(a)(ii) of the ABL Agreement (as in effect on the date hereof).

“**RH Tranche Obligations**” means any Obligations with respect to the RH Loan.

“**S&P**” means Standard & Poor’s, a Division of The McGraw-Hill Companies, Inc.

“**Sales Agency Agreement**” means each of the Sales Agency Agreements with Pevler Coal Sales Company, Inc. as in effect on the Sixth Amendment Date.



“**Secured Parties**” has the meaning assigned to that term in the Pledge and Security Agreement.

“**Securities**” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“**Shareholder Notes**” means the Notes receivable from the shareholders or members of the Credit Parties in existence on the Sixth Amendment Date and identified as such on Schedule 5.

“**Sixth Amendment**” means Amendment Agreement No. 6 to Term Credit and Guaranty Agreement and Amendment No. 1 to Pledge and Security Agreement, dated September 21, 2015, among the Borrower Group, the Guarantors, the Lenders, the Administrative Agent and the Collateral Agent.

“**Sixth Amendment Date**” means the date on which the Sixth Amendment becomes effective, which date is September 21, 2015.

“**Sixth Amendment Date Certificate**” means a Sixth Amendment Date Certificate substantially in the form of Exhibit F-1.

“**Sixth Amendment Date Mortgaged Property**” as defined in Section 3.1(f).

“**Sixth Amendment Documents**” means the Sixth Amendment and each other Credit Document executed in connection with the Sixth Amendment.

“**Solvency Certificate**” means a Solvency Certificate of the chief financial officer of Borrower Group substantially in the form of Exhibit F-2.

“**Solvent**” means, with respect to any Credit Party, that as of the date of determination, both (i) (a) the sum of such Credit Party’s debt (including contingent liabilities) does not exceed the present fair saleable value of such Credit Party’s present assets; (b) such Credit Party’s capital is not unreasonably small in relation to its business as contemplated on the Sixth Amendment Date and reflected in the Projections or with respect to any transaction contemplated to be undertaken after the Sixth Amendment Date; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is “solvent” within the meaning given that term and similar terms under the Bankruptcy Code and other applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time

shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standards No. 5).

“**Sponsors**” means James H. Booth, Ted McGinnis and J. Mark Campbell, direct lineal descendants, heirs, estates and beneficiaries of any of them, any charitable foundation created by any of them and trusts for the benefit of any of the foregoing.

“**Subordinated Indebtedness**” means Permitted Indebtedness of the Borrowers or any Guarantor incurred in connection with the acquisition of stock, assets or property that by its terms (i) has a maturity date that is not less than 91 days after the Maturity Date, (ii) has no principal payments due (whether as scheduled amortization, mandatory prepayment or otherwise) prior to the payment in full of the Obligations, (iii) will not have aggregate interest expense (calculated, with respect to floating rate debt, based upon the Adjusted Eurodollar Rate with respect to a 3 month Interest Period determined on the date such Subordinated Indebtedness is incurred) for the life of the Indebtedness in excess of the lesser of (y) \$500,000 and (z) 50% of the Consolidated Adjusted EBITDA for the most recent four-Fiscal Quarter period ending prior to the date of such acquisition, generated by the assets which such Indebtedness was used to acquire, (iii) will not be in default if interest thereon is not paid, (iv) is unsecured and (v) is not recourse to any entity other than the entity which was acquired or was used to acquire the assets financed with such Indebtedness.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (together with interest, penalties and other additions thereto) of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided that, “Tax on the overall net income” of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person’s applicable principal office (and/or, in the case of a Lender, its lending office) is located on all or part of the overall net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

“**TECO Acquisition Agreement**” means the Securities Purchase Agreement providing for the purchase by Cambrian Coal Corporation of the equity interests of TECO Coal LLC, dated as of September 21, 2015, without giving effect to any amendment thereof that would require the consent of the Agent pursuant to Section 3.1(x).

“**TECO Coal Group**” means TECO Coal LLC and its Subsidiaries.

“**TECO Transactions**” means (i) the acquisition of TECO Coal LLC pursuant to the TECO Acquisition Agreement, (ii) the Fourth Amendment to the ABL Agreement, and (iii) payment of fees and expenses in connection therewith.

“**Term Loan Collateral**” means, collectively, other than the ABL Collateral and the Excluded Collateral, all of the real, personal and mixed property of each Borrower and each of its Subsidiaries (including any Equity Interests held by a Borrower or any other Credit Party).

“**Term Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Loans of such Lender; provided that, at any time prior to the making of the Loans, the Term Loan Exposure of any Lender shall be equal to such Lender’s Additional Term Loan Commitment.

“**Term Loan Proceeds Account**” as defined in Section 5.16.

“**Terminated Lender**” as defined in Section 2.18.

“**Treasury Rate**” means, as of any date of voluntary or mandatory prepayment of the Term Loans, the yield to maturity as of such date of the United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the second anniversary of the Sixth Amendment Date; provided, however, that if the period from such date to the second anniversary of the Sixth Amendment Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“**UCC**” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

“**U.S. Lender**” as defined in Section 2.16(c).

“**Warrants**” means the warrants to be issued pursuant to (and as described in) Schedule 5.18.

“**Warrant Documentation**” means the Warrants and the documentation executed in connection therewith.

**1.2. Accounting Terms.** Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in

conformity with GAAP. Financial statements and other information required to be delivered by Borrower Group to Lenders pursuant to Sections 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. Notwithstanding the foregoing, each reference herein to “consolidated” in respect of the Borrower Group financial statements or components thereof, shall be deemed to be a reference to “combined” financial statements or components thereof (as defined for GAAP) of the Borrower Group.

**1.3. Interpretation, Etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable.

## **SECTION 2. LOANS**

### **2.1. Loans.**

(a) Term Loan Commitments. On the Closing Date, each Lender extended Loans to the Borrower Group in an aggregate amount equal to \$43,500,000 and such Loans remain outstanding in an aggregate amount equal to \$31,396,020.74. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Sixth Amendment Date, an additional Loan to Borrower Group in an amount equal to such Lender’s Additional Term Loan Commitment, the aggregate amount of which shall be equal to the Additional Term Loan Commitment. Borrower Group may make only one borrowing of Additional Term Loan Commitments which shall be on the Sixth Amendment Date. Any amount borrowed or outstanding under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.9(a) and 2.10, all amounts owed hereunder with respect to the Loans, including Loans made on the Closing Date, shall be paid in full no later than the Maturity Date. Each Lender’s Additional Term Loan Commitment shall terminate immediately and without further action on the Sixth Amendment Date after giving effect to the funding of such Lender’s Additional Term Loan Commitment on such date.

### (b) Borrowing Mechanics for Term Loans.

(i) Borrower Group shall deliver to Administrative Agent a fully executed Funding Notice no later than three days prior to the Sixth Amendment Date (or such shorter period as may be acceptable to Administrative Agent). Promptly upon

receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Loan with respect to its Additional Term Loan Commitment available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Sixth Amendment Date, by wire transfer of same day funds in Dollars, at the principal office designated by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Loans with respect to its Additional Term Loan Commitment available to Borrower Group on the Sixth Amendment Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Borrower Group at the Principal Office designated by Administrative Agent or to such other account as may be designated in writing to Administrative Agent by Borrower Group.

## **2.2. Pro Rata Shares; Availability of Funds.**

(a) Pro Rata Shares. All Loans with respect to its Additional Term Loan Commitment shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Additional Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the Sixth Amendment Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan on the Sixth Amendment Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on the Sixth Amendment Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower Group a corresponding amount on the Sixth Amendment Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from the Sixth Amendment Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event that (i) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (ii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Borrower Group on the Sixth Amendment Date, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by the Borrower Group through and including the time of Borrower Group's receipt of the requested amount. Nothing in this Section 2.2(b) shall be deemed to relieve any Lender from its obligation to fulfill its Additional Term Loan Commitments hereunder or to prejudice any rights that Borrower Group may have against any Lender as a result of any default by such Lender hereunder.

**2.3. Use of Proceeds.** The proceeds of the Loans made on the Closing Date were used by Borrower Group for working capital and general corporate purposes of Borrower Group and its Subsidiaries. The proceeds of the additional Loans made on the Sixth Amendment Date shall be applied by Borrower Group (a) to repay certain indebtedness, (b) to pay certain fees, costs and expenses incurred in connection with the TECO Transactions, and (c) for working capital and general corporate purposes of Borrower Group and its Subsidiaries.

**2.4. Evidence of Debt ; Register; Lenders' Books and Records; Notes.**

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided that, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and Loans of each Lender from time to time (the "**Register**"). The Register shall be available for inspection by any Borrower or any Lender with respect to (i) any entry relating to such Lender's Loans, (ii) the identity of the other Lenders (but not any information with respect to such other Lenders' Loans) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Loans in accordance with the provisions of Section 10.6(b), and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on each Borrower and each Lender, absent manifest error; provided that, failure to make any such recordation, or any error in such recordation, shall not affect any Borrower's Obligations in respect of any Loan. Each Borrower hereby designates Administrative Agent to serve as such Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.4, and each Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to any Borrower (with a copy to Administrative Agent) at least two Business Days in advance, such Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) a Note or Notes to evidence such Lender's Loan.

**2.5. Interest on Loans.**

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) at the sum of (i) for each Interest Period or portion thereof ending prior to the Sixth Amendment Date, the Adjusted Eurodollar Rate plus the Applicable Margin, and (ii) for each Interest Period or portion thereof commencing on or after the Sixth Amendment Date, the Applicable Cash Rate and the Applicable PIK Rate.

(b) As soon as practicable after 11:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the Adjusted Eurodollar Rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower Group and each Lender.

(c) Interest payable hereunder shall be computed (i) in the case of Base Rate Loans on the basis of a 365-day or 366-day year, as the case may be, (ii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues and (iii) in the case of Fixed-Rate Loans, on the basis of a 360-day year consisting of 30-day months. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, the last Interest Payment Date with respect to such Loan as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan as the case may be, shall be excluded.

(d) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable (A) with respect to Cash Interest, quarterly in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date, and (B) with respect to PIK Interest, in arrears on each PIK Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans. Notwithstanding any provision of this Agreement to the contrary, PIK Interest shall be paid by increasing the outstanding principal balance of the Loans by the amount of accrued but unpaid PIK Interest as of a PIK Interest Payment Date or other applicable date on which PIK Interest is to be paid, and any PIK Interest so added to the principal balance of the Loans shall thereafter accrue interest in accordance with, and otherwise be treated as a portion of the Loans for all purposes of, this Agreement.

**2.6. Default Interest.** Upon the occurrence and during the continuance of an Event of Default under Section 8.1, the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2% *per annum* in excess of the interest rate otherwise payable hereunder with respect to the Loans and shall be payable in cash, except for PIK Interest, which will continue to be paid by increasing the outstanding principal amount of the Loans; provided that, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

## 2.7. Fees.

(a) The Borrower agrees to pay on the Sixth Amendment Date to each Lender, (1) in consideration of the waivers and amendments provided for in the Sixth Amendment, a fee equal to \$7,849,005.19, which amount shall be capitalized and added to the stated principal balance of the Loans outstanding as of immediately prior to the Sixth Amendment Date (the “**Amendment Fee**”); and (2) as fee compensation for the funding of such Lender’s Additional Term Loan Commitment on the Sixth Amendment Date, a funding fee (the “**Funding Fee**”) equal to \$2,500,000 (together, with the Amendment Fee, the “**Term Loan Fees**”). Such Term Loan Fees will be in all respects fully earned, due and payable on the Sixth Amendment Date and non-refundable and non-creditable thereafter. The foregoing Funding Fee shall be netted against the funding of the Additional Term Loan Commitment by such Lender to the Borrowers on the Sixth Amendment Date.

(b) In addition to the foregoing fees, each Borrower agrees to pay to the Agents such other fees in the amounts and at the times separately agreed upon and fees and expenses (including but not limited to attorney’s fees and expenses) relating to waivers, consents, amendments, defaults and similar matters.

**2.8. Scheduled Payments.** The principal amount of the Loans shall be repaid on each Fiscal Quarter end date occurring in or after December 2015 in quarterly amounts equal to (a) for each of the first four Fiscal Quarters ending after the Sixth Amendment Date, 0.25% of the original principal amount of the Loans made to the Borrower Group and outstanding on the Sixth Amendment Date and (b) for each Fiscal Quarter thereafter (and prior to the Maturity Date), 2.50% of the original principal amount of the Loans made to the Borrower Group and outstanding on the Sixth Amendment Date (each such payment, an “**Installment**”). Notwithstanding the foregoing, (x) such Installments shall be reduced in connection with any voluntary or mandatory prepayments of the Loans in accordance with Sections 2.9, 2.10 and 2.11, as applicable; and (y) the Loans, together with all other amounts owed hereunder with respect thereto, shall, in any event, be paid in full no later than the Maturity Date applicable to such Loans.

## 2.9. Voluntary Prepayments.

### (a) Voluntary Prepayments.

(i) On any Interest Payment Date commencing after the Sixth Amendment Date, Borrower Group may prepay the Loans on any Business Day, in whole or in part, in an aggregate minimum amount of \$2,500,000 and integral multiples of \$500,000 in excess of that amount.

(ii) All such prepayments shall be made upon not less than three (3) Business Day’s prior written or electronic notice, given to Administrative Agent by 12:00 p.m. (New York City time) on the date required (and Administrative Agent will promptly transmit such original notice to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and



payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.11(a).

(b) Make-Whole. In the event that all or any portion of the Loans is prepaid (i) pursuant to Section 2.9(a), 2.10(a) or 2.10(c) or (ii) following acceleration of the Obligations pursuant to Section 8.1, in each case, on any date occurring on or prior to the one (1) year anniversary of the Sixth Amendment Date, such prepayment shall include, and the Borrowers shall pay to the Administrative Agent on such date, the Applicable Make-Whole Amount.

## **2.10. Mandatory Prepayments.**

(a) Asset Sales. No later than the first Business Day following the date of receipt by any Borrower or any of its Subsidiaries of any Net Asset Sale Proceeds, unless a Reinvestment Notice shall be delivered in respect thereof, the applicable Borrower shall prepay the Loans in an aggregate amount equal to such Net Asset Sale Proceeds; provided, that, notwithstanding the foregoing and so long as no Lock-Up Event, Default or Event of Default shall have occurred and be continuing or would result therefrom, (i) on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount shall be applied toward the prepayment of the Loans and (ii) the aggregate Net Asset Sale Proceeds that may be reinvested pursuant to a Reinvestment Notice shall not exceed \$1,000,000 in any calendar year; provided further that pending reinvestment, all Net Asset Sale Proceeds shall be held in a segregated, non-interest bearing deposit account of the Borrower Group established and maintained by the Administrative Agent (an “**Asset Sale Proceeds Deposit Account**”) subject to the lien of the Collateral Agent. All funds on deposit in the Asset Sale Proceeds Deposit Account shall remain uninvested. Notwithstanding anything to the contrary contained in this Section 2.10(a), (y) so long as any loans are outstanding under the ABL Agreement or any Continuing Debt agreement or there are outstanding any commitments to make loans under the ABL Agreement or any Continuing Debt agreement, then to the extent that any Net Asset Sale Proceeds received by the Borrower Group in connection with an Asset Sale of ABL Collateral or any collateral securing any Continuing Debt are used to repay outstanding loans under the ABL Agreement or any Continuing Debt agreement (or permanently reduce any commitments in respect thereof), as the case may be, the repayments otherwise required pursuant to such clauses of this Section 2.10(a) shall not be required to the extent the respective cash proceeds are so applied, and (z) Net Asset Sale Proceeds of any disposition pursuant to Section 6.8(m) may be applied to repay any outstanding balance under the RH Tranche Obligations and provided further that, after \$2,000,000 of such Net Asset Sale Proceeds from dispositions pursuant to Section 6.8(m) have been applied to repay the Loans, only 75% of any additional Net Asset Sale Proceeds from dispositions under Section 6.8(m) shall be required to repay Loans.

(b) Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by any Borrower or any of its Subsidiaries, or Collateral Agent as loss payee, of any Net Insurance/Condemnation Proceeds, the applicable Borrower shall prepay the Loans in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided that, so long as no Lock-Up Event, Default or Event of Default shall have occurred and be continuing or would result therefrom, such Borrower shall have the option, directly or through one or more of its Subsidiaries to invest such Net Insurance/Condemnation Proceeds within ninety days of receipt thereof in long term productive assets of the general type used in the

business of Borrower Group and its Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof; provided further that (i) the aggregate Net Insurance/Condemnation Proceeds reinvested pursuant to this Section 2.10(b) (other than so long as the Interim Period has expired, Net Insurance/Condemnation Proceeds attributable to a high wall miner) shall not exceed \$1,000,000 in any calendar year and (ii) so long as any loans are outstanding under the ABL Agreement or there are outstanding any commitments to make loans under the ABL Agreement, then any Net Insurance/Condemnation Proceeds not reinvested pursuant to this Section 2.10(b) or Section 2.11(f) of the ABL Agreement, shall be applied in the manner set forth in Section 3.3 of the Intercreditor Agreement. Pending such investment, all such proceeds shall be held in a deposit account of the Borrower Group subject to the lien of the Collateral Agent. For the avoidance of doubt, the application of Net Insurance/Condemnation Proceeds pursuant to this clause (b) shall be subject to the provisions of the Intercreditor Agreement.

(c) Issuance of Debt. On the date of receipt by any Borrower or any of its Subsidiaries of any Cash proceeds from the incurrence of Indebtedness of any Borrower or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), such Borrower shall prepay the Loans in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(d) Excess Cash Flow. Beginning with the Fiscal Year ending December 31, 2016, no later than the earlier of (x) 90 days after the end of each such Fiscal Year and (y) the date on which the financial statements with respect to such Fiscal Year have been delivered pursuant to Section 5.1(c), Borrowers shall cause outstanding Loans to be prepaid in an amount equal to 90% (reduced to 75% if the Leverage Ratio as at the end of such Fiscal Year does not exceed 1.50 to 1.00) of the excess, if any, of (i) the Consolidated Excess Cash Flow for such Fiscal Year (determined based on the audited financial statements delivered with respect to such Fiscal Year) over (ii) the sum of (A) the aggregate amount of voluntary prepayments of the Loans made pursuant to Section 2.9 during such Fiscal Year plus (B) the aggregate amount of Restricted Junior Payments permitted to be made with respect to such Fiscal Year in accordance with Section 6.4(c) and actually made during such Fiscal Year; provided, that the amount of prepayment required to be made shall be reduced to the extent necessary such that, after giving effect thereto, Liquidity as of the date of such prepayment shall not be less than \$7,500,000, so long as any amount not required to be prepaid as a result of this proviso is applied to repay outstanding Indebtedness under the ABL Agreement; and provided, further, that the portion (if any) of Consolidated Excess Cash Flow for such period which results from a positive Consolidated Working Capital Adjustment for such period attributable to an increase in Consolidated Current Liabilities as a result of accounts payable exceeding 60 days outstanding for such period shall not be required to be prepaid under this Section 2.10(d) if such amount is used first, to repay any outstanding Indebtedness under the ABL Agreement and second, any remaining amounts are retained in an account subject to a deposit account control agreement and used to pay accounts payable which exceed 60 days outstanding in lieu of borrowings under the ABL Agreement.

(e) If on any date the Borrower shall receive Cash pursuant to Section 8.2, such Cure Amount shall be applied on such date toward the prepayment of the Loans and the RH

Loan on a pro rata basis. Any portion of the Cure Amount applied to the Loans shall be applied as set forth in Section 2.11(b).

(f) Repayments of Shareholder Notes. On the date of receipt by any Borrower or any of its Subsidiaries of any Cash proceeds from repayment or prepayment of any Shareholder Note, such Borrower shall prepay the Loans in an aggregate amount equal to 100% of such proceeds.

(g) Prepayment Certificate. Concurrently with any prepayment of the Loans, the applicable Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that such Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, such Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess, and such Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

## **2.11. Application of Prepayments/Reductions.**

(a) Application of Voluntary Prepayments. Any prepayment of any Loan pursuant to Section 2.9(a) shall be applied to prepay the Loans as directed by the Borrowers.

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Sections 2.10(a) through Section 2.10(f) shall be applied to prepay the Installments of Loans in inverse order of maturity (and treating the payment due on the Maturity Date thereof as the final scheduled Installment) (in accordance with the respective outstanding principal amounts thereof).

## **2.12. General Provisions Regarding Payments.**

(a) All payments by any Borrower of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, recoupment, set-off or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 11:00 a.m. (New York City time) on the date due at the Principal Office of Administrative Agent for the account of Lenders; for purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by the applicable Borrower on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest

due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Each Borrower hereby authorizes Administrative Agent to charge the following account with Administrative Agent:

Deutsche Bank Trust Company Americas  
New York, New York 10005  
SWIFT: BKTRUS33  
ABA #021001033  
Account #01419647  
For the Account of: NYLTD Funds Control New York  
Ref: Martin County Energy Administrative Agent Account, Attn: Jennifer Van Dyne  
FFC: PORT S85609.1

in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose).

(e) Administrative Agent shall deem any payment by or on behalf of any Borrower hereunder that is not made in same day funds prior to 11:00 a.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt written or electronic notice to the applicable Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.7 from the date such amount was due and payable until the date such amount is paid in full.

(f) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 or pursuant to any sale of, any collection from, or other realization upon all or any part of the Collateral, all payments or proceeds received by Agents in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 9.2 of the Pledge and Security Agreement.

(g) Notwithstanding the foregoing mandatory prepayment provisions set forth in Sections 2.10(a), (c) and (d), in lieu of applying such proceeds on the first Business Day after receipt thereof by any Borrower or its Subsidiaries, the Borrower shall give notice to the Administrative Agent of such mandatory prepayment event and the Administrative Agent shall promptly provide such notice to the Lenders. Each Lender may reject its share of any prepayment made pursuant to any of Sections 2.10(a), (c) and (d) (such amounts, the “**Declined**

**Proceeds**”) by providing written notice (each, a “**Rejection Notice**”) to the Administrative Agent and the Borrower no later than 5:00 P.M., New York City time, three (3) Business Days after the date of such Lender’s receipt of such notice from the Administrative Agent. Each Rejection Notice from a given Lender shall specify the principal amount of the prepayment to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the prepayment to be rejected, any such failure will be deemed an acceptance of the total amount of such prepayment. Subject to any requirements of any other Indebtedness, any Declined Proceeds may be retained by the Borrower. The Borrower shall make all payments required pursuant to Sections 2.10(a), (c) and (d) (and not declined pursuant to this provision) to the Administrative Agent no later than the fifth Business Day following receipt and shall notify the Administrative Agent three (3) Business Days before the date of each such payment.

**2.13. Ratable Sharing.** Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker’s lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as Cash Collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the “**Aggregate Amounts Due**” to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and the application of such amounts pursuant to clause (b) of this Section 2.13 and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided that, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of a Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Each Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker’s lien, consolidation, set-off or counterclaim with respect to any and all monies owing by such Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.13 shall not be construed to apply to (a) any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

## 2.14. Making or Maintaining the Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of “Adjusted Eurodollar Rate,” or any Lender determines that the rates at which dollar deposits are being offered in the London interbank market will not adequately and fairly reflect the cost to such Lender of making or maintaining loans at the Adjusted Eurodollar Rate, Administrative Agent shall on such date give written notice to Borrower Group and each Lender of such determination, whereupon any Eurodollar Rate Loans shall convert to Base Rate Loans at the end of the current Interest Period for such Loans.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date (i) any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining or continuation of its Eurodollar Rate Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) Administrative Agent is advised by the Requisite Lenders (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining or continuation of its Eurodollar Rate Loans has become impracticable, as a result of contingencies occurring after the Closing Date which materially and adversely affect the London interbank market or the position of the Lenders in that market, then, and in any such event, such Lenders (or in the case of the preceding clause (i), such Lender) shall be an “**Affected Lender**” and such Affected Lender shall on that day give notice (by e-mail) to each Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). If Administrative Agent receives a notice from (x) any Lender pursuant to clause (i) of the preceding sentence or (y) a notice from Lenders constituting Requisite Lenders pursuant to clause (ii) of the preceding sentence, then the Lenders’ (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender’s) obligations to maintain their respective outstanding Eurodollar Rate Loans (the “**Affected Loans**”) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower Group shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or payable by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in the Funding Notice or the telephonic request for borrowing; (ii) if any

prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by any Borrower.

(d) Booking of the Loans. Any Lender may make, carry or transfer its Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of the Loans. Calculation of all amounts payable to a Lender under this Section 2.14 and under Section 2.15 shall be made as though such Lender had actually funded each of its relevant Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of “Adjusted Eurodollar Rate” in an amount equal to the amount of such Loan and having a maturity comparable to the Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund its Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.14 and under Section 2.15.

(f) Conversion of the Loans. Each Borrower may elect from time to time to convert Eurodollar Rate Loans to Base Rate Loans by giving Administrative Agent irrevocable notice of such election at least three Business Day prior to the date of such election; provided, however, that any such conversion of Eurodollar Rate Loans may be made only on the last day of an Interest Period with respect thereto. Each Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Rate Loans by giving Administrative Agent irrevocable notice of such election at least three Business Days prior to the date of such election (which notice shall specify the length of the initial Interest Period therefor); provided further, however, that no Base Rate Loan may be converted to a Eurodollar Rate Loan (i) when any Event of Default has occurred and is continuing or (ii) after the date that is one month prior to the Maturity Date.

(g) Continuation of the Loans. Each Borrower may elect to continue any Eurodollar Rate Loan as such upon the expiration of the then current Interest Period with respect thereto by giving irrevocable notice to Administrative Agent, in accordance with the applicable provisions in the definition of the term “Interest Period,” of the length of the next Interest Period to be applicable to such Loans; provided, however, that no Eurodollar Rate Loan may be continued as such at the end of the applicable Interest Period (i) when any Event of Default has occurred and is continuing or (ii) after the date that is one month prior to the Maturity Date; provided further, however, that, (y) if the applicable Borrower shall fail to give any required notice as described above in this subsection, then the applicable Eurodollar Rate Loan shall be continued as such with an Interest Period equal to the longest permissible monthly period as remains prior to the Maturity Date, and (z) if such continuation is not permitted pursuant to the preceding proviso, such Loans shall be converted automatically to Base Rate Loans on the last day of such then expiring Interest Period.

## **2.15. Increased Costs; Capital Adequacy.**

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.13 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (regardless of whether the underlying law, treaty or governmental rule, regulation or order was issued or enacted prior to the Closing Date), including the introduction of any new law, treaty or governmental rule, regulation or order but excluding solely proposals thereof, or any determination of a court or Governmental Authority, in each case that becomes effective after the Closing Date, or (B) any guideline, request or directive by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued or made after the Closing Date: (i) subjects such Lender (or its applicable lending office) or any company controlling such Lender to any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Loans that are reflected in the definition of “Adjusted Eurodollar Rate”) or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender’s obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, each Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to each Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.15(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) the adoption, effectiveness, phase-in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or



(B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five Business Days after receipt by a Borrower from such Lender of the statement referred to in the next sentence, such Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after-tax basis for such reduction. Such Lender shall deliver to each Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.15(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, subsections (a) and (b) of this Section 2.15 shall apply to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any United States regulatory authority (i) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

(c) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section 2.15 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the circumstances giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the circumstances giving rise to such increased costs or reductions are retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

## **2.16. Taxes; Withholding, Etc.**

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by any Governmental Authority.

(b) Withholding of Taxes. If any Credit Party or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) the applicable Borrower shall notify Administrative Agent of any such

requirement or any change in any such requirement as soon as such Borrower becomes aware of it; (ii) the applicable Borrower shall pay, or cause to be paid, any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) unless otherwise provided on this Section 2.16, the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, such Borrower shall deliver to Administrative Agent evidence of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority, such evidence to be satisfactory to the other affected parties as determined by such parties in their sole discretion; provided, with respect to any United States federal withholding tax, no such additional amount shall be required to be paid to any Lender (other than a Lender that becomes a Lender pursuant to Section 2.18) under clause (iii) above except to the extent that any change after the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the Closing Date or at the date of such Assignment Agreement, as the case may be, in respect of payments to such Lender; provided that additional amounts shall be payable to a Lender to the extent such Lender's assignor was entitled to receive such additional amounts.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a “**Non-US Lender**”) shall, to the extent such Lender is legally able to do so, deliver to Administrative Agent for transmission to Borrower Group, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of any Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by such Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by such Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with

respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a “**U.S. Lender**”) and is not an exempt recipient within the meaning of Treasury Regulation Section 1.6049-4(c) shall deliver to Administrative Agent and Borrower Group on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.16(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8EXP, W-8IMY and/or W-9 (or, in each case, any successor form), or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by any Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and such Borrower of its inability to deliver any such forms, certificates or other evidence. No Borrower shall be required to pay any additional amount to any Non-US Lender under Section 2.16(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence required by the first sentence of this Section 2.16(c) or (2) to notify Administrative Agent and such Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.16(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of this Section 2.16(c) shall relieve any Borrower of its obligation to pay any additional amounts pursuant this Section 2.16 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

(d) Notwithstanding anything to the contrary, no Borrower shall be required to pay any additional amount pursuant to Section 2.16(b) with respect to any United States federal withholding tax imposed on any “withholdable payments” payable to a recipient as a result of the failure of such recipient to satisfy the applicable requirements as set forth in FATCA.

(e) Without limiting the provisions of Section 2.16(b), each Borrower shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with applicable law. Each Borrower shall deliver to Administrative Agent official receipts or other

evidence of such payment reasonably satisfactory to the Requisite Lenders in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes.

(f) Borrower Group, jointly and severally agrees to indemnify Administrative Agent and any Lender for the full amount of Taxes for which additional amounts are required to be paid pursuant to Section 2.16(b) arising in connection with payments made under this Agreement or any other Credit Document and Other Taxes (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16) paid by Administrative Agent or Lender or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Credit Party shall be conclusive absent manifest error. Such payment shall be due within thirty (30) days of such Credit Party's receipt of such certificate.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16 (including additional amounts pursuant to this Section 2.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.16 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) 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. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

**2.17. Obligation to Mitigate.** Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.14, 2.15 or 2.16, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Loans, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.14, 2.15 or 2.16 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise

adversely affect such Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.17 unless Borrower Group agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by each Borrower pursuant to this Section 2.17 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to each Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

**2.18. Removal or Replacement of a Lender.** Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an “**Increased-Cost Lender**”) shall give notice to Borrower Group that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.14, 2.15 or 2.16, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after any Borrower’s request for such withdrawal; or (b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each, a “**Non-Consenting Lender**”) whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the “**Terminated Lender**”), Borrower Group may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans in full to one or more Eligible Assignees (each, a “**Replacement Lender**”) in accordance with the provisions of Section 10.6 and Borrower Group shall pay the fees, if any, payable thereunder in connection with any such assignment from an Increased-Cost Lender or a Non-Consenting Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender; (2) on the date of such assignment, Borrower Group shall pay any amounts payable to such Terminated Lender pursuant to Section 2.14(c), 2.15 or 2.16 or otherwise as if it were a prepayment pursuant to Section 2.11; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender such Terminated Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if Borrower Group exercises its option hereunder to cause an assignment by such Lender as a Non-Consenting Lender or Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Non-Consenting Lender or Terminated Lender and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.6.

## 2.19. Co-Borrowers.

(a) Joint and Several Liability. All Obligations of Borrowers under this Agreement and the other Credit Documents shall be joint and several Obligations of each Borrower. Anything contained in this Agreement and the other Credit Documents to the contrary notwithstanding, the Obligations of each Borrower hereunder, solely to the extent that such Borrower did not receive proceeds of Loans from any borrowing hereunder, shall be limited to a maximum aggregate amount equal to the largest amount that would not render its Obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, 11 U.S.C. §548, or any applicable provisions of comparable state law (collectively, the “**Fraudulent Transfer Laws**”), in each case after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Borrower in respect of intercompany Indebtedness to any other Credit Party or Affiliates of any other Credit Party to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Credit Party hereunder) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of such Borrower pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Borrower and other Affiliates of any Credit Party of Obligations arising under guarantees by such parties.

(b) Subrogation. Until the Obligations shall have been paid in full in Cash, each Borrower shall withhold exercise of any right of subrogation, contribution or any other right to enforce any remedy which it now has or may hereafter have against the other Borrower or any other guarantor of the Obligations. Each Borrower further agrees that, to the extent the waiver of its rights of subrogation, contribution and remedies as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights such Borrower may have against the other Borrower, any collateral or security or any such other guarantor, shall be junior and subordinate to any rights Collateral Agent may have against the other Borrower, any such collateral or security, and any such other guarantor. Borrowers under this Agreement and the other Credit Documents together desire to allocate among themselves, in a fair and equitable manner, their Obligations arising under this Agreement and the other Credit Documents. Accordingly, in the event any payment or distribution is made on any date by any Borrower under this Agreement and the other Credit Documents (a “**Funding Borrower**”) that exceeds its Obligation Fair Share (as defined below) as of such date, that Funding Borrower shall be entitled to a contribution from the other Borrower in the amount of such other Borrower’s Obligation Fair Share Shortfall (as defined below) as of such date, with the result that all such contributions will cause each Borrower’s Obligation Aggregate Payments (as defined below) to equal its Obligation Fair Share as of such date. “**Obligation Fair Share**” means, with respect to a Borrower as of any date of determination, an amount equal to (i) the ratio of (x) the Obligation Fair Share Contribution Amount (as defined below) with respect to such Borrower to (y) the aggregate of the Obligation Fair Share Contribution Amounts with respect to all Borrowers, multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Borrowers under this Agreement and the other Credit Documents in respect of the Obligations guaranteed. “**Obligation Fair Share Shortfall**” means, with respect to a Borrower as of any date of determination, the excess, if any, of the Obligation Fair Share of such Borrower over the Obligation Aggregate Payments of such Borrower. “**Obligation Fair Share Contribution**

**Amount**” means, with respect to a Borrower as of any date of determination, the maximum aggregate amount of the Obligations of such Borrower under this Agreement and the other Credit Documents that would not render its Obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under §548 of the Bankruptcy Code, 11 U.S.C. §548, or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the Obligation Fair Share Contribution Amount with respect to any Borrower for purposes of this Section 2.19, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or Obligations of contribution hereunder shall not be considered as assets or liabilities of such Borrower. **“Obligation Aggregate Payments”** means, with respect to a Borrower as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Borrower in respect of this Agreement and the other Credit Documents (including in respect of this Section 2.19) minus (ii) the aggregate amount of all payments received on or before such date by such Borrower from the other Borrower as contributions under this Section 2.19. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Borrower. The allocation among Borrowers of their Obligations as set forth in this Section 2.19 shall not be construed in any way to limit the liability of any Borrower hereunder or under any Credit Document.

(c) Representatives of Borrowers. Each Co-Borrower hereby appoints Lead Borrower as its agent, attorney-in-fact and representative for the purpose of (i) making any borrowing requests or other requests required under this Agreement, (ii) the giving and receipt of notices by and to Borrowers under this Agreement, (iii) the delivery of all documents, reports, financial statements and written materials required to be delivered by Borrowers under this Agreement, and (iv) all other purposes incidental to any of the foregoing. Each Co-Borrower agrees that any action taken by Lead Borrower as the agent, attorney-in-fact and representative of the Co-Borrowers shall be binding upon each Co-Borrower to the same extent as if directly taken by such Co-Borrower.

(d) Obligations Absolute. Each Borrower hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Borrower, to (i) proceed against any other Borrower, any guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any other Borrower, any guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any other Borrower or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any other Borrower or any Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any other Borrower or any Guarantor from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary’s errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the

terms hereof and any legal or equitable discharge of such Borrower's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Borrower's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to Borrower and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

### SECTION 3. CONDITIONS PRECEDENT

**3.1. Sixth Amendment Date.** The effectiveness of the Sixth Amendment and obligation of each Lender to make a Loan on the Sixth Amendment Date is subject to the prior satisfaction, or waiver in writing by Administrative Agent acting at the direction of the Requisite Lenders, of the following conditions on or before the Sixth Amendment Date:

(a) Credit Documents. Administrative Agent and Lenders shall have received sufficient copies of the Sixth Amendment and each other Credit Document executed in connection therewith as Administrative Agent shall request, originally executed and delivered by each applicable Credit Party.

(b) Organizational Documents; Incumbency. Administrative Agent and Lenders shall have received, in respect of each Credit Party, (i) sufficient copies of each Organizational Document as Administrative Agent and Lenders shall request, and, to the extent applicable, certified as of the Sixth Amendment Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Credit Party; (iii) resolutions of the Board of Directors or similar governing body of such Credit Party approving and authorizing the execution and delivery of the Sixth Amendment Documents and the performance of the Sixth Amendment Documents, this Agreement and other Credit Documents as amended thereby, in each case to which it is a party or by which it or its assets may be bound as of the Sixth Amendment Date, certified as of the Sixth Amendment Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated the Sixth Amendment Date or a recent date prior thereto; (v) signature and incumbency certificates of one or more officers of each Borrower who are authorized to execute Funding Notices delivered under this Agreement, in substantially the form of Exhibit L (with such amendments or modifications as may be approved by Administrative Agent) and (vi) such other documents as Administrative Agent and Lenders may reasonably request.

(c) Capitalization and Structure of Borrower Group and their respective Subsidiaries. Administrative Agent and Lenders shall have received a true, complete and



accurate organizational chart of Borrower Group and each of their respective Subsidiaries as of the Sixth Amendment Date.

(d) Reclamation Bonding. The Lenders shall have received evidence reasonably satisfactory to them that (i) Borrowers and their Subsidiaries have posted all reclamation bonds required by applicable Governmental Authorities with respect to the Projects and (ii) that OneBeacon Insurance Group shall have issued bonds in the aggregate amount of \$37,500,000 to support the Borrower Group's obligations with respect to certain black lung and workers compensation liabilities.

(e) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons necessary to conduct its business as currently being conducted, in each case that are necessary or advisable in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent and Arranger. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired. Administrative Agent and Lenders shall have received certified copies of all such Governmental Authorizations.

(f) Real Estate Assets. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in the Material Real Estate Assets, except as set forth on Schedule 5.18 Collateral Agent and Lenders shall have received:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each Material Real Estate Asset listed on Schedule 3.1(f) (each, a "**Sixth Amendment Date Mortgaged Property**");

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent and Lenders) with respect to the creation and perfection of the security interests in each Sixth Amendment Date Mortgaged Property in favor of Collateral Agent in each state in which a Sixth Amendment Date Mortgaged Property is located and with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent and Lenders may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent and the Requisite Lenders;

(iii) copies of all searches for mortgages, fixture filings, tax liens, judgment liens and mechanics liens (or equivalent reports or searches), each of a recent date listing all effective mortgagees, fixture filings, as-extracted collateral filings and lien notices or comparable documents that name any Credit Party as debtor and that are filed

in those state and county jurisdictions in which a Sixth Amendment Date Mortgaged Property is located and such other searches that the Collateral Agent and the Requisite Lenders deem necessary or appropriate, none of which encumber the Material Real Estate Assets covered or intended to be covered by the Mortgages (other than Permitted Liens or any other Liens acceptable to the Requisite Lenders); and

(iv) in the case of each Leasehold Property that is a Sixth Amendment Date Mortgaged Property listed in Schedule 3.1(f), (1) a Landlord Consent and Collateral Access Agreement and (2) evidence that such Leasehold Property is a Recorded Leasehold Interest, in each case, as reasonably required by Collateral Agent or the Requisite Lenders.

(g) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Term Loan Collateral, and a valid second priority security interest in the personal property ABL Collateral, Collateral Agent and Lenders shall have received:

(i) evidence satisfactory to Collateral Agent and the Requisite Lenders of the compliance by each Credit Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to execute or authorize, as applicable, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) copies of UCC searches and certified copies of United States Patent and Trademark Office and United States Copyright Office, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Credit Party as debtor and that are filed in those state and county jurisdictions in which any Credit Party is organized or maintains its chief executive office and such other searches that the Collateral Agent and the Requisite Lenders deem necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Collateral Documents (other than Permitted Liens or any other Liens acceptable to the Requisite Lenders);

(iii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent and the Requisite Lenders) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Credit Party or any personal property Collateral is located as Collateral Agent or the Requisite Lenders may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent and the Requisite Lenders; and

(iv) evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 6.1(b)) and made or

caused to be made any other filing and recording (other than as set forth herein), in each case, reasonably required by Collateral Agent or the Requisite Lenders.

(h) Environmental Reports. Administrative Agent and Lenders shall have received reports and other information, in form, scope and substance satisfactory to Administrative Agent and the Requisite Lenders, regarding environmental matters relating to the Facilities.

(i) Financial Statements; Projections. Administrative Agent and Arranger shall have received from Borrower Group the Historical Financial Statements and the Projections, together with an officer's certificate from the Borrowers' chief executive officer or chief financial officer as to the representations regarding the Projections set forth in Section 4.8.

(j) Evidence of Insurance. Collateral Agent and Lenders shall have received a certificate from the applicable Credit Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Collateral Agent, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(k) Opinions of Counsel to Credit Parties. Agents and Lenders and their respective counsel shall have received originally executed copies of the favorable written opinions of Frost Brown Todd LLC, counsel for Credit Parties, as to such matters as Administrative Agent or Arranger may reasonably request, dated as of the Sixth Amendment Date and in form and substance reasonably satisfactory to Administrative Agent and Arranger (and each Credit Party hereby instructs such counsel to deliver such opinions to the Agents and Lenders).

(l) Fees. Borrower Group shall have paid to each Agent the fees payable on or before the Sixth Amendment Date referred to in Sections 2.7(a) and (b) and all expenses payable pursuant to Section 10.2 which have accrued to the Sixth Amendment Date.

(m) Solvency Certificate. On the Sixth Amendment Date, Administrative Agent and Arranger shall have received a Solvency Certificate from each Credit Party in form, scope and substance satisfactory to Administrative Agent and Arranger, and demonstrating that after giving effect to transactions contemplated hereby, the Credit Parties are and will be, on a consolidated basis, Solvent.

(n) Sixth Amendment Date Certificate. Borrower Group shall have delivered to Administrative Agent and Arranger an originally executed Sixth Amendment Date Certificate, together with all attachments thereto.

(o) No Litigation. There shall not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Administrative Agent and Arranger, singly or in the aggregate, materially impairs the any of the transactions contemplated by the Credit Documents or that could have a Material Adverse Effect.

(p) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent or Arranger and its counsel shall be satisfactory in form and substance to Administrative Agent and Arranger and such counsel, and Administrative Agent, Arranger and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent or Arranger may reasonably request.

(q) PATRIOT Act. At least 3 Business Days prior to the Sixth Amendment Date, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the “**PATRIOT Act**”).

(r) Funding Notice. Administrative Agent shall have received a fully executed and delivered Funding Notice.

(s) Other Documentation. The Credit Parties shall have entered into the Fourth Amendment to ABL Agreement and the Administrative Agent shall have received a fully executed copy of the Credit Documents (as defined in the ABL Agreement), and such agreements are in full force and effect as of the Sixth Amendment Date.

(t) Representations and Warranties. As of the Sixth Amendment Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

(u) No Default. No event shall have occurred and be continuing or would result from the consummation of the making of the Loans that would constitute an Event of Default or a Default.

(v) No Material Adverse Effect. No event shall have occurred or shall have become known to any Lender of any material adverse condition or material adverse change in or affecting the business, operations, property or condition (financial or otherwise) of Borrower Group and its Subsidiaries, taken as a whole, since December 31, 2014.

(w) Equity Contribution. James H. Booth shall have caused Five Million Dollars (\$5,000,000) from any source to be contributed as cash equity into Cambrian Coal Corporation.

(x) Concurrent Transactions.

(i) The TECO Transactions shall have been consummated and all conditions precedent to the consummation of the transactions contemplated by the TECO

Acquisition Agreement shall have been satisfied or waived, without giving effect to any amendments thereto or any waivers or consents that are adverse to the Administrative Agent or the Lenders in their capacities as Lenders in any material respect, in each case without the consent of the Administrative Agent acting at the direction of the Lenders; and

(ii) (x) Indebtedness of the Borrower Group and its Subsidiaries with Community Trust Bank (other than financing listed on Schedule 6.1) shall have been repaid in full and all liens with respect thereto terminated, and the Lenders shall have received satisfactory evidence thereof and (y) the Indebtedness with Community Trust Bank listed on Schedule 6.1 shall have been amended on terms and conditions satisfactory to Administrative Agent and Lenders.

Any Agent or Requisite Lenders shall be entitled, but not obligated to, request and receive, prior to the making of any Loan, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of such Agent or Requisite Lenders such request is warranted under the circumstances.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents and Lenders to enter into this Agreement and to make the Loans to be made hereby, each Credit Party represents and warrants to each Agent and Lender on the Sixth Amendment Date, that the following statements are true and correct:

**4.1. Organization; Requisite Power and Authority; Qualification.** Each Borrower and each of its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

**4.2. Equity Interests and Ownership.** The Equity Interests of each Subsidiary of the Borrower Group has been duly authorized and validly issued and is fully paid and non-assessable. As of the Sixth Amendment Date, there is no existing option, warrant, call, right, commitment or other agreement to which any Borrower or any of its Subsidiaries is a party requiring, and there is no membership interest or other Equity Interests of any Borrower or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by any Borrower or any of its Subsidiaries of any additional membership interests or other Equity Interests of any Borrower or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any Borrower or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Borrower Group and each of their respective Subsidiaries in their respective Subsidiaries as of the Sixth Amendment Date.

**4.3. Due Authorization.** The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

**4.4. No Conflict.** The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to Borrower Group or any of their respective Subsidiaries, (ii) any of the Organizational Documents of any Borrower or any of its Subsidiaries, or (iii) any order, judgment or decree of any court or other agency of government binding on any Borrower or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of any Borrower or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of any Borrower or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, for the benefit of the Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of any Borrower or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Sixth Amendment Date and disclosed in writing to Lenders.

**4.5. Governmental Consents.** The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Sixth Amendment Date.

**4.6. Binding Obligation.** Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

**4.7. Historical Financial Statements.** The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Sixth Amendment Date, no Borrower nor any of its Subsidiaries has any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower Group and any of their respective Subsidiaries taken as a whole.

**4.8. Projections.** The Initial Operating and Capital Budget attached as Exhibit M hereto (the “**Projections**”) (a) are based on good faith estimates and assumptions made by the management of Borrower Group and (b) include no statements or conclusions that are based upon or include information known to any Borrower or any of their respective Subsidiaries to be misleading in any material respect or which fail on the Sixth Amendment Date to take into account material information regarding the matters reported therein; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material; provided further, as of the Sixth Amendment Date, management of Borrower Group believed that the Projections were reasonable and attainable.

**4.9. No Material Adverse Effect.** Since December 31, 2014, no event, circumstance or change has occurred that has caused or evidences, or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect.

**4.10. No Restricted Junior Payments.** Except as set forth on Schedule 4.10, since December 31, 2014, (a) no Borrower nor any of its Subsidiaries (excluding TECO Coal LLC and its Subsidiaries) has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted pursuant to Section 6.4 and (b) except as set forth in Section 3.9 of the Disclosure Schedule (as defined in the TECO Acquisition Agreement), as set forth in the Historical Financial Statements, as expressly contemplated in the TECO Acquisition Agreement, or in the Ordinary Course of Business (as defined in the TECO Acquisition Agreement), neither TECO Coal LLC nor any of its Subsidiaries has declared or paid any dividends or distributions on or in respect of any of its capital stock or other equity interests or redeemed, purchased or acquired any of its capital stock or other equity interests.

**4.11. Adverse Proceedings, Etc.** There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. No Borrower nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws and Mining Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**4.12. Payment of Taxes.** Except as set forth on Schedule 4.12 or as otherwise permitted under Section 5.3, all Tax returns and reports of Borrower Group and their respective Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Borrower Group and their respective Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. There is no proposed Tax assessment against Borrower Group or any of their respective Subsidiaries which is not being actively contested by such Borrower or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other

appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

#### **4.13. Properties.**

(a) Title. Except as set forth on Schedule 4.13, each Borrower and its Subsidiaries has (i) good, sufficient and legal title to the Real Estate Assets (in the case of fee interests in real property), (ii) for each leasehold interest that is a Material Real Estate Asset, a lease in full force and effect, enforceable against the applicable Credit Party and the lessor in accordance with the terms therein, (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective material properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.8. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Sixth Amendment Date, except with respect to those assets of TECO Coal LLC, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Except as disclosed on Schedule 4.13, regarding each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and no Borrower has knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles. Borrower Group has made available to Administrative Agent and Lenders, to the extent requested, a complete and correct copy of (i) each lease, sub-lease and assignment of leases relating to a Leasehold Property and of all exhibits and schedules thereto as of the Sixth Amendment Date and (ii) any material amendment, restatement or other modification to or waiver of each such lease, sub-lease and assignment of leases relating to a Leasehold Property entered into after the Sixth Amendment Date.

**4.14. Environmental Matters.** Except as set forth on Schedule 4.14, as of the Sixth Amendment Date, (a) no Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim or any Hazardous Materials Activity; and (b) there are no pending or, to each Borrower's and its Subsidiaries' knowledge, threatened Environmental Claims related to any Borrower or any of its Subsidiaries, and there are and, to each Borrower's and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of such an Environmental Claim. Except as could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (a) each Borrower and each of its Subsidiaries is in compliance with, and has no liability under,



Environmental Law or Mining Law; and (b) each Borrower and each of its Subsidiaries has obtained, and is in compliance with, all Environmental or Mining Governmental Authorizations required for the conduct of their businesses and operations, and all such Environmental or Mining Governmental Authorizations are valid and in good standing. There are no material Black Lung Liabilities pending or to each Borrower's and its Subsidiaries' knowledge, threatened against Borrower or any of its Subsidiaries. All Mining Financial Assurances have been obtained by each Borrower and each of its Subsidiaries. No Borrower nor any of its Subsidiaries has been barred for a period of sixty (60) or more consecutive days from receiving surface or underground Governmental Authorizations pursuant to the permit blockage provisions of the Surface Mining Control and Reclamation Act, 30 U.S.C. §§1201 et seq., and the regulations promulgated thereunder, or any corresponding state laws or regulations.

**4.15. No Defaults.** After giving effect to the Sixth Amendment (including, for the avoidance of doubt, the waiver contained in Section 11 thereof), no Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except, with respect to Contractual Obligations other than in respect of Material Contracts, where such default could not, directly or indirectly, reasonably be expected to have a Material Adverse Effect.

**4.16. Material Contracts.** The Borrower Group and their respective Subsidiaries have no Material Contracts other than (i) the Coal Supply Contracts, (ii) leases and sub-leases related to Leasehold Properties, (iii) the Sales Agency Agreements, (iv) other than with respect to TECO Coal LLC and its Subsidiaries, the contracts set forth on Schedule 4.16, and (v) with respect to TECO Coal LLC and its Subsidiaries, as notified to the Administrative Agent and the Lenders on or prior to the date that is 30 Business Days after the Sixth Amendment Date.

**4.17. Governmental Regulation.** No Borrower nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Borrower nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

**4.18. Federal Reserve Regulations; Exchange Act.**

(a) No Borrower or any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No portion of the proceeds of any Loans shall be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such Loans or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

**4.19. Employee Matters.** No Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against any Borrower or any of its Subsidiaries, or to the best knowledge of each Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Borrower or any of its Subsidiaries or to the best knowledge of each Borrower, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving any Borrower or any of its Subsidiaries, and (c) to the best knowledge of each Borrower, no union representation question existing with respect to the employees of any Borrower or any of its Subsidiaries and, to the best knowledge of each Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

**4.20. Employee Benefit Plans.**

(a) Except as set forth on Schedule 4.20, each Borrower, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all of their material obligations under each Employee Benefit Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified or is able to rely on a notification letter issued by the Internal Revenue Service to the sponsor of a prototype plan or volume submitter plan utilized by the Employee Benefit Plan and, to the knowledge of the Credit Parties, nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status. The Borrowers, each of their Subsidiaries and each of their respective ERISA Affiliates do not sponsor, contribute to or have any liability with respect to any Employee Benefit Plan or any trust established under Title IV of ERISA. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by any Borrower, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. Each Borrower, its Subsidiaries and their respective ERISA Affiliates (i) have not contributed to or participated in a Multiemployer Plan (within the meaning of Section 4203 of ERISA) and have no liability with respect to any Multiemployer Plan and (ii) have no actual or contingent liability under the Coal Industry Retiree Health Benefit Act of 1992, as amended.

(b) Notwithstanding anything in the preceding clause (a) to the contrary, prior to the TECO Transactions the TECO Coal Group participated in and contributed to employee

benefit plans sponsored and maintained by their parent companies and ERISA Affiliates not acquired in the TECO Transactions (the “**Parent Plans**”). Effective on the date of the closing of the TECO Transactions, the TECO Coal Group ceased participation in and contributions to, and, pursuant to terms of the TECO Acquisition Agreement assumed no liabilities with respect to, the Parent Plans. Accordingly, the Borrowers, each of their respective Subsidiaries and each of their respective ERISA Affiliates make no representations or warranties with respect to the Parent Plans and nothing herein should be construed as such, except that Borrowers represent and warrant that neither it nor any of its subsidiaries or their respective ERISA Affiliates has any actual or contingent liability with respect to the Parent Plans, other than as would not reasonably be expected to have a Material Adverse Effect.

**4.21. Solvency.** The Credit Parties are and, upon the incurrence of any Obligation by any Credit Party, will be, on a consolidated basis, Solvent.

**4.22. Compliance with Statutes, Etc.** Each Borrower and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (other than Environmental Laws and Mining Laws which are addressed in Section 4.14 above), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**4.23. Disclosure.** No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or Lender by or on behalf of Borrower Group or any of their respective Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by the applicable Borrower to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to any Borrower (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

**4.24. PATRIOT Act.** To the extent applicable, each Credit Party is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

**4.25. Governmental Authorization.** All material Governmental Authorizations required for the operation of the Projects are set forth on Schedule 4.25 (“**Material Governmental Authorizations**”), including all material Environmental or Mining Governmental Authorizations. Except as set forth on Schedule 4.25, all Material Governmental Authorizations have been duly obtained, were validly issued, are in full force and effect, and are not the subject of any pending appeal and all applicable appeal periods have expired, are held in the name of any Borrower or any of its Subsidiaries and are free from conditions or requirements which could reasonably be expected to have a Material Adverse Effect.

**4.26. Valid Liens.** Each Collateral Document delivered pursuant to the terms hereof will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Credit Parties’ right, title and interest in and to the Collateral thereunder, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable law and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Collateral Document), such Collateral Document will constitute fully perfected Liens on, and security interests in, all right, title an interest of the Credit Parties in such Collateral, in each case subject to no Liens other than the applicable Permitted Liens.

**4.27. Coal Supply Contracts.** All Coal Supply Contracts are in full force and effect and no defaults currently exist thereunder.

**4.28. Sales Agency Agreements.** All Sales Agency Agreements are in full force and effect and no defaults currently exist thereunder.

**4.29. Shareholder Notes.**

(a) Other than the Shareholder Notes or as set forth on the Borrower Group’s balance sheet as of, and delivered on, the Sixth Amendment Date, no equity owner, shareholder or member of a Borrower (or any Affiliate of such equity owner, shareholder or member that is not part of the Borrower Group) owes any Indebtedness or other financial obligation to any member of the Borrower Group;

(b) The Shareholder Notes each were validly issued, and are the legally valid and binding obligation of the shareholder of a Credit Party party thereto, enforceable against such shareholder in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

(c) The Shareholder Notes are in full force and effect and no defaults currently exist thereunder.

## SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until payment in full of all Obligations hereunder, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

**5.1. Financial Statements and Other Reports.** Each Borrower will deliver to Administrative Agent and Lenders:

(a) Monthly Reports. As soon as available, and in any event within 45 days after the end of each month ending after the Sixth Amendment Date, commencing with the month in which the Sixth Amendment Date occurs, the consolidated balance sheet of Borrower Group and their respective Subsidiaries as at the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of Borrower Group and their respective Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year (and solely with respect to Cambrian Coal Corporation (including TECO Coal LLC), commencing September 30, 2016 for the month ended June 2016) and the corresponding figures from the Operating and Capital Budget for the current Fiscal Year, to the extent prepared on a monthly basis, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year, commencing with the Fiscal Quarter in which the Sixth Amendment Date occurs, the consolidated and consolidating balance sheets of Borrower Group and their respective Subsidiaries as at the end of such Fiscal Quarter and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Borrower Group and their respective Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative consolidated form the corresponding figures for the corresponding periods of the previous Fiscal Year (and solely with respect to Cambrian Coal Corporation (including TECO Coal LLC), commencing on November 30, 2016, for the quarter ended September 30, 2016) and the corresponding figures from the Operating and Capital Budget for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event 120 days after the end of each subsequent Fiscal Year, (i) the consolidated and consolidating balance sheets of Borrower Group and their respective Subsidiaries as at the end of such Fiscal Year and the related consolidated (and with respect to statements of income, consolidating) statements of income, stockholders' equity and cash flows of Borrower Group and their respective Subsidiaries for such Fiscal Year, setting forth in each case in comparative consolidated form the corresponding figures for the previous Fiscal Year (and solely with respect to Cambrian Coal Corporation (including TECO Coal LLC), commencing on April 30, 2017 for Fiscal Year 2016) and the corresponding figures from the Operating and Capital Budget for the

Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated and consolidating financial statements a report thereon of Dean, Dorton, Allen Ford, PLLC or other independent certified public accountants of recognized regional standing selected by Borrower Group, and reasonably satisfactory to the Requisite Lenders (which report and/or the accompanying financial statements shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower Group and their respective Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating (1) that their audit examination has included a review of the terms of Section 6.7 of this Agreement and the related definitions, (2) whether, in connection therewith, any condition or event that constitutes a Default or an Event of Default under Section 6.7 has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof, and (3) that nothing has come to their attention that causes them to believe that the information contained in any Compliance Certificate is not correct or that the matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof; provided that such statement may provide that with respect to this clause (3), that the audit examination extended only to accounting matters and except for the review of the terms of Section 6.7 described in the foregoing clauses (1) and (2), no special investigation was made with respect to the existence of Defaults or Events of Default;

(d) Compliance Certificate. Together with each delivery of financial statements of Borrower Group and their respective Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of Borrower Group and their respective Subsidiaries delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(f) Notice of Default. Promptly upon any officer of a Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to such Borrower with respect thereto; (ii) that any Person has given any notice to any Borrower or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person

and the nature of such claimed Event of Default, Default, default, event or condition, and what action such Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any officer of a Borrower obtaining knowledge of (i) any Adverse Proceeding not previously disclosed in writing by Borrower Group to Lenders, or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii), if adversely determined could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to such Borrower to enable Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the applicable Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by such Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan and (2) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent or the Requisite Lenders shall reasonably request;

(i) Operating and Capital Budget. As soon as practicable and in any event no later than thirty (30) days prior to the beginning of each Fiscal Year, an Operating and Capital Budget for the succeeding Fiscal Year. Copies of the proposed Operating and Capital Budget, together with a comparison of the costs in the proposed Operating and Capital Budget with the costs set forth in the Operating and Capital Budget for the current fiscal year and an explanation of the reasons for any significant increase or decrease in any category shall be furnished to the Administrative Agent and Lenders at least 30 days before the beginning of the fiscal year to which such proposed Operating and Capital Budget applies. Prior to adoption thereof, each proposed Operating and Capital Budget shall be subject to the prior approval of the Requisite Lenders (including any individual line item). Copies of the final Operating and Capital Budget so adopted shall be furnished to the Administrative Agent and Lenders promptly upon their adoption. In the event that any proposed Operating and Capital Budget is not approved by the Requisite Lenders (including any individual line item), the Operating and Capital Budget from the previous Fiscal Year shall apply for the then-current Fiscal Year until an Operating and Capital Budget is approved.

(j) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, a certificate from each Borrower's insurance broker(s) in form and substance satisfactory to the Requisite Lenders outlining all material insurance coverage maintained as of the date of such certificate by such Borrower and its Subsidiaries;

(k) Notice Regarding Material Contracts. Promptly, and in any event within fifteen (15) Business Days after: (i) any Material Contract of any Borrower or any of its

Subsidiaries is terminated (other than due to expiration of the term set forth therein) or amended, restated, supplemented, modified or waived, (ii) any new Material Contract has been entered into, or (iii) any delivery to any Borrower or any of its Subsidiaries of any material notices under any Material Contract, a written statement describing such event, with copies of such amendments, notices or new contracts, delivered to Administrative Agent and Lenders (to the extent such delivery is permitted by the terms of any such Material Contract, provided, no such prohibition on delivery shall be effective if it were bargained for by the applicable Borrower or its applicable Subsidiary with the intent of avoiding compliance with this Section 5.1(k)), and an explanation of any actions being taken with respect thereto;

(l) Notice Regarding Governmental Authorizations. Promptly following delivery or receipt by any Borrower or any of its Subsidiaries of the same, a copy of any report or material certificate or other notification from any Governmental Authority in connection with the Projects or Governmental Authorizations including any notices of default, rescission, termination, material claims or material demands thereunder;

(m) Information Regarding Collateral. (a) Borrower Group will furnish to Collateral Agent and Lenders prompt written notice of any change (i) in any Credit Party's corporate name, (ii) in any Credit Party's identity or corporate structure, (iii) in any Credit Party's jurisdiction of organization or (iv) in any Credit Party's Federal Taxpayer Identification Number or state organizational identification number. Each Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Collateral Documents. Each Borrower also agrees promptly to notify Collateral Agent and Lenders if any material portion of the Collateral is damaged or destroyed;

(n) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(c), Borrower Group shall deliver to Collateral Agent and Lenders (i) a certificate of its Authorized Officer (y) either confirming that there has been no change in the information provided with respect to the Collateral since the Sixth Amendment Date or the date of the most recent certificate delivered pursuant to this Section 5.1 and/or identifying such changes and (z) certifying that all UCC financing statements (including fixtures filings, as applicable) and all supplemental intellectual property security agreements or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (y) above to the extent necessary to effect, protect and perfect the security interests under the Collateral Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period and (ii) an Appraisal;

(o) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by any Borrower to its security holders acting in such capacity, or by any Subsidiary of Borrower Group to its equity holders, bondholders or holders of any other of its securities acting in such capacity, in each case other than another Borrower or another Subsidiary of Borrower Group, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed



by Borrower Group or any of their respective Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any other Governmental Authority, (iii) all press releases and other statements made available generally by Borrower Group or any of their respective Subsidiaries to the public concerning material developments in the business of Borrower Group or any of their respective Subsidiaries, and (B) such other information and data with respect to Borrower Group or any of their respective Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any Lender; and

(p) Certification of Public Information. Each Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “**Platform**”), any document or notice that such Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for such Public Lenders. Each Borrower may designate any information provided to Administrative Agent by or on behalf of such Borrower which is suitable to make available to Public Lenders. If such Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Non-Public Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material Non-Public Information with respect to Borrower Group, their respective Subsidiaries and their Securities.

(q) Coal Supply Contracts; Sales Agency Agreements. The Borrower will make available to the Lenders true, correct and complete lists of (i) all Coal Supply Contracts in effect from time to time and (ii) all Sales Agency Agreements between Pevler Coal Sales Company, Inc. and any Credit Party, in effect from time to time, in each case promptly upon any addition, amendment or modification of a previously provided applicable list. The Borrower Group shall promptly provide to the Administrative Agent and Lenders a complete and correct copy of each new Coal Supply Contract and of all exhibits and schedules thereto and each new Sales Agency Agreement between Pevler Coal Sales Company, Inc. and any Credit Party and all exhibits and schedules thereto, in each case upon its addition to such applicable list.

(r) Mining Events. Promptly upon becoming aware of the occurrence of (i) any lost time accidents that (x) are Immediately Reportable Accidents (as such term is defined by the Mine Safety and Health Administration) and (y) cause an interruption of mining for three or more days and (ii) geological events that cause an interruption of mining for three or more days, written notice thereof together with such other information as may be reasonably available to enable Lenders and their counsel to evaluate such matters.

**5.2. Existence.** Except as otherwise permitted under Section 6.8, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party (other than each Borrower with respect to existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person’s board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable or necessary in the conduct of the business of such

Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

**5.3. Payment of Taxes and Claims.** Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Borrower Group or any of their respective Subsidiaries).

**5.4. Maintenance of Properties.** Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, (ordinary wear and tear excepted), in accordance with generally accepted prudent Central Appalachian mining industry practices, all material properties used or useful in the business of Borrower Group and their respective Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof in accordance with generally accepted prudent Central Appalachian mining industry practices.

**5.5. Insurance.** Each Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third-party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses (other than coal inventory) of such Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each Borrower will maintain or cause to be maintained replacement value (or actual value in the case of equipment) casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name Collateral Agent, for the benefit of the Secured Parties, as an additional insured thereunder as its interests may appear, (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of the Secured Parties, as the loss payee thereunder and provide for prior written notice to Collateral Agent of any modification or cancellation of such policy, which such prior written notice must be provided within the lesser of (y) thirty (30) days or (z) such notice period deemed satisfactory by the Requisite Lenders; provided, that if such policy does not require prior notice of a modification of

such policy, the notice of modification provisions contained in this Section 5.5(ii) shall not apply.

**5.6. Books and Records; Inspections.** Each Credit Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Agent or any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

**5.7. Lenders Meetings.** Each Borrower will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent, if applicable, and Lenders once during each Fiscal Year to be held at such Borrower's corporate offices (or at such other location as may be agreed to by such Borrower and Administrative Agent) at such time as may be agreed to by such Borrower and Administrative Agent.

**5.8. Compliance with Laws.** Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and all obligations binding on any Credit Party contained in any Governmental Authorizations or orders of any Governmental Authority and with applicable Environmental Laws and Mining Laws, noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.9. Environmental.** (a) Environmental Disclosure. Each Borrower will deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of such Borrower or any of their respective Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to environmental matters (other than insignificant, routine matters, including monthly and other periodic reports that do not reflect a violation of Environmental Laws that could reasonably be expected to have a Material Adverse Effect) at any Facility or with respect to any Environmental Claims that have a reasonable possibility of resulting in a Material Adverse Effect;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws that, individually or in the aggregate, has a reasonable possibility of giving rise to a Material Adverse Effect, (2) any remedial action taken by such Borrower any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse

Effect, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (3) such Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by such Borrower or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether such Borrower or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by such Borrower or any of its Subsidiaries that could reasonably be expected to (A) expose such Borrower or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of such Borrower or any of its Subsidiaries to maintain in full force and effect all material Environmental or Mining Governmental Authorizations required under any Environmental Law or Mining Laws for their respective operations and (2) any proposed action to be taken by such Borrower or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject such Borrower or any of its Subsidiaries to any additional obligations or requirements under any Environmental Laws or Mining Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent or Lenders in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Environmental Compliance. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws or Mining Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (iii) comply, and use commercially reasonable efforts to cause all lessees and other persons occupying any Real Estate Assets to comply, in all material respects with all Environmental Laws, Mining Laws and Environmental or Mining Governmental Authorizations, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect and (iv) obtain, maintain in full force and effect and renew all material Environmental or Mining Governmental Authorizations applicable to its

operations and Real Estate Assets, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

**5.10. Subsidiaries.** In the event that any Person becomes a Domestic Subsidiary of a Borrower, such Borrower shall (a) promptly cause such Domestic Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by Collateral Agent or the Requisite Lenders, including those which are similar to those described in Sections 3.1(b), 3.1(f), 3.1(g), 3.1(h), 3.1(j) and 3.1(k). In the event that any Person becomes a Foreign Subsidiary of a Borrower, and the ownership interests of such Foreign Subsidiary are owned by such Borrower or by any Domestic Subsidiary thereof, such Borrower shall, or shall cause such Domestic Subsidiary to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(b), and such Borrower shall take, or shall cause such Domestic Subsidiary to take, all of the actions referred to in Section 3.1(g)(i) necessary to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties, under the Pledge and Security Agreement in 65% of such ownership interests. With respect to each such Subsidiary, such Borrower shall promptly send to Administrative Agent and Lenders written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of such Borrower, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of such Borrower; and such written notice shall be deemed to supplement Schedules 4.1 and 4.2 for all purposes hereof.

**5.11. Additional Material Real Estate Assets.** In the event that any Credit Party acquires a Material Real Estate Asset or a Real Estate Asset owned or leased on the Sixth Amendment Date becomes a Material Real Estate Asset and such interest in such Material Real Estate Asset has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then, unless otherwise agreed by the Requisite Lenders, such Credit Party shall use its commercially reasonable efforts to obtain a Landlord Consent and Collateral Access Agreement from the lessor if the property is leased, and subject to the foregoing, shall promptly take all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, documents, instruments, agreements, opinions and certificates, including those which are similar to those described in Sections 3.1(f), 3.1(g) and 3.1(h) with respect to each such Material Real Estate Asset that Collateral Agent or the Requisite Lenders shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Material Real Estate Assets. In addition to the foregoing, Borrower shall, at the request of Collateral Agent or the Requisite Lenders, deliver, from time to time, to Collateral Agent and Lenders such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Lien.

**5.12. Further Assurances.** At any time or from time to time upon the request of Administrative Agent or the Requisite Lenders, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent, Collateral Agent or the Requisite Lenders may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the

foregoing, each Credit Party shall take such actions as Administrative Agent, Collateral Agent or the Requisite Lenders may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Borrower Group, and their respective Subsidiaries (other than those assets specifically excluded from being designated as Term Loan Collateral) and all of the outstanding Equity Interests of each Borrower's Subsidiaries (subject to limitations contained in the Credit Documents with respect to Foreign Subsidiaries).

**5.13. Material Agreements.** Each Credit Party will comply in all material respects, and shall cause each of its Subsidiaries to comply in all material respects with the requirements of all Material Contracts, and will enforce the material rights granted to it under all Material Contracts, noncompliance with or non-enforcement of which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.14. Governmental Authorizations.** Each Borrower and each of its Subsidiaries shall obtain and maintain in full force and effect, and comply in all material respects (including mandatory reporting requirements) with all Obligations binding on such Borrower or Subsidiary under the Governmental Authorizations and rights necessary for the operation of the Projects, as they are presently being operated, or necessary to comply with its obligations under the Credit Documents and Material Contracts, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

**5.15. Retention of Financial Advisor by Credit Parties.** The Borrowers shall continue to retain Alvarez & Marsall LLC (or another financial advisor that is reasonably acceptable to Administrative Agent acting at the direction of the Lenders) as financial advisor until such time as (a) the Borrowers generate Consolidated Adjusted EBITDA of no less than \$30,000,000 (on an annualized basis) for at least two Fiscal Quarters following the Sixth Amendment Date or (b) all of the Lenders consent to the termination of such engagement; provided that the Borrowers shall not be required to incur expenses in excess of \$250,000 with respect to such financial advisor through the Fiscal Quarter ending March 31, 2016.

**5.16. Proceeds of Term Loan Collateral.** All amounts received by each Credit Party in respect of proceeds of any Disposition of Collateral (other than ABL Collateral), shall, within one Business Day of receipt, be deposited into an account designated by the Administrative Agent (the "**Term Loan Proceeds Account**") and shall be held in such account pending application of such proceeds in accordance with the terms of this Agreement.

**5.17. TECO Coal Real Estate.** Within 30 days after the Sixth Amendment Date, the Borrowers shall update Schedule 4.13 to include the following assets of TECO Coal LLC and its Subsidiaries: (i) Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of TECO Coal LLC or any of its Subsidiaries, regardless of whether such Person is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment.

**5.18. Post-Closing Matters.** The Borrowers shall execute and deliver the documents and complete the tasks set forth on Schedule 5.18, in each case within the period after the Sixth Amendment Date set forth on such Schedule.

## SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until payment in full of all Obligations hereunder, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

**6.1. Indebtedness.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of any Credit Party to any other Credit Party; provided, (i) all such Indebtedness outstanding at the end of any Fiscal Quarter shall be evidenced by the Global Intercompany Note, which shall be updated to reference such Indebtedness within forty-five (45) days following the end of each Fiscal Quarter, and shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement, (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Global Intercompany Note, and (iii) any payment by any such Guarantor under any guaranty of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Subsidiary to the applicable Borrower or to any of its Subsidiaries for whose benefit such payment is made;

(c) Indebtedness incurred by any Borrower or any of its Subsidiaries arising from agreements providing for indemnification, deferred purchase price or payments, contingent payments, adjustment of purchase price or similar obligations (including, Indebtedness consisting of the deferred purchase price of property acquired in a Permitted Acquisition or pursuant to the TECO Acquisition Agreement, “**Earn Out Indebtedness**”), or from guaranties or letters of credit, Mining Financial Assurances, surety bonds or performance bonds securing the performance of such Borrower or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of any Borrower or any of its Subsidiaries;

(d) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business and not for borrowed money, including, without limitation, reclamation, black lung, workers’ compensation and surety bonds held or obtained by any of the Credit Parties in the ordinary course of business in connection with their ongoing operations and reimbursement obligations on any letters of credit issued with respect thereto;

(e) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(f) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of any Borrower and its Subsidiaries;

(g) guaranties by a Borrower of Indebtedness of a Guarantor or guaranties by a Guarantor of Indebtedness of a Borrower or another Guarantor with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; provided, that if the Indebtedness that is being guaranteed is unsecured and/or subordinated to the Obligations, the guaranty shall also be unsecured and/or subordinated to the Obligations;

(h) Indebtedness described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced plus accrued interest, fees and premiums (if any) thereon and reasonable fees and expenses associated with the refinancing (provided that the principal amount of such Indebtedness shall not include any principal constituting interest paid in kind) or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(i) [Reserved];

(j) [Reserved];

(k) (i) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary of a Borrower or Indebtedness attaching to assets that are acquired by any Borrower or any of its Subsidiaries, in each case after the Sixth Amendment Date as the result of a Permitted Acquisition, in an aggregate amount not to exceed \$500,000 at any one time outstanding, provided that (x) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (y) such Indebtedness is not guaranteed in any respect by any Borrower or any Subsidiary of a member of the Borrower Group (other than by any such person that so becomes a Subsidiary of a Borrower), and (ii) any refinancing, refunding, renewal or extension of any Indebtedness specified in subclause (i) above, provided that (1) the principal amount of any such Indebtedness is not increased above the principal amount thereof outstanding immediately prior to such refinancing, refunding, renewal or extension, plus accrued interest, fees and premiums (if any) thereon and reasonable fees and expenses associated with the refinancing (provided that the principal amount of such Indebtedness shall not include any principal constituting interest paid in kind), (2) the direct and contingent obligors with respect to such Indebtedness are not changed and (3) such Indebtedness shall not be secured by any assets other than the assets securing the Indebtedness being renewed, extended or refinanced;



(l) Indebtedness under the ABL Agreement in an aggregate principal amount (excluding capitalized interest or fee amounts, if any, and the Minimum Interest Amount (as such term is defined in the ABL Agreement)) not to exceed \$47,500,000 (plus, solely to the extent required by any change in applicable law or the requirements of the surety with respect to the bonding requirements applicable to the Borrowers that increases such bonding requirements, an additional amount equal to the amount necessary to satisfy such bonding requirements (not to exceed 100% of the amount of the bond required)); provided that the aggregate principal amount of the RH Loan may not exceed the RH Loan Cap Amount (as defined in the Intercreditor Agreement); and provided further that the aggregate amount of all such Indebtedness under the ABL Agreement may not exceed the ABL Loan Cap Amount (as defined in the Intercreditor Agreement);

(m) Indebtedness relating to insurance premium financing in an aggregate amount not to exceed \$12,000,000 at any time; and

(n) Indebtedness that constitutes Continuing Debt.

During the Interim Period and at any time that a Lock-Up Event shall have occurred and be continuing, no Credit Party shall, nor shall it permit any of its Subsidiaries to, incur any new or additional Indebtedness under clause (k) of this Section 6.1.

**6.2. Liens.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any Borrower or any of its Subsidiaries, whether now owned or hereafter acquired or licensed, or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves have been made in accordance with GAAP;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, Mining Financial Assurances, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower Group or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by any Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by any Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of such Borrower or such Subsidiary;

(l) Liens on assets that are not collateral for the Continuing Debt, as described in Schedule 6.2(l);

(m) the Lien in favor of the Surety (as defined in the ABL Agreement) with respect to the Surety Bond Controlled Account (as defined in the ABL Agreement);

(n) Liens securing Indebtedness permitted by Section 6.1(k), provided any such Lien shall encumber only those assets which secured such Indebtedness at the time such assets were acquired by Borrower or its Subsidiaries;

(o) (i) Liens on the ABL Collateral in favor of the ABL Collateral Agent securing Permitted ABL Debt, subject to the Intercreditor Agreement, (ii) second priority Liens on the Term Loan Collateral in favor of the ABL Collateral Agent securing Permitted ABL Debt, subject to the Intercreditor Agreement and (iii) third priority Liens on the TECO PP&E

Collateral (as defined in the Intercreditor Agreement) in favor of the ABL Collateral Agent, subject to the Intercreditor Agreement;

(p) Liens on insurance policies and the proceeds thereof pursuant to premium financing arrangements in the ordinary course of business and consistent with past practice, so long as (A) such lien encumbers only the policy on which such premiums are owed and (B) the aggregate Indebtedness secured thereby is permitted by Section 6.1(m); and

(q) Liens on assets that are collateral for the Continuing Debt, as described on Schedule 6.2(q).

**6.3. No Further Negative Pledges.** Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (b) restrictions by reason of customary provisions restricting the granting of Liens, assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), (c) restrictions identified on Schedule 6.3, (d) restrictions existing in the ABL Agreement on the Sixth Amendment Date, and (e) restrictions existing in the agreements on the Sixth Amendment Date relating to the Continuing Debt, no Credit Party nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

**6.4. Restricted Junior Payments.** No Credit Party shall, nor shall it permit any of its Subsidiaries or Affiliates through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that:

(a) Any Subsidiary of Borrower Group may declare and pay dividends or make other distributions ratably to its equity holders;

(b) payments of Earn Out Indebtedness will be permitted; provided that both immediately prior to and after giving effect to the incurrence thereof, (x) no Default or Event of Default shall exist or result therefrom, and (y) Borrower Group will be in compliance with the covenants set forth in Section 6.7;

(c) so long as no Default or Event of Default shall have occurred and be continuing or shall be caused thereby, Borrowers may make Restricted Junior Payments to their shareholders once per Fiscal Year on the date for mandatory prepayment of the Loans pursuant to Section 2.10(d) with respect to such Fiscal Quarter and solely from Consolidated Excess Cash Flow and to the extent necessary to permit such shareholders to discharge the tax liabilities of the Borrower Group attributed to such shareholder, in each case so long as such shareholder applies the amount of any such Restricted Junior Payment for such purpose; provided that the aggregate amount of all Restricted Junior Payments permitted under this clause (c) for any Fiscal Year shall not exceed (y) so long as the Interim Period has expired and no Lock-Up Event has occurred and is continuing, the product of (A) 80% of the combined net income of Borrower

Group and their respective Subsidiaries for such Fiscal Quarter determined in accordance with GAAP and (B) the highest individual marginal federal tax rate in the relevant period of determination (which on the date of this Agreement is 39.6%); or (z) during the Interim Period or after the occurrence and during the continuation of a Lock-Up Event, the product of (A) 40% of the combined net income of Borrower Group and their respective Subsidiaries for such Fiscal Quarter determined in accordance with GAAP and (B) the highest individual marginal federal tax rate in the relevant period of determination (which on the date of this Agreement is 39.6%); and provided further that the holder of any issued and unexercised Warrants may be treated as a shareholder of an applicable Borrower for purpose of this subsection (c) to the extent that income of such Borrower is attributed to such Warrant holder for tax purposes;

(d) payments to Pevler Coal Sales Company, Inc. pursuant to the Sales Agency Agreements shall be permitted;

(e) payments, including but not limited to wages, director's fees, management fees, and life insurance payments, shall be permitted to be paid to any of the Sponsors or any officers or employees Affiliated with or otherwise relating to any of the Sponsors or any of their respective Affiliates (other than the Credit Parties) in an aggregate amount not to exceed \$1,500,000 each calendar year; provided that the Credit Parties may increase the payments permitted to be made under this Section 6.4(e) by an aggregate amount not to exceed 3% in each Fiscal Year; provided further that this Section 6.4(e) shall not prohibit payments under those arrangements described on Schedule 6.11;

(f) payments of Indebtedness consisting of deferred payment obligations under the TECO Acquisition Agreement shall be permitted;

(g) purchases of Warrants (prior to the exercise thereof) at the price set forth in the Warrant Documentation shall be permitted;

(h) payments to holders of Warrants to provide tax distributions with respect to any phantom income that may arise solely with respect to holding the Warrant shall be permitted.

**6.5. Restrictions on Subsidiary Distributions.** Except as provided herein or in Section 6.4, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower Group to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by any Borrower or any other Subsidiary of Borrower Group, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower Group or any other Subsidiary of Borrower Group, (c) make loans or advances to Borrower Group or any other Subsidiary of Borrower Group, or (d) transfer, lease or license any of its property or assets to Borrower Group or any other Subsidiary of Borrower Group other than restrictions (i) in agreements evidencing the Continuing Debt that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any

property, assets or Equity Interests not otherwise prohibited under this Agreement, (iv) existing in the ABL Agreement on the Sixth Amendment Date or (v) described on Schedule 6.5.

**6.6. Investments.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

- (a) Investments in Cash and Cash Equivalents;
- (b) equity Investments owned as of the Sixth Amendment Date in any Subsidiary and Investments made after the Sixth Amendment Date in any Borrower and any wholly-owned Domestic Subsidiary of Borrower Group that is a Credit Party;
- (c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Borrower Group and their respective Subsidiaries;
- (d) intercompany loans to the extent permitted under Section 6.1(b).
- (e) loans and advances to employees of Borrower Group and their respective Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed \$1,000,000;
- (f) Permitted Acquisitions permitted pursuant to Section 6.8;
- (g) the Investments described in Schedule 6.6 existing on the Sixth Amendment Date (but not any renewals or extensions thereof);
- (h) so long as the Interim Period has expired and no Lock-Up Event or Event of Default has occurred and is continuing or would result therefrom, other Investments in Persons other than Affiliates and in an aggregate amount not to exceed \$1,000,000 during the term of this Agreement;
- (i) trade credit extended on usual and customary terms in the ordinary course of business and consistent with past practice;
- (j) the Shareholder Notes (but not any renewals or extensions thereof); and
- (k) Investments resulting from any pledge or deposit permitted under Section 6.2.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.4.

**6.7. Financial Covenants.**

(a) Minimum Liquidity. Borrower Group shall maintain, collectively, Liquidity of at least: (i) for the period from the Sixth Amendment Date through December 31, 2015, \$3,000,000, (ii) for each period thereafter, an amount equal to the sum of (x) \$3,000,000 and (y) \$500,000 times the number of Fiscal Quarters after December 31, 2015 that have elapsed since the applicable date; provided that such sum shall be capped at \$7,500,000.

(b) Leverage Ratio. Commencing with the Fiscal Quarter ended March 31, 2016, Borrower Group shall not permit the Leverage Ratio as of the last day of any Fiscal Quarter exceed the ratio set forth below opposite the last day of such Fiscal Quarter.

Fiscal Quarter End Date	Leverage Ratio
March 31, 2016	4.50:1.00
June 30, 2016	4.50:1.00
September 30, 2016	4.50:1.00
December 31, 2016	4.50:1.00
March 31, 2017	4.50:1.00
June 30, 2017	4.50:1.00
September 30, 2017	4.50:1.00
December 31, 2017 and thereafter	3.50:1.00

(c) Debt Service Coverage Ratio. Commencing with the Fiscal Quarter ending March 31, 2016, permit the Debt Service Coverage Ratio as of the last day of any Fiscal Quarter to be less than (i) with respect to the Fiscal Quarter ending March 31, 2016, 1.25 to 1.00, (ii) with respect to the Fiscal Quarters ending on June 30, 2016, September 30, 2016 and December 31, 2016, 1.35 to 1.00 and (iii) with respect to any Fiscal Quarter thereafter, 1.75 to 1.00.

(d) Maximum Consolidated Capital Expenditures. Borrower Group shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures, in any Fiscal Year indicated below, in an aggregate amount for Borrower Group in excess of the corresponding amount set forth below opposite such Fiscal Year:

Fiscal Year	Consolidated Capital Expenditures
2015	\$8,840,000
2016	\$18,830,000
2017	\$26,070,000

**6.8. Fundamental Changes; Disposition of Assets; Acquisitions.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or

convey, sell, lease or license, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Borrower Group may be merged with or into a Borrower which directly or indirectly controls such Subsidiary or any Guarantor that is a Subsidiary of such Borrower, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to a Borrower which directly or indirectly controls such Subsidiary or any Guarantor that is a Subsidiary of such Borrower; provided, in the case of such a merger, such Borrower or such Guarantor, as applicable shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) disposals of obsolete, worn out or surplus property;

(d) so long as the Interim Period has expired, Permitted Acquisitions, the Acquisition Consideration for which constitutes (i) less than \$500,000 in the aggregate in any Fiscal Year, and (ii) less than \$1,000,000 in the aggregate from the Sixth Amendment Date to the date of determination;

(e) Investments made in accordance with Section 6.6;

(f) any sale, assignment, abandonment, lease, license or other transfer or disposition of assets by any Credit Party to another Credit Party;

(g) any sale, assignment, abandonment, lease, license or other transfer or disposition of assets in the ordinary course of business to the extent that (i) such assets are replaced by similar substitute assets acquired or leased pursuant to this Agreement; provided that such substitute assets have a fair market value greater than or equal to the fair market value of the assets sold, assigned, abandoned, leased, licensed or transferred and are subject to the Lenders' First Priority Lien to the same extent the asset disposed of was subject to the Lenders' First Priority Lien, and (ii) the proceeds of such sale or other disposition are promptly applied to the purchase price of such substitute assets;

(h) any discount, other compromise or sale for less than face value of accounts receivable (or notes accepted to evidence same) owed by non-Affiliates in order to (i) resolve disputes that occur in the ordinary course of business or (ii) expedite the payment of any such accounts receivable or notes having an original payment term of greater than 30 days;

(i) dispositions by Borrowers and their Subsidiaries of property pursuant to lease and sub-lease transactions entered into in the ordinary course of business, but only if (i) the

mineable and merchantable coal underlying such property has been exhausted, (ii) the net effect of each such transaction does not materially diminish the quantity, quality or mineability of the mineable and merchantable coal available to the Projects, or (iii) such transactions do not involve any Material Real Estate Asset;

(j) licenses or sublicenses of intellectual property rights in the ordinary course of business;

(k) dispositions resulting from a casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of either of the Borrower or any Subsidiary, the proceeds of which are applied as provided under Section 2.10;

(l) the roll-over or disposition of Cash Equivalents for cash or other Cash Equivalents in the ordinary course of business;

(m) dispositions of the following assets acquired in the TECO Transaction: (i) assets other than Material Real Estate Assets, provided that such assets are not necessary for the operations of the Borrower Group and its Subsidiaries, (ii) oil and gas rights and interests, and (iii) timber rights and interests, provided that the net cash proceeds of all such dispositions are applied in accordance with Section 2.10(a); and

(n) as reasonably required to effect a Permitted Issuer Restructuring.

**6.9. Disposal of Subsidiary Interests.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Equity Interests of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Equity Interests of any of its Subsidiaries, except to such Borrower as directly or indirectly controls such Credit Party or another Subsidiary of such Borrower (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

**6.10. Sales and Lease-Backs.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Borrower Group or any of their respective Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than or any of its Subsidiaries) in connection with such lease.

**6.11. Transactions with Shareholders and Affiliates.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) (i) with any Affiliate that is not part of the Borrower Group, pursuant to which such Credit Party extends any credit (other than intercompany payables in the ordinary course of business and with payment terms (and payment) not to exceed 30 days) not existing as of the



Sixth Amendment Date to such Affiliate or (ii) with any Affiliate of Borrower Group on terms that are less favorable to the applicable Borrower or the applicable Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction between a Borrower and any other Credit Party; (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of any Borrower and its Subsidiaries; (c) compensation arrangements for officers and other employees on customary market terms of Borrower Group and their respective Subsidiaries entered into in the ordinary course of business, provided that payments, including but not limited to wages, director's fees and management fees, to any of the Sponsors or any officers or employees Affiliated with or otherwise relating to any of the Sponsors or any of their respective Affiliates shall not exceed the amounts permitted under Section 6.4(e); and (d) transactions described in Schedule 6.11. The Borrowers shall disclose to the Administrative Agent, within sixty (60) days after the end of each Fiscal Quarter, each transaction with any Affiliate of the Borrower Group which was not previously disclosed to the Administrative Agent and shall certify in an officer's certificate that such transactions comply with this Section 6.11 and the basis for such compliance.

**6.12. Conduct of Business.** From and after the Sixth Amendment Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by such Credit Party on the Sixth Amendment Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

**6.13. Amendments or Waivers of Organizational Documents and Certain Material Contracts.** Except as set forth in this Section 6.13, no Credit Party shall, nor shall it permit any of its Subsidiaries to, agree to any material amendment, restatement, supplement or other modification to, or waiver of, any of its Organizational Documents or any of its material rights under any Material Contract or terminate, suspend or cancel any Material Contract prior to its expiration (other than any termination, suspension or cancellation of a Material Contract expressly permitted under (i) other than with respect to any Coal Supply Contract, Section 6.8(g) and (ii) Sections 6.8(b) and (c)) without in each case obtaining the prior written consent of Requisite Lenders to such amendment, restatement, supplement, other modification or waiver or termination, suspension or cancellation; provided, that the foregoing restrictions shall not apply to any amendment, restatement, supplement or modification of the Organizational Documents or a Material Contract of a Credit Party solely to the extent reasonably required to effect a Permitted Issuer Restructuring; provided further, that the foregoing restriction with respect to any Material Contract shall not apply to any amendment, restatement, supplement or other modification to, or waiver under such Material Contract that (a) would result in a reduction in revenue to the Credit Parties of less than \$2,500,000 in the aggregate or a reduction in Collateral value of less than \$250,000 in the aggregate and (b) could not reasonably be expected to have a Material Adverse Effect; provided further that if the Requisite Lenders do not respond in writing to any request for consent hereunder within fifteen (15) Business Days following confirmation of receipt of written notice of such request, the consent of Requisite Lenders shall be deemed to have been given to the amendment, restatement, supplement, modification, waiver, termination, suspension or cancellation specified in such notice and the applicable Credit Parties shall be permitted to proceed with such action.

**6.14. Amendments or Waivers with Respect to Certain Indebtedness.** Except as set forth in this Section 6.14 and as permitted under the Intercreditor Agreement, no Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of the ABL Agreement, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on the ABL Agreement, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, or if the effect of such amendment or change, together with all other amendments or changes made, would either require the consent of the Lenders and the ABL Lenders pursuant to the terms of the Intercreditor Agreement or would increase materially the obligations of the obligor thereunder or otherwise modify or confer any additional rights on the ABL Lenders (or a trustee or other representative on their behalf) which would be adverse to any Credit Party or Lenders.

**6.15. Fiscal Year.** No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from December 31.

**6.16. Compensation.** Except for: (i) the Sales Agency Agreements, (ii) existing contracts or other agreements for advisory or management-related services, as listed on Schedule 6.16 hereto and (iii) other brokerage and sales agency agreements that the Credit Parties enter into in the ordinary course of business not to exceed \$400,000 annually in aggregate, consistent with past practice and with Persons that are not Affiliates, no Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into a contract or other agreement of any kind for any advisory or management-related services, or make any payments to any Person for any advisory or management-related services (“**Management Compensation**”), unless such Management Compensation is approved in writing by Administrative Agent, acting at the direction of the Requisite Lenders, which compensation, in each case, shall be reasonable for the services rendered to the applicable Borrower, as determined by the Requisite Lenders. Management Compensation shall include amounts paid in connection with overseeing, arranging or managing (or other similar activities) any coal sales arrangements or operating and maintenance arrangements or financing arrangements, but this Section 6.16 shall not be construed to restrict payments under compensation arrangements permitted by clause (c) of the proviso to Section 6.11 and Section 6.4(e) hereof. For clarification, this Section 6.16 shall not apply to contracts, other agreements, or payments, in each case, with respect to employees of any of the Credit Parties, other than employees that are Affiliates of the Sponsors; provided that this Section 6.16 shall not apply to employees of any of the Credit Parties who are Affiliates of the Sponsors solely by virtue of their being employees of any of the Credit Parties.

**6.17. Coal Reserves.** No Credit Party shall, nor shall it permit any of its Subsidiaries to modify any material portion of existing mine plans that would have any Material Adverse Effect.

**6.18. Shareholder Notes.** Except as set forth in this Section 6.18, no Credit Party shall nor shall it permit any of its Subsidiaries to, (i) agree to any amendment, restatement, supplement or other modification to, or waiver of any of the Shareholder Notes or any of its rights thereunder; (ii) sell or to transfer to any other Person the Shareholder Notes or any rights

thereunder; (iii) incur, assume or permit to exist any Lien on or with respect to the Shareholder Notes, other than liens securing Permitted ABL Debt permitted under Section 6.2 or (iv) terminate, suspend or cancel any of the Shareholder Notes prior to such Shareholder Note's expiration after the Sixth Amendment Date without in each case obtaining the prior written consent of Requisite Lenders to such amendment, restatement, supplement, other modification or waiver or termination, suspension or cancellation.

## SECTION 7. GUARANTY

### 7.1. Guaranty of the Obligations.

(a) Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent, for the ratable benefit of the Secured Parties, the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**"). Notwithstanding the foregoing maximum joint and several liability of Guarantors, Guarantors hereby jointly and severally agree to separately guarantee payment of interest accruing on the Guaranteed Obligations, and all fees, charges, and costs of collecting the Guaranteed Obligations, including reasonable attorneys' fees.

(b) The date upon which Guarantors' guaranty terminates shall be the Maturity Date (the "**Termination Date**"), which Termination Date shall not affect the liability of Guarantors with respect to (a) Obligations created or incurred prior to the Termination Date; or (b) extensions or renewals of, interest accruing on, or fees, costs or expenses incurred with respect to the Obligations on or after the Termination Date. Notwithstanding anything herein to the contrary, the liability of the Guarantors hereunder shall survive the payment in full of the Obligations for a period of one year and one day after the date such Obligations are paid in full.

**7.2. Contribution by Guarantors.** All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions

of state law; provided, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. “**Aggregate Payments**” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third-party beneficiary to the contribution agreement set forth in this Section 7.2.

**7.3. Payment by Guarantors.** Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of any Borrower to pay any of the Guaranteed Obligations in Cash when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for such Borrower’s becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against such Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

**7.4. Liability of Guarantors Absolute.** Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between any Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower Group and the obligations of any other guarantor (including any other

Guarantor) of the obligations of Borrower Group, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against any Borrower or any of such other guarantors and whether or not any Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Credit Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, at law, in equity or otherwise) with respect to the

Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Borrower Group or any of their respective Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Borrower Group may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

**7.5. Waivers by Guarantors.** Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against any Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from any Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any Credit Party or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of

dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrower Group and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; (g) any right to deem the amount of the Guaranteed Obligations to be reduced by the value of the property other than Cash received by the Beneficiary in respect thereof; and (h) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

**7.6. Guarantors' Rights of Subrogation, Contribution, Etc.** Until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against any Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against such Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

**7.7. Subordination of Other Obligations.** Any Indebtedness of Borrower Group or any Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

**7.8. Continuing Guaranty.** This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

**7.9. Authority of Guarantors or Borrower.** It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower Group or the officers, directors or any agents acting or purporting to act on behalf of any of them.

**7.10. Financial Condition of Borrower Group.** The Loans may be made to Borrower Group without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower Group at the time of any such grant. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Borrower Group. Each Guarantor has adequate means to obtain information from Borrower Group on a continuing basis concerning the financial condition of Borrower Group and its ability to perform its obligations under the Credit Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower Group and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower Group now known or hereafter known by any Beneficiary.

**7.11. Bankruptcy, Etc.**

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against any Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of any Borrower or any other Guarantor or by any defense which any Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve a Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of



Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by a Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

**7.12. Discharge of Guaranty Upon Sale of Guarantor.** If all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

## SECTION 8. EVENTS OF DEFAULT

**8.1. Events of Default.** If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by any Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise or (ii) any interest on any Loan or any fee or any other amount due hereunder within three days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of \$250,000 or more or with an aggregate principal amount of \$1,000,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 2.3, Section 5.1(f), Section 5.2, Section 5.18 or Section 6, or, upon five days' notice from Administrative Agent, failure to perform or comply with any term or condition contained in Section 5.1(a), 5.1(b), 5.1(c) or 5.1(d); or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made; provided that the breach of one or more of the representations contained in Section 4.13(a), 4.14 or 4.15, which result in a reduction in revenue to the Credit Parties of no more than \$2,500,000 in the aggregate or a reduction in Collateral value of no more than \$250,000 in the aggregate, in each case in any Fiscal Year, shall not result in an Event of Default hereunder; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any material term contained herein or any of the other Credit Documents (including, solely for purposes of this clause (e), the Warrant Documentation), other than any such term referred to in any other paragraph of this Section 8.1, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an officer of such Credit Party becoming aware of an event which results in a default and that a default has occurred under any of the Credit Documents, or (ii) receipt by Borrower Group of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Borrower or any of its Subsidiaries in an involuntary case under any Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Borrower or any of its Subsidiaries under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over such Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Borrower or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower Group or any of their respective Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Any Borrower or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Laws now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) any Borrower or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Borrower or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$250,000 or (ii) in the aggregate at any time an amount in excess of \$500,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against a Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of any Borrower, any of their respective Subsidiaries or any of their respective ERISA Affiliates in excess of \$1,000,000 during the term hereof; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Collateral Documents; or

(m) Event of Abandonment. An Event of Abandonment shall have occurred;  
or

(n) Event of Taking. An Event of Taking shall have occurred with respect to all or substantially all of the Projects, or that otherwise could reasonably be expected to have a Material Adverse Effect; or

(o) Loss of Material Contracts. (i) One or more Governmental Authorizations or Coal Supply Contracts, shall cease to be in full force and effect (other than due to expiration of the term of such Governmental Authorization or Coal Supply Contract), and such cessation

could reasonably be expected to result a reduction in revenue to the Credit Parties in excess of \$2,500,000, in the aggregate in any Fiscal Year, or (ii) any lease or sub-lease related to a Leasehold Property shall cease to be in full force and effect (other than due to expiration of the term of such lease or sub-lease), and such cessation could reasonably be expected to have a Material Adverse Effect; or

(p) Total Loss. All or substantially all of the Facilities are destroyed or are declared a total loss by the insurers;

**THEN**, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Borrower Group by Administrative Agent, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest and premium on the Loans and (II) all other Obligations; and (B) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents.

## **8.2. Equity Cure Rights.**

(a) Notwithstanding anything to the contrary contained in Section 8.1, in the event that the Borrowers fail to comply with the requirements of any Financial Covenant, during the period beginning on the first day following the applicable fiscal quarter (i.e., the last fiscal quarter in the period of non-compliance with such Financial Covenant) until the expiration of the 7th Business Day subsequent to the date the Compliance Certificate to be delivered pursuant to Section 5.1(d) is required to be delivered (the “**Cure Date**”), the Borrowers shall have the right (the “**Cure Right**”) to issue common equity interests for Cash (“**Cure Securities**”), and upon the receipt by the Borrowers of such Cash (the “**Cure Amount**”) pursuant to the exercise by the Borrowers of such Cure Right and request to the Administrative Agent to effect such recalculation, such Financial Covenant shall be recalculated by the Borrower (which calculation shall be confirmed by the Administrative Agent) giving effect to the following pro forma adjustments:

(i) The applicable Financial Covenant shall be recalculated including the proceeds of Cure Securities in the calculation of Consolidated Adjusted EBTIDA; and

(ii) if, after giving effect to the foregoing recalculations, the Borrowers shall then be in compliance with the requirements of the Financial Covenants, the Borrowers shall be deemed to have satisfied the requirements of the Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Covenants that had occurred shall be deemed cured for the purposes of this Agreement.

(b) Notwithstanding anything herein to the contrary, (i) in each four-fiscal-quarter period, there shall be at least two fiscal quarters in which the Cure Right is not exercised,

(ii) during the term of this Agreement, the Cure Right may be exercised no more than three times, (iii) the Cure Amount shall be no greater than the amount required for purposes of causing the Borrowers to comply with the Financial Covenants and (iv) proceeds of Cure Securities shall be disregarded for all other purposes of this Agreement.

(c) The proceeds of Cure Securities shall be applied to repay the Loans and, to the extent that the RH Loan has not been refinanced pursuant to Section 11.3 of the Intercreditor Agreement, the RH Loan on a pro rata basis upon receipt thereof.

## **SECTION 9. AGENTS**

**9.1. Appointment of Agents.** Deutsche Bank Trust Company Americas is hereby appointed Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Deutsche Bank Trust Company Americas to act as Administrative Agent and Collateral Agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of the Agents and Lenders and no Credit Party shall have any rights as a third-party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower Group or any of their respective Subsidiaries.

**9.2. Powers and Duties.** Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any duties or obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein (it being understood and agreed that a permissive right of an Agent shall not be construed as a duty).

### **9.3. General Immunity.**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals, statements or calculations made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any

other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders or Borrowers for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be fully protected and entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to act through and to rely, and shall be fully protected in relying, upon any instruction, certificate, communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower Group and their respective Subsidiaries), accountants, experts and other professional advisors selected by it and will not be responsible for the misconduct or negligence of any agent appointed with due care; (ii) no Lender or Borrower shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5); (iii) no provision of this Agreement or any other Credit Document will require any Agent to expend or risk its own funds or incur any liability and no Agent will be under an obligation to exercise any of its rights or powers under this Agreement at the request of the Lenders, unless such Agent has been offered security or indemnity satisfactory to it against any loss, liability or expense; (iv) no Agent shall be liable for interest on any money received by it except as agreed in writing with the Borrowers; and (v) no Agent shall be deemed to have knowledge or notice of any Event of Default, unless written notice of any event which is in fact an Event of Default is received by a responsible officer at the office of the Administrative Agent from a Borrower or the Requisite Lenders and such notice references the specific Event of Default and this Agreement and, in the absence of any such notice, the Administrative Agent and any other Agent may conclusively assume that no such Event of Default exists.

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to the Agent, any such sub-agent and to the Affiliates of the Agent or any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third-party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third-party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Credit Party, Lender or any other Person and no Credit Party, Lender or any other Person shall have any rights, directly or indirectly, as a third-party beneficiary or otherwise, against such sub-agent.

**9.4. Agents Entitled to Act as Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower Group or any of their respective Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower Group for services in connection herewith and otherwise without having to account for the same to Lenders.

**9.5. Lenders’ Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower Group and their respective Subsidiaries in connection with the Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower Group and their respective Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its

possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, an Assignment Agreement and funding its Loan on the Sixth Amendment Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Sixth Amendment Date.

**9.6. Right to Indemnity.** Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Credit Documents; provided that, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity or security and cease, or not commence, to do the acts indemnified against until such additional indemnity or security is furnished; provided that, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further that, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**9.7. Successor Administrative Agent and Collateral Agent.**

(a) Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and Borrower Group and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Borrower Group and Administrative Agent and signed by Requisite Lenders. Administrative Agent shall have the right to appoint a financial institution to act as Administrative Agent and/or Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower Group and the Requisite Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Borrower Group and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Requisite Lenders shall have the right, upon five Business Days' notice to



Borrower Group, to appoint a successor Administrative Agent. If neither Requisite Lenders nor Administrative Agent have appointed a successor Administrative Agent, Requisite Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that, until a successor Administrative Agent is so appointed by Requisite Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. If a successor Administrative Agent has not been appointed or has not accepted such appointment, the retiring Administrative Agent may, at the Borrowers' expense, petition a court of competent jurisdiction for the appointment of a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation or removal of Deutsche Bank Trust Company Americas or its successor as Administrative Agent pursuant to this Section 9.7 shall also constitute the resignation or removal of Deutsche Bank Trust Company Americas or its successor as Collateral Agent. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.7 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

(b) In addition to the foregoing, Collateral Agent may resign at any time by giving prior written notice thereof to Lenders and the Grantors, and Collateral Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Grantors and Collateral Agent signed by Requisite Lenders. Administrative Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower Group and the Requisite Lenders and Collateral Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Borrower Group and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, Requisite Lenders shall have the right, upon five Business Days' notice to Administrative Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by Requisite Lenders or Administrative Agent, any collateral security held by Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of

any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement and the Collateral Documents, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing, in each case at the expense of the Borrowers, of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any retiring or removed Collateral Agent's resignation or removal hereunder as the Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was the Collateral Agent hereunder.

#### **9.8. Collateral Documents and Guaranty.**

(a) Agents under Collateral Documents and Guaranty. Each Secured Party hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, each Borrower, Administrative Agent, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party 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 and under any of the Credit Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code),

Collateral Agent (or any Lender, except with respect to a “credit bid” pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Requisite Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) Release of Collateral and Guarantees, Termination of Credit Documents.

Notwithstanding anything to the contrary contained herein or any other Credit Document, when all Obligations have been paid in full, upon request of Borrower Group, Administrative Agent shall take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Credit Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(d) The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent’s Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(e) For the avoidance of doubt, nothing in this Agreement or any other Credit Document shall require the Collateral Agent to file financing statements or continuation statements (except for the safe custody of any Collateral in its possession), or be responsible for maintaining the security interests purported to be created as described herein, and such responsibility shall be solely that of the Borrowers.

(f) Notwithstanding anything else to the contrary herein, whenever reference is made in this Agreement or in any other Credit Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by an Agent or to any amendment, waiver or other modification of this Agreement or any other Credit Document to be executed (or not to be executed by an Agent, or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by an Agent, it is understood that in all cases such Agent shall be acting, giving, withholding, suffering, omitting, making or otherwise undertaking and exercising the same (or shall not be undertaking and exercising the same) as directed by the Requisite Lenders (or such

greater percentage of Lenders as is required by the Credit Documents) in accordance with this Agreement or any other Credit Document. This provision is intended solely for the benefit of the Agents and their respective successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

(g) In no event and under no circumstances shall the Collateral Agent be required or deemed to be the operator of any facility, plant, property or other Collateral of any Borrower.

(h) For the avoidance of doubt and without limitation of any other provision of this Section 9.8, each Agent (i) shall not be required to take any action under any Landlord Consent and Collateral Access Agreement unless such Agent has received direction to do so from the Requisite Lenders and (ii) shall have no obligation to make any funding or cure under any Landlord Consent and Collateral Access Agreement unless such funds or cure payments have been funded by the Lenders.

**9.9. Withholding Taxes.** To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

**9.10. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower Group) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the 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 Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and

counsel) and all other amounts due Administrative Agent under Sections 2.7, 10.2 and 10.3 allowed in such judicial proceeding; and

(c) 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 Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.7, 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under Sections 2.7, 10.2 and 10.3 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize Administrative 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 or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## **SECTION 10. MISCELLANEOUS**

### **10.1. Notices.**

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Credit Party, Collateral Agent or Administrative Agent shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Except as otherwise set forth in paragraph (b) below, each notice hereunder shall be in writing and may be personally served or sent by telefacsimile (except for any notices sent to Administrative Agent) or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that, no notice to any Agent shall be effective until received by such Agent; provided further that, any such notice or other communication shall at the request of Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) as designated by Administrative Agent from time to time.

#### **(b) Electronic Communications.**

(i) Notices and other communications to any Agent and Lenders hereunder may be delivered or furnished by electronic communication (including e-mail

and Internet or intranet websites, including the Platform) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Agent or any Lender pursuant to Section 2 if such Person has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent or Borrower Group may, in their 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 Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), 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.

(ii) Each Credit Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available." None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. 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 Affiliates in connection with the Platform or the Approved Electronic Communications.

(iv) Each Credit Party, each Lender and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(c) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public

Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public Side Information" portion of the Platform and that may contain Non-Public Information with respect to Borrower Group, their respective Subsidiaries or their securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither Borrower Group nor Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

**10.2. Expenses.** Whether or not the transactions contemplated hereby shall be consummated, each Borrower agrees to pay promptly (a) all the actual and reasonable costs and expenses (other than for counsel) of the Agents and Lenders incurred in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower Group and the other Credit Parties; (c) the reasonable fees, expenses and disbursements of one firm of counsel to the Agents (and, if necessary, one firm of special counsel and one firm of local counsel in any relevant jurisdiction) and one firm of counsel for Lenders (and, if necessary, one firm of special counsel and one firm of local counsel in any relevant jurisdiction), in each case, in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower Group; (d) all the actual and reasonable costs and expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel including counsel providing any opinions that any Agent may reasonably request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual and reasonable costs, fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; (f) all the actual and reasonable costs and expenses of the Collateral Agent (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Loans and the transactions contemplated by the Credit Documents and any consents, amendments, waivers or other modifications thereto and (h) upon the occurrence and during the continuance of a Default or an Event of Default, all reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees (but only for one firm of counsel to the Agents and one firm of counsel to the Lenders and, if necessary, one firm of special counsel and one firm of local counsel for each of the Agents and the Lenders in any relevant jurisdiction) and costs of settlement, incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or

pursuant to any insolvency or bankruptcy cases or proceedings including related diligence fees and costs of a financial advisor consultant to be selected by the Lenders.

### **10.3. Indemnity.**

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender, and each of their respective officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and affiliates (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; provided that, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, no Credit Party or, following the occurrence of a Permitted Issuer Restructuring, shareholders of the Borrowers that have undergone a Permitted Issuer Restructuring shall assert, and each Credit Party hereby waives, on behalf of itself and, following the occurrence of a Permitted Issuer Restructuring, shareholders of the Borrowers that have undergone a Permitted Issuer Restructuring, any claim against each Lender, each Agent and their respective Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Each Credit Party also agrees that no Lender, Agent nor their respective Affiliates, directors, employees, attorneys, agents or sub-agents will have any liability to any Credit Party, any Affiliate of a Credit Party or any person asserting claims on behalf of or in right of any Credit Party, any Affiliate of a Credit Party or any other person in connection with or as a result of the performance or administration of this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except in the case of any Credit Party or an Affiliate of a Credit Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such Credit Party or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of



competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Lender, Agent or their respective Affiliates, directors, employees, attorneys, agents or sub-agents in performing its obligations under this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein; provided, however, that in no event and under no circumstances will such Lender, Agent, or their respective Affiliates, directors, employees, attorneys, agents or sub-agents have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's, Agent's or their respective Affiliates', directors', employees', attorneys', agents' or sub-agents' activities related to this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein irrespective of whether such Lender, Agent, or their respective Affiliates, directors, employees, attorneys, agents or sub-agents had been advised or knew of the likelihood of such loss or damage regardless of the form of action.

**10.4. Set-Off.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder and under the other Credit Documents, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. The rights of each Lender and their respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of set-off) that such Lender or their respective Affiliates may have.

**10.5. Amendments and Waivers.**

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Requisite Lenders; provided that Administrative Agent may, with the consent of only the Borrower Group, amend, modify or supplement this Agreement or any other Credit Document to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender and the Lenders shall have received at least five Business Days' prior written notice thereof and Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be directly and adversely affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Loan or Note;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment);
- (iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.7) or any fee or any premium payable hereunder;
- (iv) extend the time for payment of any such interest, fees or premium;
- (v) reduce the principal amount of any Loan;
- (vi) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;
- (vii) amend the definition of "Requisite Lenders" or "Pro Rata Share";
- (viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents and except in connection with a "credit bid" undertaken by the Collateral Agent at the direction of the Requisite Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Credit Documents (in which case only the consent of the Requisite Lenders will be needed for such release);
- (ix) subordinate the payment priority of any of the Obligations;
- (x) amend, modify or waive Section 2.11, Section 2.12(c) or Section 2.13; or
- (xi) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document;

provided that, for the avoidance of doubt, all Lenders shall be deemed directly and adversely affected thereby with respect to any amendment described in clauses (vii), (viii), (ix), (x) and (xi) of this Section 10.5(b).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall amend, modify, terminate or waive any provision of the Credit Documents as the same applies to any Agent or Arranger, or any other provision hereof as the same applies to

the rights or obligations of any Agent or Arranger, in each case without the consent of such Agent or Arranger, as applicable.

(d) Execution of Amendments, Etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender, upon receipt of an (i) officer's certificate from the Credit Parties and (ii) an opinion of counsel to the Credit Parties that such amendment is permitted under the Agreement and that all conditions precedent to such amendment have been satisfied. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

#### **10.6. Successors and Assigns; Participations.**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders, except with respect to a Borrower as reasonably required to effect a Permitted Issuer Restructuring. 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 and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower Group, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Loans listed therein for all purposes hereof, and no assignment or transfer of any such Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower Group and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date**". Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Loans owing to it or other Obligations (provided, however, that pro rata

assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan):

(i) to any Person meeting the criteria of clause (i) of the definition of the term “Eligible Assignee” upon the giving of notice to Borrower Group and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term “Eligible Assignee” upon giving of notice to Borrower Group and Administrative Agent and to any such Person (except in the case of assignments made by or to any Lender on the Sixth Amendment Date); provided further that each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than (w) \$1,000,000, (x) such lesser amount as agreed to by Administrative Agent, (y) the aggregate amount of the Loans of the assigning Lender or (z) the amount assigned by an assigning Lender to an Affiliate or Related Fund of such Lender.

(d) Mechanics. Assignments and assumptions of Loans by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment Agreement in the form of Exhibit D. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent, at least three Business Days prior to the execution of the Assignment Agreement, a completed administrative questionnaire and such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.16(c), together with payment to Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to any Lender or any Affiliate thereof on the Sixth Amendment Date or (z) in the case of an assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Loans, as the case may be, represents and warrants as of the Sixth Amendment Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in loans such as the applicable Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Loans for its own account in the ordinary course and without a view to distribution of such Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Loans or any interests therein shall at all times remain within its exclusive control).

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which

survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder; provided further, if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower Group shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Borrower Group, any of their respective Subsidiaries or any of its Affiliates) in all or any part of its Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.6(g) shall, acting solely for U.S. federal income tax purposes as an agent of Borrower Group, maintain a register on which it records the name and address of each participant and the principal amounts of each participant's participation interest with respect to the Loan (each, a "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. 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 a participation with respect to the Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of such participation, and that an increase in any Loan shall be permitted

without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Each Borrower agrees that each participant shall be entitled to the benefits of Sections 2.12 and 2.13 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under Section 2.15 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with Borrower Group's prior written consent (not to be unreasonably withheld or delayed) and (y) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless Borrower Group is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower Group, to comply with Section 2.16 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower Group or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided that such participant agrees to be subject to Section 2.13 as though it were a Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as between Borrower Group and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

**10.7. Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**10.8. Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Loan. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.14(c), 2.15, 2.16, 9.6, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.14, 9.3(b) and 9.6 shall

survive the payment of the Loans, the cancellation or expiration of the letters of credit and the reimbursement of any amounts drawn thereunder, and the termination hereof and the resignation or removal of an Agent, as applicable, and shall inure to the benefit of any Person that was at any time a Lender or an Indemnitee under this Agreement or any other Loan Document.

**10.9. No Waiver; Remedies Cumulative.** No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

**10.10. Marshalling; Payments Set Aside.** Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or any Agent or Lender enforces any security interests or exercises any right of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or set-off had not occurred.

**10.11. Severability.** In case any provision in or obligation hereunder or under any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**10.12. Obligations Several; Independent Nature of Lenders' Rights.** The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Additional Term Loan Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**10.13. Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**10.14. APPLICABLE LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

**10.15. CONSENT TO JURISDICTION.** SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY SECURITY AGREEMENT GOVERNED BY A LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY SECURITY DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

**10.16. WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR



**UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

**10.17. Confidentiality.** Each Agent and each Lender shall hold all Non-Public Information regarding Borrower Group and their respective Subsidiaries, Affiliates and their businesses identified as such by Borrower Group and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by each Borrower that, in any event, Administrative Agent may disclose such information to the Lenders and each Agent and each Lender and each Agent may make (i) disclosures of such information to Affiliates of such Lender or Agent and to their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts or agents who need to know such information and on a confidential basis (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to Borrower Group and its obligations (provided that, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of

any confidential information relating to Credit Parties received by it from any Agent or any Lender, (iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Credit Document, (vi) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Borrower Group promptly thereof to the extent not prohibited by law) and (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority purporting to have jurisdiction over such Person or any of its Affiliates. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Credit Documents.

**10.18. Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower Group shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower Group to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower Group.

**10.19. Effectiveness; Counterparts.** This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower Group and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format (i.e., "pdf" or "tif" shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.20. PATRIOT Act.** Each Credit Party acknowledges that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to

Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. Each Credit Party agrees that it will provide to each Lender and Agent such information as such Lender or Agent may request, from time to time, in order for the Lenders and Agents to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and such Agent or Lender may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

**10.21. Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.22. No Fiduciary Duty.** Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “**Lenders**”), may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender or Agent, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender or Agent has assumed an advisory or fiduciary responsibility in favor of any Credit 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 Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit 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 Credit Party, in connection with such transaction or the process leading thereto.

**10.23. Force Majeure.** No Agent shall incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of such Agent (including but not limited to any act or provision of any present or

future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

**10.24. Non-Petition.** Each Credit Party hereby agrees not to institute, or join any other Person in instituting, against any Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding under any federal or state bankruptcy or similar law of any applicable jurisdiction (which agreement shall survive the termination of this agreement).

**10.25. Intercreditor Agreement.** Reference is made to the Intercreditor Agreement. Each Lender hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and authorizes and instructs Collateral Agent to enter into the Intercreditor Agreement on behalf of such Lender. The foregoing provisions are intended as an inducement to the Lenders under this Agreement to extend credit and such Lenders are intended as third-party beneficiaries of such provisions and the Intercreditor Agreement. None of the Credit Parties shall have any rights, benefits, priority or interest under the Intercreditor Agreement and no Credit Party may rely on the terms thereof. Nothing in the Intercreditor Agreement is intended to or shall impair the obligations of the Credit Parties, which are absolute and unconditional, to repay the Loans and any other Obligations as and when the same shall become due and payable in accordance with their terms.

**10.26. Warrant Documentation.** The parties hereto agree that the Warrants to be issued on the terms set forth on Schedule 5.18 are consideration for the restatement of the Agreement effected pursuant to the Sixth Amendment Documents and the incremental extensions of credit provided for hereunder. The issuance of the Warrants is unconditional and the execution of the documents with respect thereto and the issuance of the Warrants is being done on a post effective date basis solely as an administrative convenience. The parties agree that the purchase price of the Warrants will be deemed to have been allocated pro rata to the Lenders, based on the aggregate principal amount of such Lender's Loans and as to each Lender, ratably across the full outstanding amount of such Lender's Loans.

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**EXHIBIT A-2**

**THIS AGREEMENT AND ANY LIEN CREATED HEREIN IS SUBJECT TO THE LIEN PRIORITY AND OTHER PROVISIONS SET FORTH IN THAT CERTAIN AMENDED AND RESTATED INTERCREDITOR AGREEMENT, DATED AS OF SEPTEMBER 21, 2015, BETWEEN DEUTSCHE BANK TRUST COMPANY AMERICAS, AS TERM LOAN AGENT FOR THE TERM LOAN SECURED PARTIES, AND DEUTSCHE BANK AG NEW YORK BRANCH, AS ABL LOAN AGENT FOR THE ABL LOAN SECURED PARTIES, AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME.**

**PLEDGE AND SECURITY AGREEMENT**

**dated as of July 10, 2013**

**and as amended and restated in full as of September 21, 2015**

**between**

**EACH OF THE GRANTORS PARTY HERETO**

**and**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**

**as Collateral Agent**

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This **PLEDGE AND SECURITY AGREEMENT**, dated as of July 10, 2013 (as amended and restated in full as of September 21, 2015) (as it may be further amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), between Cambrian Coal Corporation, a Kentucky corporation, Beech Fork Processing, Inc., a Kentucky corporation, Eagle Coal Company, Inc., a Kentucky corporation, and Shelby Resources, LLC, a Kentucky limited liability company (each, a “**Borrower**” and collectively, the “**Borrower Group**”) and each of their respective subsidiaries party hereto from time to time, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a “**Grantor**”), and Deutsche Bank Trust Company Americas, as collateral agent for the Secured Parties (as herein defined) (in such capacity as collateral agent, together with its successors and permitted assigns, the “**Collateral Agent**”).

**RECITALS:**

**WHEREAS**, reference is made to that certain Term Credit and Guaranty Agreement, dated as of the date hereof and as previously amended by the Waiver and Amendment, dated as of September 3, 2014, Amendment Agreement No. 1, dated as of October 31, 2014, Amendment Agreement No. 2, dated as of November 12, 2014, Amendment Agreement No. 3, dated as of December 19, 2014, Amendment Agreement No. 4, dated as of March 18, 2015, and Amendment Agreement No. 5, dated as of May 22, 2015, and as restated in full by Amendment Agreement No. 6, dated as of September 21, 2015, (as amended to date and as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Borrower Group, certain Subsidiaries of the Borrower Group party thereto from time to time (collectively, the “**Guarantors**”), the lenders party thereto from time to time (the “**Lenders**”), and **DEUTSCHE BANK TRUST COMPANY AMERICAS**, as Administrative Agent and Collateral Agent;

**WHEREAS**, in consideration of the extensions of credit and other accommodations of Lenders as set forth in the Credit Agreement each Grantor has agreed to secure such Grantor’s obligations under the Credit Documents as set forth herein;

**WHEREAS**, Argus Energy, LLC (“**Argus Energy**”), an Affiliate of Borrower Group, derives substantial benefits from the business of Borrower Group and will derive substantial benefit from the making of the Loans to Borrower Group under the Credit Agreement;

**WHEREAS**, in order to induce the Lenders to extend credit to Borrower Group and to make other accommodations as set forth in the Credit Agreement, Argus Energy has agreed to grant certain Collateral specified herein; and

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Argus Energy, each Grantor and the Collateral Agent agree as follows:

## SECTION 1. DEFINITIONS; GRANT OF SECURITY.

**1.1 General Definitions.** In this Agreement, the following terms shall have the following meanings:

**“ABL Collateral Agent”** shall mean the ABL Loan Agent as such term is defined in the Intercreditor Agreement.

**“ABL Loan Credit Agreement”** shall mean that certain ABL Credit and Guaranty Agreement, dated as of the date hereof, by and among the Borrower Group, certain subsidiaries of the Borrower Group party thereto, as guarantors, the lenders party thereto from time to time, Deutsche Bank AG New York Branch, as administrative agent and the ABL Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time).

**“ABL Pledge and Security Agreement”** shall mean that certain ABL Pledge and Security Agreement, dated as July 10, 2013 (as amended and restated in full as of the date hereof), by and among the Borrower Group, certain subsidiaries of the Borrower Group party thereto and Deutsche Bank AG New York Branch, as administrative agent and the ABL Collateral Agent.

**“Additional Grantors”** shall have the meaning assigned in Section 7.2.

**“Agreement”** shall have the meaning set forth in the preamble.

**“Amendment Agreement”** shall mean the Amendment Agreement No. 6 to Term Credit and Guaranty Agreement and Amendment No. 1 to Pledge and Security Agreement, dated September 21, 2015, among the Borrower Group, the other Grantors, the Lenders, the Collateral Agent and the Administrative Agent, as administrative agent.

**“Argus Energy”** shall have the meaning set forth in the recitals.

**“Argus Permits”** shall have the meaning assigned in Section 2.3.

**“Borrower”** and **“Borrower Group”** shall have the meanings set forth in the recitals.

**“Burke Assets”** means the “Burke Assets” as defined in that certain Security Agreement, dated as of August 6, 2015, by and among Community Trust Bank, Marshall Resources, Inc. and Cambrian Coal Corporation, as amended by that certain First Amendment to Loan and Security Agreement and Related Loan Documents, dated as of the date hereof, by and among Community Trust Bank, Inc., Marshall Resources, Inc., Cambrian Coal Corporation, James H. Booth, Ted McGinnis and J. Mark Campbell and as the same may be further amended, restated, supplemented or otherwise modified from time to time.

**“Cash Proceeds”** shall have the meaning assigned in Section 9.7.

**“Collateral”** shall have the meaning assigned in Section 2.1.

**“Collateral Account”** shall mean any account established by the Collateral Agent pursuant to the Credit Documents.

**“Collateral Agent”** shall have the meaning set forth in the preamble.

**“Collateral Records”** shall mean books, records, ledger cards, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer software and related documentation, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

**“Collateral Support”** shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

**“Control”** shall mean: (1) with respect to any Deposit Accounts, control within the meaning of Section 9-104 of the UCC, (2) with respect to any Securities Accounts, Security Entitlements, Commodity Contract or Commodity Account, control within the meaning of Section 9-106 of the UCC, (3) with respect to any Uncertificated Securities, control within the meaning of Section 8-106(c) of the UCC, (4) with respect to any Certificated Security, control within the meaning of Section 8-106(a) or (b) of the UCC, (5) with respect to any Electronic Chattel Paper, control within the meaning of Section 9-105 of the UCC, (6) with respect to Letter of Credit Rights, control within the meaning of Section 9-107 of the UCC and (7) with respect to any “transferable record”(as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), control within the meaning of Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in the jurisdiction relevant to such transferable record.

**“Controlled Foreign Corporation”** shall mean “controlled foreign corporation” as defined in the Internal Revenue Code.

**“Copyright Licenses”** shall mean any and all agreements, licenses and covenants providing for the granting of any right in or to any Copyright or otherwise providing for a covenant not to sue for infringement or other violation of any Copyright (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Copyright Licenses” (as such schedule may be amended or supplemented from time to time).

**“Copyrights”** shall mean all United States, and foreign copyrights (whether or not the underlying works of authorship have been published), including but not limited to copyrights in software and all rights in and to databases, all designs (including but not limited to industrial designs, Protected Designs within the meaning of 17 U.S.C. 1301 et. seq. and Community designs), and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, as well as all moral rights, reversionary interests, and

termination rights, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications required to be listed in Schedule 5.2(II) under the heading "Copyrights" (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) the right to sue or otherwise recover for any past, present and future infringement or other violation thereof, (iv) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages and proceeds of suit now or hereafter due and/or payable with respect thereto, and (v) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

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

**"Credit Documents"** shall have the meaning set forth in the Credit Agreement.

**"Excluded Asset"** shall mean any asset of any Grantor excluded from the security interest hereunder by virtue of Section 2.2 hereof but only to the extent, and for so long as, so excluded thereunder.

**"First Amendment Date"** shall mean the date on which the Amendment Agreement becomes effective, which date is September 21, 2015.

**"Grantors"** shall have the meaning set forth in the preamble.

**"Initial Pledged Equity Interests"** shall mean the Pledged Equity Interests beneficially owned by any Grantor on the date hereof and identified on Schedule 5.2.

**"Insurance"** shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) any key man life insurance policies.

**"Intellectual Property"** shall mean, the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under the United States, multinational or foreign laws or otherwise, including without limitation, Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks, Trademark Licenses, Trade Secrets, and Trade Secret Licenses, and the right to sue or otherwise recover for any past, present and future infringement, dilution, misappropriation, or other violation or impairment thereof, including the right to receive all Proceeds therefrom, including without limitation license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto.

**"Intellectual Property Security Agreement"** shall mean each intellectual property security agreement executed and delivered by the applicable Grantors, substantially in the form set forth in Exhibit E, Exhibit F and Exhibit G, as applicable.

**"Intercreditor Agreement"** shall mean that certain Amended and Restated Intercreditor Agreement, dated as of September 21, 2015, and entered into between the Collateral Agent (in its capacity as the Term Loan Agent, as defined therein), and the ABL Collateral

Agent (in its capacity as ABL Loan Agent, as defined therein) (as amended, restated, supplemented or otherwise modified from time to time).

**“Investment Accounts”** shall mean the Collateral Account, Securities Accounts and all Security Entitlements with respect thereto and Financial Assets carried therein, Commodity Accounts and Commodity Contracts and Deposit Accounts.

**“Investment Related Property”** shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

**“Lender”** shall have the meaning set forth in the recitals.

**“Light Duty Vehicles”** shall mean each car or pick-up truck with a gross weight of 10,000 pounds or less that is owned or leased by any Borrower or Grantor.

**“Material Intellectual Property”** shall mean any Intellectual Property included in the Collateral that is material to the business of any Grantor or is otherwise of material value.

**“Non-Assignable Contract”** shall mean any Coal Sales Contract, Sales Agency Agreement or other agreement, contract or license that constitutes a Material Contract to which any Grantor is a party that by its terms purports to restrict or prevent the granting of a security interest therein (either by its terms or by any federal or state statutory prohibition or otherwise irrespective of whether such prohibition or restriction is enforceable under Section 9-406 through 409 of the UCC).

**“Patent Licenses”** shall mean all agreements, licenses and covenants providing for the granting of any right in or to any Patent or otherwise providing for a covenant not to sue for infringement or other violation of any Patent (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Patent Licenses” (as such schedule may be amended or supplemented from time to time).

**“Patents”** shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, without limitation: (i) each patent and patent application required to be listed in Schedule 5.2(II) under the heading “Patents” (as such schedule may be amended or supplemented from time to time), (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all patentable inventions and improvements thereto, (iv) the right to sue or otherwise recover for any past, present and future infringement or other violation thereof, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

**“Pledge Supplement”** shall mean any supplement to this Agreement in substantially the form of Exhibit A.

**“Pledged Debt”** shall mean all indebtedness for borrowed money owed to such Grantor, whether or not evidenced by any Instrument, including, without limitation, all indebtedness described on Schedule 5.2(I) under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments, if any, evidencing any of the foregoing, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing.

**“Pledged Equity Interests”** shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and any other participation or interests in any equity or profits of any business entity including, without limitation, any trust and all management rights relating to any entity whose equity interests are included as Pledged Equity Interests.

**“Pledged LLC Interests”** shall mean all interests in any limited liability company and each series thereof owned by such Grantor, including, without limitation, all limited liability company interests listed on Schedule 5.2(I) under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests and all rights as a member of the related limited liability company.

**“Pledged Partnership Interests”** shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership owned by such Grantor, including, without limitation, all partnership interests listed on Schedule 5.2(I) under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests and all rights as a partner of the related partnership.

**“Pledged Stock”** shall mean all shares of capital stock owned by such Grantor, including, without limitation, all shares of capital stock described on Schedule 5.2(I) under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

**“Receivables”** shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed

of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

**"Receivables Records"** shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors, secured parties or agents thereof, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

**"Secured Obligations"** shall have the meaning assigned in Section 3.1.

**"Secured Parties"** shall mean the Agents, Lenders and shall include, without limitation, all former Agents, Lenders to the extent that any Obligations owing to such Persons were incurred while such Persons were Agents, Lenders and such Obligations have not been paid or satisfied in full.

**"Trademark Licenses"** shall mean any and all agreements, licenses and covenants providing for the granting of any right in or to any Trademark or otherwise providing for a covenant not to sue for infringement dilution or other violation of any Trademark or permitting co-existence with respect to a Trademark (whether such Grantor is licensee or licensor thereunder)including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading "Trademark Licenses" (as such schedule may be amended or supplemented from time to time).

**"Trademarks"** shall mean all United States, and foreign trademarks, trade names, trade dress, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, whether or not registered, and with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications required to be listed in Schedule 5.2(II) under the heading "Trademarks"(as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by any of the foregoing, (iv) the right to sue or otherwise recover for any past, present and future infringement, dilution or other violation of any of the foregoing or for any injury to the related goodwill, (v) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims,

damages, and proceeds of suit now or hereafter due and/or payable with respect thereto, and (vi) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

**“Trade Secret Licenses”** shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement required to be listed in Schedule 5.2(II) under the heading “Trade Secret Licenses” (as such schedule may be amended or supplemented from time to time).

**“Trade Secrets”** shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not the foregoing has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to the foregoing, and with respect to any and all of the foregoing: (i) the right to sue or otherwise recover for any past, present and future misappropriation or other violation thereof, (ii) all Proceeds of the foregoing, including, without limitation, license fees, royalties, income, payments, claims, damages, and proceeds of suit now or hereafter due and/or payable with respect thereto; and (iii) all other rights of any kind accruing thereunder or pertaining thereto throughout the world.

**“UCC”** shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

**“United States”** shall mean the United States of America.

## **1.2 Definitions; Interpretation.**

(a) In this Agreement, the following capitalized terms shall have the meaning given to them in the UCC (and, if defined in more than one Article of the UCC, shall have the meaning given in Article 9 thereof): Account, Account Debtor, As-Extracted Collateral, Bank, Certificated Security, Chattel Paper, Commercial Tort Claims, Commodity Account, Commodity Contract, Commodity Intermediary, Consignee, Consignment, Consignor, Deposit Account, Document, Entitlement Order, Electronic Chattel Paper, Equipment, Farm Products, Fixtures, Financial Assets, General Intangibles, Goods, Health-Care-Insurance Receivable, Instrument, Inventory, Letter of Credit Right, Manufactured Home, Money, Payment Intangible, Proceeds, Promissory Notes, Record, Securities Account, Securities Intermediary, Security Certificate, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) All other capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. The incorporation by reference of terms defined in the Credit Agreement shall survive any termination of the Credit Agreement until this Agreement is terminated as



provided in Section 11 hereof. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

## **SECTION 2. GRANT OF SECURITY.**

**2.1 Grant of Security.** Each Grantor hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and continuing lien on all of such Grantor’s right, title and interest in, to and under all personal property of such Grantor including, but not limited to the following, in each case whether now or hereafter existing or in which any Grantor now has or hereafter acquires an interest and wherever the same may be located (all of which, together with the Argus Permits, being hereinafter collectively referred to as the “Collateral”):

- (a) Accounts;
- (b) As-Extracted Collateral;
- (c) Chattel Paper;
- (d) Documents;
- (e) Fixtures located on any Material Real Estate Asset;
- (f) General Intangibles;
- (g) Goods (including, without limitation, Inventory and Equipment);
- (h) Instruments, including all Promissory Notes;
- (i) Insurance;
- (j) Intellectual Property;
- (k) Investment Related Property (including, without limitation, Deposit Accounts);
- (l) Letter of Credit Rights;

- (m) Money;
- (n) Receivables and Receivable Records;
- (o) Commercial Tort Claims now or hereafter described on Schedule 5.2

(p) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and

(q) to the extent not otherwise included above, all Proceeds, products, accessions to and substitutions and replacements for, rents and profits of or in respect of any of the foregoing and, to the extent related to any Collateral, all books, correspondence, credit files, records, invoices and other papers (including all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Grantor or any computer bureau or service company from time to time acting for such Grantor).

**2.2 Certain Limited Exclusions.** Notwithstanding anything herein to the contrary, in no event shall the Collateral include or the security interest granted under Section 2.1 hereof attach to (a) any lease, license, contract or agreement, including equipment leases, to which any Grantor is a party, and any of its rights or interest thereunder, if and to the extent that a security interest is prohibited by or in violation of (i) any law, rule or regulation applicable to such Grantor, or (ii) a term, provision or condition of any such lease, license, contract or agreement, including with respect to equipment leases (unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided however that the Collateral shall include (and such security interest shall attach to) such lease, license contract or agreement immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in (i) or (ii) above; provided further that the exclusions referred to in clause (a) of this Section 2.2 shall not include any Proceeds of any such lease, license, contract or agreement; (b) any of the outstanding capital stock of a Controlled Foreign Corporation in excess of 66% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the Internal Revenue Code to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and the security interest granted by each Grantor shall attach to, such greater percentage of capital stock of each Controlled Foreign Corporation, (c) any “intent-to-use” application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law, (d) security account number 021-097918 and security account number 021-097900, each held at Fifth Third

Securities, Inc. and any successor or replacement account(s) to the extent the funds held in such account(s) secure reclamation bonds permitted under the Credit Agreement (collectively, the “Reclamation Bond Accounts”), (e) any Light Duty Vehicle (f) the Burke Assets, unless and until Collateral Agent has received evidence satisfactory to Collateral Agent that all Liens on the Burke Assets in favor of Community Trust Bank have been terminated, (g) the equipment listed on Tab C to Schedule 6.1 to the Credit Agreement, unless and until Collateral Agent has received evidence satisfactory to Collateral Agent that all Liens on such equipment in favor of Community Trust Bank have been terminated, (h) the trust account maintained by Wells Fargo Bank, National Association, pursuant to that certain Collateral Trust Agreement, dated September 21, 2015, among Wells Fargo Bank, National Association, Cambrian Coal Corporation and OneBeacon Insurance Group (the “Injury Bond Account”), (i) the account maintained by Matrix Financial Solutions for the Apex Energy, Inc. Deferred Compensation Plan (the “Deferred Compensation Account”) to the extent that the existence or enforcement of a security interest in such account is prohibited by or in violation of the terms and conditions of the Apex Energy, Inc. Deferred Compensation Plan, or (j) any accounts established to hold royalty or similar payments with respect to any leases, subleases or similar agreements where the identity of the owners of the underlying real property is in dispute, including such accounts that are set forth on Schedule 5.2 and denoted as being Excluded Assets; provided that the Collateral Agent shall be notified in writing within a commercially reasonable period of time following the establishment of any account referenced in this clause (i). At the request of the Collateral Agent, acting at the direction of the Requisite Lenders, but in no case more frequently than once per Fiscal Quarter, the Grantors shall provide information with respect to the balance of each of the accounts referenced in clauses (h) through (j) hereof.

### **2.3 Special Grantor.**

(a) Argus Energy hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest and continuing lien on all of its right, title and interest in, to and under the following permits and all extensions, revisions, amendments and additions thereto and all accessions to and substitutions and replacements for, and all rents, profits and Proceeds of or in respect thereof (collectively, the “Argus Permits”):

- (i) Permit Number 864-0167;
- (ii) Permit Number 864-0168; and
- (iii) Permit Number 864-9002.

(b) Argus Energy hereby represents and warrants, on the Closing Date that (i) it holds the Argus Permits free and clear of any and all Liens, rights or claims of all other Persons and (ii) other than any financing statements filed in favor of the Collateral Agent, no effective financing statement or other instrument similar in effect under any applicable law covering the Argus Permits is on file in any filing or recording office except for financing statements for which duly authorized proper termination statements have been filed.

### **SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.**

**3.1 Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code (and any successor provision thereof)), of all Obligations (the “Secured Obligations”).

**3.2 Continuing Liability Under Collateral.** Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any other Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

## **SECTION 4. CERTAIN PERFECTION REQUIREMENTS**

### **4.1 Delivery Requirements.**

(a) With respect to any Certificated Securities included in the Collateral, each Grantor shall deliver to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) the Security Certificates evidencing such Certificated Securities duly indorsed by an effective indorsement (within the meaning of Section 8-107 of the UCC), or accompanied by share transfer powers or other instruments of transfer duly endorsed by such an effective endorsement, in each case, in blank. In addition, each Grantor shall cause any certificates evidencing any Pledged Equity Interests, including, without limitation, any Pledged Partnership Interests or Pledged LLC Interests, to be similarly delivered to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) regardless of whether such Pledged Equity Interests constitute Certificated Securities.

(b) With respect to any Instruments or Tangible Chattel Paper included in the Collateral, each Grantor shall deliver to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) all such Instruments or Tangible Chattel Paper to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) duly indorsed in blank.

#### **4.2 Control Requirements.**

(a) With respect to any Deposit Accounts, Securities Accounts, Security Entitlements, Commodity Accounts and Commodity Contracts included in the Collateral, each Grantor shall ensure that the Collateral Agent has Control thereof (subject to the terms of the Intercreditor Agreement). With respect to any Securities Accounts or Securities Entitlements, such Control shall be accomplished by the Grantor causing the Securities Intermediary maintaining such Securities Account or Security Entitlement to enter into an agreement substantially in the form of Exhibit C hereto (or such other agreement in form and substance reasonably satisfactory to the Collateral Agent) pursuant to which the Securities Intermediary shall agree to comply with the Collateral Agent's Entitlement Orders (subject to the terms of the Intercreditor Agreement) without further consent by such Grantor. With respect to any Deposit Account, each Grantor shall cause the depository institution maintaining such account to enter into an agreement substantially in the form of Exhibit D hereto (or such other agreement in form and substance reasonably satisfactory to the Collateral Agent), pursuant to which the Bank shall agree to comply with the Collateral Agent's instructions with respect to disposition of funds in the Deposit Account without further consent by such Grantor (subject to the terms of the Intercreditor Agreement). With respect to any Commodity Accounts or Commodity Contracts each Grantor shall cause Control in favor of the Collateral Agent in a manner reasonably acceptable to the Collateral Agent (subject to the terms of the Intercreditor Agreement).

(b) With respect to any Uncertificated Security included in the Collateral (other than any Uncertificated Securities credited to a Securities Account), each Grantor shall cause the issuer of such Uncertificated Security to either (i) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (ii) execute an agreement substantially in the form of Exhibit B hereto (or such other agreement in form and substance reasonably satisfactory to the Collateral Agent), pursuant to which such issuer agrees to comply with the Collateral Agent's instructions (subject to the terms of the Intercreditor Agreement) with respect to such Uncertificated Security without further consent by such Grantor.

(c) With respect to any Letter of Credit Rights included in the Collateral (other than any Letter of Credit Rights constituting a Supporting Obligation for a Receivable in which the Collateral Agent has a valid and perfected security interest), Grantor shall ensure that Collateral Agent has Control thereof (subject to the terms of the Intercreditor Agreement) by obtaining the written consent of each issuer of each related letter of credit to the assignment of the proceeds of such letter of credit to the Collateral Agent.

(d) With respect to any Electronic Chattel Paper or "transferable record" (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) included in the Collateral, Grantor shall ensure that the Collateral Agent has Control thereof (subject to the terms of the Intercreditor Agreement).

#### **4.3 Intellectual Property Recording Requirements.**

(a) In the case of any Collateral (whether now owned or hereafter acquired) consisting of issued U.S. Patents and applications therefor, each Grantor shall, subject to the

terms of the Intercreditor Agreement, execute and deliver to the Collateral Agent a Patent Security Agreement in substantially the form of Exhibit F hereto (or a supplement thereto) covering all such Patents in appropriate form for recordation with the U.S. Patent and Trademark Office with respect to the security interest of the Collateral Agent.

(b) In the case of any Collateral (whether now owned or hereafter acquired) consisting of registered U.S. Trademarks and applications therefor, each Grantor shall, subject to the terms of the Intercreditor Agreement, execute and deliver to the Collateral Agent a Trademark Security Agreement in substantially the form of Exhibit E hereto (or a supplement thereto) covering all such Trademarks in appropriate form for recordation with the U.S. Patent and Trademark Office with respect to the security interest of the Collateral Agent.

(c) In the case of any Collateral (whether now owned or hereafter acquired) consisting of registered U.S. Copyrights and exclusive Copyright Licenses in respect of registered U.S. Copyrights for which any Grantor is the licensee, each Grantor shall, subject to the terms of the Intercreditor Agreement, execute and deliver to the Collateral Agent a Copyright Security Agreement in substantially the form of Exhibit G hereto (or a supplement thereto) covering all such Copyrights and Copyright Licenses in appropriate form for recordation with the U.S. Copyright Office with respect to the security interest of the Collateral Agent.

#### **4.4 Other Actions.**

(a) With respect to any Pledged Partnership Interests and Pledged LLC Interests included in the Collateral, if the Grantors own less than 100% of the equity interests in any issuer of such Pledged Partnership Interests or Pledged LLC Interests, Grantors shall use their commercially reasonable efforts to obtain the consent of each other holder of partnership interest or limited liability company interests in such issuer to the security interest of the Collateral Agent hereunder and following an Event of Default, the transfer of such Pledged Partnership Interests and Pledged LLC Interests to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) or its designee, and to the substitution of the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) or its designee as a partner or member with all the rights and powers related thereto. Each Grantor consents to the grant by each other Grantor of a Lien in all Investment Related Property to the Collateral Agent and without limiting the generality of the foregoing consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) or its designee following an Event of Default and to the substitution of the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) or its designee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

(b) With respect to any Goods which are Collateral and which are covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable request of the Collateral Agent, such Grantor shall (A) provide information with

respect to any such Goods, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Collateral Agent copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Goods covered thereby.

**4.5 Timing and Notice.** With respect to any Collateral in existence on the First Amendment Date, each Grantor shall comply with the requirements of Section 4 on the date hereof and, with respect to any Collateral hereafter owned or acquired, such Grantor shall comply with such requirements within 10 (ten) days of Grantor acquiring rights therein. Each Grantor shall promptly inform the Collateral Agent of its acquisition of any Collateral for which any action is required by Section 4 hereof (including, for the avoidance of doubt, the filing of any applications for, or the issuance or registration of, any Patents, Copyrights or Trademarks).

**4.6 Certain Agreements of Grantors as Issuers and Holders of Pledged Equity Interest.**

(a) In the case of each Grantor which is an issuer of Pledged Equity Interests, such Grantor agrees to be bound by the terms of this Agreement relating to the Pledged Equity Interests issued by it and will comply with such terms insofar as such terms are applicable to it.

(b) In the case of each Grantor which is a partner, shareholder or member, as the case may be, in a partnership, limited liability company or other entity, such Grantor hereby (i) consents to the extent required by the applicable organizational document to the pledge by each other Grantor, pursuant to the terms hereof, of the Pledged Equity Interests in such partnership, limited liability company or other entity, (ii) subject to the terms of the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Equity Interests to the Collateral Agent or its nominee and to the substitution of the Collateral Agent or its nominee as a substituted partner, shareholder or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner, limited partner, shareholder or member, as the case may be and (iii) waives to the fullest extent permitted under law, the collection of any expenses incurred by the issuer in connection with the transfer to and substitution of the Collateral Agent or its nominee referenced in clause (ii) above.

**SECTION 5. REPRESENTATIONS AND WARRANTIES.**

Each Grantor hereby represents and warrants, on the First Amendment Date, that:

**5.1 Grantor Information and Status.**

(a) Schedule 5.1 (A) and (B) (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings: (1) the full legal name of such Grantor, (2) all trade names or other names under which such Grantor currently conducts business, (3) the type of organization of such Grantor, (4) the jurisdiction of organization of such Grantor, (5) its organizational identification number, if any, and (6) the

jurisdiction where the chief executive office or its sole place of business (or the principal residence if such Grantor is a natural person) is located; and

(b) except as set forth in Schedule 5.1 (A) or (B), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business (or principal residence if such Grantor is a natural person) or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) and has not done business under any other name, in each case, within the past five (5) years; and

(c) it has not within the last five (5) years become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated other than the agreements identified on Schedule 5.1(D) hereof (as such schedule may be amended or supplemented from time to time); and

(d) it has been duly organized and is validly existing as an entity of the type as set forth opposite such Grantor's name on Schedule 5.1(A) solely under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 5.1(A) and remains duly existing as such. Such Grantor has not filed any certificates of dissolution or liquidation, any certificates of domestication, transfer or continuance in any other jurisdiction; and

(e) it is not a "transmitting utility" (as defined in Section 9-102(a)(80) of the UCC).

## **5.2 Collateral Identification, Special Collateral.**

(a) Subject to Section 4.16 of the Credit Agreement, Schedule 5.2 (as such schedule may be amended or supplemented from time to time) sets forth under the appropriate headings all of such Grantor's: (1) Pledged Equity Interests, (2) Pledged Debt, (3) Securities Accounts, (4) Deposit Accounts, (5) Commodity Contracts and Commodity Accounts, (6) United States and foreign registrations and issuances of and applications for Patents, Trademarks, and Copyrights owned by each Grantor, (7) Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses, (8) Commercial Tort Claims, (9) Letter of Credit Rights for letters of credit, (10) the name and address of any warehouseman, bailee or other third party in possession of any Inventory, Equipment and other tangible personal property, (11) motor vehicles (other than Light Duty Vehicles) or other goods or equipment subject to a certificate of title statute of any jurisdiction, and (12) Material Contracts (other than Sales Agency Agreements, Coal Supply Contracts and mining leases involving Material Real Estate Assets). Each Grantor shall supplement such schedules from time to time as necessary to ensure that such schedules are accurate; provided that solely with respect to equipment leases that constitute Material Contracts, each Grantor shall only be obligated to supplement such schedules annually within 30 days after the end of each Fiscal Year, commencing with the Fiscal Year in which the First Amendment Date occurs;

(b) none of the Collateral constitutes, or is the Proceeds of, (1) Farm Products, (2) Manufactured Homes, (3) Health-Care-Insurance Receivables; (4) timber to be cut, or (5) aircraft, aircraft engines, satellites, ships or railroad rolling stock. No material portion of the



collateral consists of motor vehicles or other goods subject to a certificate of title statute of any jurisdiction;

(c) all information set forth herein, including the schedules hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party in connection with this Agreement, with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects; provided, however, that no Grantor makes any representations or warranties hereunder relating to the accuracy of values provided by and included in any report or document prepared by third party consultants or appraisers;

(d) not more than 10% of the value of all personal property included in the Collateral is located in any country other than the United States; and

(e) no Excluded Asset is material to the businesses of the Grantors, taken as a whole, other than the following: the Reclamation Bond Accounts, the Injury Bond Account, the Deferred Compensation Account and, until such time as any relevant contractual or legal prohibition against granting a security interest is no longer applicable, certain equipment leases, coal supply agreements and other leases, licenses, contracts or agreements excluded pursuant to Section 2.2.

### **5.3 Ownership of Collateral and Absence of Other Liens.**

(a) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, developed or created (including by way of lease or license), will continue to own or have such rights in each item of the Collateral (except as otherwise permitted by the Credit Agreement), in each case free and clear of any and all Liens, rights or claims of all other Persons, including, without limitation, liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, other than any Permitted Liens; and

(b) other than any financing statements filed in favor of the Collateral Agent or the ABL Collateral Agent, no effective financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (x) financing statements for which duly authorized proper termination statements have been filed by a Grantor and delivered to the Collateral Agent or delivered to the Collateral Agent for filing and (y) financing statements filed in connection with Permitted Liens. Other than the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) and any automatic control in favor of a Bank, Securities Intermediary or Commodity Intermediary maintaining a Deposit Account, Securities Account or Commodity Contract, no Person is in Control of any Collateral.

### **5.4 Status of Security Interest.**

(a) upon the filing of financing statements naming each Grantor as “debtor” and the Collateral Agent as “secured party” and describing the Collateral in the filing offices set

forth opposite such Grantor's name on Schedule 5.4 hereof (as such schedule may be amended or supplemented from time to time), the security interest of the Collateral Agent in all Collateral that can be perfected by the filing of a financing statement by a Grantor or Collateral Agent under the Uniform Commercial Code as in effect in any jurisdiction will constitute a valid, perfected, first priority Liens subject to the terms of the Intercreditor Agreement and any Permitted Liens with respect to Collateral. Each agreement purporting to give the Collateral Agent Control over any Collateral is effective to establish the Collateral Agent's Control of the Collateral subject thereto;

(b) to the extent perfection or priority of the security interest therein is not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks, Copyrights and exclusive Copyright Licenses in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office, the security interests granted to the Collateral Agent hereunder in such Collateral shall constitute valid, perfected, first priority Liens (subject to the terms of the Intercreditor Agreement and, in the case of priority only, to Permitted Liens);

(c) no authorization, consent, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other Person is required for either (i) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder or (ii) the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for the filings contemplated by clauses (a) and (b) above, (B) as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Securities, and (C) for any authorization, consent, approval or other action by, or notice to or filing with, any Governmental Authority in connection with the creation of any Lien upon, or the transfer of, any permit, license or similar asset granted or otherwise issued by any Governmental Authority; and

(d) each Grantor is in compliance with its obligations under Section 4 hereof.

## **5.5 Goods and Receivables.**

(a) each Receivable (a) is and will be the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor, (b) is and will be enforceable in accordance with its terms, (c) is not and will not be subject to any credits, rights of recoupment, setoffs, defenses, taxes, counterclaims (except with respect to refunds, returns and allowances in the ordinary course of business with respect to damaged merchandise and except as expressly provided under the terms of the contracts relating to such Receivable) and (d) is and will be in compliance with all applicable laws, whether federal, state, local or foreign;

(b) with respect to the Grantors (other than TECO Coal LLC and its Subsidiaries) and, to Grantor's knowledge, with respect to TECO Coal LLC and its Subsidiaries, none of the Account Debtors in respect of any Receivable is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign. No

Receivable requires the consent of the Account Debtor in respect thereof in connection with the security interest hereunder, except any consent which has been obtained;

(c) no Goods now or hereafter produced by any Grantor and included in the Collateral have been or will be produced in violation of the requirements of the Fair Labor Standards Act, as amended, or the rules and regulations promulgated thereunder; and

(d) other than any Inventory or Equipment in transit, all of the Equipment and Inventory included in the Collateral is located only at the locations specified in Schedule 5.5 (as such schedule may be amended or supplemented from time to time).

#### **5.6 Pledged Equity Interests, Investment Related Property.**

(a) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons (except for (a) transfer restrictions contained in the Operating Agreements of certain of the Grantors with respect to certain Pledged LLC Interests which will be satisfied on the First Amendment Date and (b) Permitted Liens) and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(b) no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or desirable in connection with the creation, perfection or first priority status (subject to the terms of the Intercreditor Agreement) of the security interest of the Collateral Agent in any Pledged Equity Interests or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof except such as have been obtained or waived;

(c) the Pledged LLC Interests (other than those specified in clause (d) below) and Pledged Partnership Interests are or represent interests that by their terms provide that they are securities governed by the uniform commercial code of an applicable jurisdiction;

(d) the Pledged LLC Interests of C&B Construction Company, LLC, Matrix Energy, LLC, Toptiki Coal LLC, Wright Management Company LLC and TECO Coal LLC and its Subsidiaries do not represent interests (1) that by their terms provide that they are securities governed by the uniform commercial code of an applicable jurisdiction, (2) that are dealt in or traded on securities exchanges or markets or (3) in issuers that are registered as investment companies; and

(e) the Initial Pledged Equity Interests constitute 100% of the issued and outstanding Pledged Equity Interest beneficially owned by each Grantor on the date hereof, whether or not registered in the name of such Grantor.

#### **5.7 Intellectual Property.**

(a) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 5.2 (as such schedule may be amended or

supplemented from time to time), and owns or has the valid right to use and, where such Grantor does so, sublicense others to use, all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, claims and licenses, except for, in the case of priority only, Permitted Liens and the licenses set forth on Schedule 5.2 (as such schedule may be amended or supplemented from time to time);

(b) all Intellectual Property of such Grantor is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, nor, in the case of Patents, is any of the Intellectual Property the subject of a reexamination proceeding, and such Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks of such Grantor in full force and effect;

(c) no holding, decision, ruling, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity, enforceability, or scope of, or such Grantor's right to register, own or use, any Intellectual Property of such Grantor, and no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened;

(d) all registrations, issuances and applications for Copyrights, Patents and Trademarks of such Grantor are standing in the name of such Grantor, and none of the Trademarks, Patents, Copyrights or Trade Secrets owned by such Grantor has been licensed by such Grantor to any Affiliate or third party, except as disclosed in Schedule 5.2(II) (as such schedule may be amended or supplemented from time to time), and all exclusive Copyright Licenses in respect of registered Copyrights have been properly recorded in the U.S. Copyright Office or, where appropriate, any foreign counterpart;

(e) all Copyrights owned by such Grantor have been registered with the United States Copyright Office or, where appropriate, any foreign counterpart;

(f) such Grantor has not made a previous assignment, sale, transfer, exclusive license, or similar arrangement constituting a present or future assignment, sale, transfer, exclusive license or similar arrangement of any Intellectual Property that has not been terminated or released;

(g) such Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with its use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights;

(h) such Grantor has taken commercially reasonable steps to protect the confidentiality of its Trade Secrets in accordance with industry standards;

(i) such Grantor controls the nature and quality in accordance with industry standards of all products sold and all services rendered under or in connection with all Trademarks of such Grantor, in each case consistent with industry standards, and has taken all action necessary to insure that all licensees of the Trademarks owned by such Grantor comply with such Grantor's standards of quality;

(j) the conduct of such Grantor's business does not infringe, misappropriate, dilute or otherwise violate any Intellectual Property right of any other Person; no claim has been made that the use of any Intellectual Property owned or used by such Grantor (or any of its respective licensees) infringes, misappropriates, dilutes or otherwise violates the asserted rights of any other Person, and no demand that such Grantor enter into a license or co-existence agreement has been made but not resolved;

(k) to the best of such Grantor's knowledge, no Person is infringing, misappropriating, diluting or otherwise violating any rights in any Intellectual Property owned, licensed or used by such Grantor, or any of its respective licensees; and

(l) no settlement or consents, covenants not to sue, co-existence agreements, non-assertion assurances, or releases have been entered into by such Grantor or bind such Grantor in a manner that could adversely affect such Grantor's rights to own, license or use any Intellectual Property.

## **SECTION 6. COVENANTS AND AGREEMENTS.**

Each Grantor hereby covenants and agrees that:

**6.1 Grantor Information and Status.** Without limiting any prohibitions or restrictions on mergers or other transactions set forth in the Credit Agreement, it shall not change such Grantor's name, identity, corporate structure (e.g. by merger, consolidation, change in corporate form or otherwise), sole place of business (or principal residence if such Grantor is a natural person), chief executive office, organizational identification number, type of organization or jurisdiction of organization or establish any trade names unless it shall have (a) notified the Collateral Agent in writing at least thirty (30) days prior to any such change or establishment, identifying such new proposed name, identity, corporate structure, sole place of business (or principal residence if such Grantor is a natural person), chief executive office, jurisdiction of organization or trade name and providing such other information in connection therewith as the Collateral Agent may reasonably request and (b) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral granted or intended to be granted and agreed to hereby, which in the case of any merger or other change in corporate structure shall include, without limitation, executing and delivering to the Collateral Agent a completed Pledge Supplement together with all Supplements to Schedules thereto, upon completion of such merger or other change in corporate structure confirming the grant of the security interest hereunder.

### **6.2 Collateral Identification; Special Collateral.**

(a) in the event that it hereafter acquires any Collateral of a type described in Section 5.2(b) hereof, it shall promptly notify the Collateral Agent thereof in writing and take such actions and execute such documents and make such filings all at Grantor's expense as the Collateral Agent may reasonably request in order to ensure that the Collateral Agent has a valid, perfected, first priority security interest in such Collateral, subject to the terms of the Intercreditor Agreement and any Permitted Liens; and

(b) in the event that it hereafter acquires or has any Commercial Tort Claim it shall deliver to the Collateral Agent a completed Pledge Supplement together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

### **6.3 Ownership of Collateral and Absence of Other Liens.**

(a) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, other than Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(b) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify the Collateral Agent in writing of any event that may have a Material Adverse Effect on the value of the Collateral or any portion thereof, the ability of any Grantor or the Collateral Agent to dispose of the Collateral or any portion thereof, or the rights and remedies of the Collateral Agent in relation thereto, including the levy of any legal process against the Collateral or any portion thereof; and

(c) subject to the terms of the Intercreditor Agreement, it shall not sell, transfer or assign (by operation of law or otherwise) or exclusively license to another Person any Collateral except as permitted by the Credit Agreement.

### **6.4 Status of Security Interest.**

(a) Subject to the limitations set forth in subsection (b) of this Section 6.4, each Grantor shall maintain the security interest of the Collateral Agent hereunder in all Collateral as valid, perfected, first priority Liens (subject to the terms of the Intercreditor Agreement and, in the case of priority only, to Permitted Liens); and

(b) Notwithstanding the foregoing, no Grantor shall be required to take any action to perfect any Collateral that can only be perfected by (i) foreign filings with respect to Intellectual Property, or (ii) filings with registrars of motor vehicles or similar governmental authorities with respect to goods covered by a certificate of title, in each case except as and to the extent specified in Section 4 hereof.

### **6.5 Goods and Receivables.**

(a) it shall not deliver any Document evidencing any Equipment and Inventory to any Person other than the issuer of such Document to claim the Goods evidenced therefor or the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement);

(b) if any Equipment or Inventory is in possession or control of any warehouseman, bailee or other third party (other than a Consignee under a Consignment for which such Grantor is the Consignor), each Grantor shall join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest and obtaining an acknowledgment from the third party that it is holding the Equipment and Inventory for the benefit of the Collateral Agent and will permit the Collateral Agent (subject to the terms of the

Intercreditor Agreement) to have access to Equipment or Inventory for purposes of inspecting such Collateral or, following an Event of Default, to remove same from such premises if the Collateral Agent so elects (subject to the terms of the Intercreditor Agreement); and with respect to any Goods subject to a Consignment for which such Grantor is the Consignor, Grantor shall file appropriate financing statements against the Consignee and take such other action as may be necessary to ensure that the Grantor has a first priority perfected security interest in such Goods;

(c) it shall keep and maintain at its own cost and expense satisfactory and complete records of the Receivables, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(d) other than in the ordinary course of business (i) it shall not amend, modify, terminate or waive any provision of any Receivable in any manner which could reasonably be expected to have a material adverse effect on the value of such Receivable; (ii) following and during the continuation of an Event of Default, such Grantor shall not (w) grant any extension or renewal of the time of payment of any Receivable, (x) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (y) release, wholly or partially, any Person liable for the payment thereof, or (z) allow any credit or discount thereon; provided that credits or discounts shall be permitted to the extent required pursuant to the terms of Coal Supply Contracts as a result of changes in applicable law or regulation; and

(e) subject to the terms of the Intercreditor Agreement, the Collateral Agent shall have the right at any time upon at least two (2) Business Days' prior written notice to Borrowers to notify, or require any Grantor to notify, any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation and, in addition, at any time following the occurrence and during the continuation of an Event of Default, the Collateral Agent may: (i) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent; (ii) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent; and (iii) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence (while it is then in compliance with the Intercreditor Agreement), any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in the Collateral Account maintained under the sole dominion and control of the Collateral Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle

or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon.

## **6.6 Pledged Equity Interests, Investment Related Property.**

(a) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Pledged Equity Interest or other Investment Related Property, upon the merger, consolidation, liquidation or dissolution of any issuer of any Pledged Equity Interest or Investment Related Property, then (a) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (b) such Grantor shall immediately take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control of the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) over such Investment Related Property (including delivery thereof to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement)) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all scheduled payments of interest;

### **(b) Voting.**

(i) So long as no Event of Default shall have occurred and be continuing (subject to the terms of the Intercreditor Agreement), except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or elsewhere herein or in the Credit Agreement or in the ABL Loan Credit Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement, the Credit Agreement or the ABL Loan Credit Agreement; provided that no Grantor shall exercise or refrain from exercising any such right if the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement), acting at the direction of the Requisite Lenders, shall have notified such Grantor that such action would have a Material Adverse Effect on the value of the Investment Related Property or any part thereof; and provided further, such Grantor shall give the Collateral Agent at least five (5) Business Days prior written notice of the manner in which it intends to exercise, or the reasons for refraining from exercising, any such right; it being understood, however, that neither the voting by such Grantor of any Pledged Stock for, or such Grantor's consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor such Grantor's consent to or approval of any action otherwise permitted under this Agreement and the Credit Agreement, shall be deemed inconsistent with the terms of this Agreement or the



Credit Agreement within the meaning of this Section 6.6(b)(i) and no notice of any such voting or consent need be given to the Collateral Agent; and

(ii) Upon the occurrence and during the continuation of an Event of Default (subject to the terms of the Intercreditor Agreement):

- (1) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) who shall thereupon have the sole right to exercise such voting and other consensual rights; and
- (2) in order to permit the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) all proxies, dividend payment orders and other instruments as the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) may from time to time reasonably request and (2) each Grantor acknowledges that the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) may utilize the power of attorney set forth in Section 8.1.

(c) except as permitted by the Credit Agreement, without the prior written consent of the Collateral Agent, acting at the direction of the Requisite Lenders, it shall not vote to enable or take any other action to: (i) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any Investment Related Property or adversely affects the validity, perfection or priority of the Collateral Agent's security interest, (ii) permit any issuer of any Pledged Equity Interest to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer, (iii) other than as permitted under the Credit Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of their assets, (iv) waive any default under or breach of any terms of organizational document relating to the issuer of any Pledged Equity Interest or the terms of any Pledged Debt, or (v) cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; provided, however, notwithstanding

the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (c), such Grantor shall promptly notify the Collateral Agent in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Collateral Agent's "control" thereof, subject to the terms of the Intercreditor Agreement; and

(d) except as permitted by the Credit Agreement, without the prior written consent of the Collateral Agent acting at the direction of the Requisite Lenders, it shall not permit any issuer of any Pledged Equity Interest to merge or consolidate unless (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, (ii) all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent Grantor; provided that if the surviving or resulting Grantors upon any such merger or consolidation involving an issuer which is a Controlled Foreign Corporation, then such Grantor shall only be required to pledge equity interests in accordance with Section 2.2 and (iii) Grantor promptly complies with the delivery and control requirements of Section 4 hereof.

## **6.7 Intellectual Property.**

(a) it shall not do any act or omit to do any act whereby any of the Intellectual Property that is material to the business of such Grantor or otherwise of material value may lapse, or become abandoned, canceled, dedicated to the public, forfeited, unenforceable or otherwise impaired, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein;

(b) it shall not, with respect to any Trademarks, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and such Grantor shall take all steps necessary to insure that licensees of such Trademarks use such consistent standards of quality;

(c) it shall, within thirty (30) days of the creation or acquisition or exclusive license of any copyrightable work that is material to the business of such Grantor or otherwise of material value, apply to register the Copyright in the United States Copyright Office or, where appropriate, any foreign counterpart and, in the case of an exclusive Copyright License in respect of a registered Copyright, record such license, in the United States Copyright Office or, where appropriate, any foreign counterpart;

(d) it shall promptly notify the Collateral Agent if it knows or has reason to know that any item of Intellectual Property may become (i) abandoned or dedicated to the public or placed in the public domain, (ii) invalid or unenforceable, (iii) subject to any adverse determination or development regarding such Grantor's ownership, registration or use or the validity or enforceability of such item of Intellectual Property (including the institution of, or any adverse development with respect to, any action or proceeding in the United States Patent and

Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court) or (iv) the subject of any reversion or termination rights;

(e) it shall take all reasonable steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration or issuance of each Trademark, Patent, and Copyright owned by or exclusively licensed to any Grantor, including, but not limited to, those items on Schedule 5.2(II) (as such schedule may be amended or supplemented from time to time);

(f) it shall use best efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could or may in any way materially impair or prevent the creation of a security interest in, or the assignment of, such Grantor's rights and interests in any property included within the definitions of any Intellectual Property acquired under such contracts;

(g) in the event that any Intellectual Property owned by or exclusively licensed to any Grantor is infringed, misappropriated, diluted or otherwise violated by a third party, such Grantor shall promptly take all reasonable actions to stop such infringement, misappropriation, dilution or other violation and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(h) it shall take all steps reasonably necessary to protect the secrecy of all Trade Secrets, including, without limitation, entering into confidentiality agreements with employees and consultants and labeling and restricting access to secret information and documents;

(i) it shall use proper statutory notice in connection with its use of any of the Intellectual Property; and

(j) it shall continue to collect, at its own expense, all amounts due or to become due to such Grantor in respect of the Intellectual Property or any portion thereof. In connection with such collections, such Grantor may take (and, at the direction of the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement) acting at the direction of the Requisite Lenders, shall take) such action as such Grantor or the Requisite Lenders may deem reasonably necessary or advisable to enforce collection of such amounts. Notwithstanding the foregoing, the Collateral Agent shall have the right at any time, to notify, or require any Grantor to notify, any obligors with respect to any such amounts of the existence of the security interest created hereby.

**6.8 Miscellaneous.** Each Grantor shall, on or before the last day of the first calendar month of each Fiscal Quarter, request in writing the consent of the counterparty or counterparties to any Material Contract that is a Non-Assignable Contract and was entered into in the prior Fiscal Quarter pursuant to the terms of such Non-Assignable Contract or applicable law to the granting of a security interest in such Non-Assignable Contract to Secured Party and use its reasonable best efforts to obtain such consent as soon as practicable thereafter.

**SECTION 7. FURTHER ASSURANCES; ADDITIONAL GRANTORS.**

**7.1 Further Assurances.**

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may reasonably request, at the direction of the Requisite Lenders, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file, or cooperate as requested in connection with the filing of, such financing or continuation statements, or amendments thereto, record security interests in Intellectual Property and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Collateral Agent may reasonably request at the direction of the Requisite Lenders, in order to effect, reflect, perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in any Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or issued or in which an application for registration or issuance is pending, including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) subject to the terms of the Intercreditor Agreement, at any reasonable time, upon request by the Collateral Agent, allow inspection of the Collateral by the Collateral Agent, or persons designated by the Collateral Agent;

(iv) subject to the terms of the Intercreditor Agreement, at the Collateral Agent's request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral; and

(v) furnish the Collateral Agent with such information regarding the Collateral, including, without limitation, the location thereof, as the Collateral Agent may reasonably request from time to time.

(b) Each Grantor hereby authorizes the Collateral Agent (provided that the Collateral Agent shall not be obligated to so file, unless directed to so file by the Requisite Lenders) to file a Record or Records, including, without limitation, financing or continuation statements, Intellectual Property Security Agreements and amendments and supplements to any of the foregoing, in any jurisdictions and with any filing offices as are necessary or advisable to perfect or otherwise protect the security interest granted to the Collateral Agent herein. Such

financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as “all assets, whether now owned or hereafter acquired, developed or created” or words of similar effect. Each Grantor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail. Notwithstanding the foregoing and for the avoidance of doubt, nothing in this Agreement or any other Credit Document shall require the Collateral Agent to file financing statements or continuation statements (except for the safe custody of any Collateral in its possession, subject to the terms of the Intercreditor Agreement) other than as directed by the Requisite Lenders, or be responsible for maintaining the security interests purported to be created as described herein, and such responsibility shall be solely that of the Grantors.

(c) Each Grantor hereby authorizes the Collateral Agent to modify this Agreement after obtaining such Grantor’s approval of or signature to such modification by amending Schedule 5.2 (as such schedule may be amended or supplemented from time to time) to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest.

**7.2 Additional Grantors.** From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an “Additional Grantor”), by executing a Pledge Supplement. Upon delivery of any such Pledge Supplement to the Collateral Agent, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Collateral Agent not to cause any Subsidiary of any Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

## **SECTION 8. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.**

**8.1 Power of Attorney.** Subject to the terms of the Intercreditor Agreement, each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor’s attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent’s discretion, subject to the terms of the Intercreditor Agreement, to take any action and to execute any instrument necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Credit Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to open a deposit account in the name of such Grantor for the benefit of the Secured Parties (including deposit account number S85609.2 titled "Martin County Energy Collateral Account" on the First Amendment Date);

(g) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in any Intellectual Property in the name of such Grantor as debtor;

(h) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand; provided that, so long as no Event of Default shall have occurred and be continuing, Collateral Agent shall provide Borrowers' not less than three (3) Business Days' notice of its intent to make any such payments; and

(i) after the occurrence and during the continuance of any Event of Default, to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at such Grantor's expense, at any time or from time to time, all acts and things necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

**8.2 No Duty on the Part of Collateral Agent or Secured Parties.** The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured

Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

**8.3 Appointment Pursuant to Credit Agreement.** The Collateral Agent has been appointed as collateral agent pursuant to the Credit Agreement, by Lenders and, by their acceptance of the benefits hereof, the other Secured Parties. The rights, duties, privileges, immunities and indemnities of the Collateral Agent hereunder are subject to the provisions of the Credit Agreement, including but not limited to Section 9 of the Credit Agreement, and such provisions are incorporated herein by reference as if fully set forth herein and shall survive any termination of the Credit Agreement or this Agreement or the resignation or removal of the Collateral Agent. In the event that any provision of this Agreement is deemed to conflict with the Credit Agreement, the provisions of the Credit Agreement shall control. The Collateral Agent shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the Credit Agreement. In furtherance of the foregoing provisions of this Section, each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of Secured Parties in accordance with the terms of this Agreement and the Credit Agreement.

## **SECTION 9. REMEDIES.**

### **9.1 Generally.**

(a) Subject to the terms of the Intercreditor Agreement, if any Event of Default shall have occurred and be continuing, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Collateral Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any other Secured Party may be the purchaser of any or all of the Collateral at any public or private sale in accordance with the UCC and the Collateral Agent, as collateral agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way limit the rights of the Collateral Agent hereunder.



(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

**9.2 Application of Proceeds.** Subject to the terms of the Intercreditor Agreement, except as expressly provided elsewhere in this Agreement and in the Intercreditor Agreement, all proceeds received by the Collateral Agent in the event that an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 of the Credit Agreement and in respect of any sale of, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Collateral Agent against, the Secured Obligations in the following order of priority: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to the Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Collateral Agent and its agents and counsel in connection therewith, and all amounts for which the Collateral Agent is entitled to indemnification hereunder (in its capacity as the Collateral Agent and not as a Lender) and all advances made by the Collateral Agent hereunder for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by the Collateral Agent in connection with the exercise of any right or remedy hereunder or under the Credit Agreement, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations for the ratable benefit of the Secured Parties until the Secured Obligations are paid in full; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of the applicable Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**9.3 Sales on Credit.** If Collateral Agent sells any of the Collateral upon credit, the applicable Grantor will be credited only with payments actually made by purchaser and received by Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Collateral Agent may resell the Collateral and the applicable Grantor shall be credited with proceeds of the sale.

**9.4 Investment Related Property.** Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made

in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

**9.5 Grant of Intellectual Property License.** Subject to the terms of the Intercreditor Agreement, for the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Section 9 hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of such Trademarks, to use, assign, license or sublicense any of the Intellectual Property now owned or hereafter acquired, developed or created by such Grantor, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

**9.6 Intellectual Property.**

(a) Anything contained herein to the contrary notwithstanding, in addition to the other rights and remedies provided herein, upon the occurrence and during the continuation of an Event of Default (subject to the terms of the Intercreditor Agreement):

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, to enforce any Intellectual Property rights of such Grantor, in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement, and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Agent as provided in Section 12 hereof in connection with the exercise of its rights under this Section 9.6, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property rights as provided in this Section 9.6, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement, misappropriation, dilution or other violation of any of such Grantor's rights in the Intellectual Property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so

infringing, misappropriating, diluting or otherwise violating as shall be necessary to prevent such infringement, misappropriation, dilution or other violation;

(ii) upon written demand from the Collateral Agent, each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Agent or such Collateral Agent's designee all of such Grantor's right, title and interest in and to any Intellectual Property and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Agent (or any other Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, any such Intellectual Property;

(iv) within five (5) Business Days after written notice from the Collateral Agent, each Grantor shall make available to the Collateral Agent, to the extent within such Grantor's power and authority, such personnel in such Grantor's employ on the date of such Event of Default as the Collateral Agent may reasonably designate, by name, title or job responsibility, to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with any Trademarks or Trademark Licenses, such persons to be available to perform their prior functions on the Collateral Agent's behalf and to be compensated by the Collateral Agent at such Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default; and

(v) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of any Intellectual Property of such Grantor, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done;

(vi) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of its Intellectual Property or any portion thereof shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 9.7 hereof; and

(vii) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to any Intellectual Property of such Grantor shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

#### **9.7 Cash Proceeds; Deposit Accounts.**

(a) Subject to the terms of the Intercreditor Agreement, if any Event of Default shall have occurred and be continuing, in addition to the rights of the Collateral Agent specified in Section 6.5 with respect to payments of Receivables, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in the Collateral Account. Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise) may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by the Collateral Agent against the Secured Obligations then due and owing.

(b) If any Event of Default shall have occurred and be continuing, the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement) may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Collateral Agent (or the ABL Collateral Agent, to the extent so provided in the Intercreditor Agreement and the ABL Pledge and Security Agreement).

**SECTION 10. [Reserved].**

**SECTION 11. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.**

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations, be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of

the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations (other than contingent indemnity obligations), this Agreement, all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and the Grantors, and the security interest granted hereby shall automatically terminate, all without delivery of any instrument or any further action by any party, and all rights to the Collateral shall revert to the Grantors. Upon any such termination the Collateral Agent shall, at the Grantors' expense, execute and deliver to the Grantors or otherwise authorize the filing of such documents as the Grantors shall reasonably request, including financing statement amendments to evidence such termination. Upon any disposition of property permitted by the Credit Agreement, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. A Grantor shall be released from its obligations hereunder in the event that all the Pledged Equity Interests of such Grantor are sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement. The Collateral Agent shall, at the applicable Grantor's expense, execute and deliver or otherwise authorize the filing of such documents as such Grantor shall reasonably request, in form and substance reasonably satisfactory to the Collateral Agent, including financing statement amendments to evidence such release.

**SECTION 12. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.**

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 10.2 of the Credit Agreement.

**SECTION 13. MISCELLANEOUS.**

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Credit Agreement. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power,

right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Credit Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and the Grantors and their respective successors and assigns. No Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. This Agreement and the other Credit Documents embody the entire agreement and understanding between the Grantors and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Credit Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or other electronic delivery shall be effective as delivery of a manually executed counterpart of this Agreement.

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTEREST).**

**THE PROVISIONS OF THE CREDIT AGREEMENT UNDER THE HEADINGS “CONSENT TO JURISDICTION” AND “WAIVER OF JURY TRIAL” ARE INCORPORATED HEREIN BY THIS REFERENCE AND SUCH INCORPORATION SHALL SURVIVE ANY TERMINATION OF THE CREDIT AGREEMENT.**

**SECTION 14. INTERCREDITOR AGREEMENT.**

Notwithstanding any other provision contained herein, this Agreement, the Liens created hereby and the rights, remedies, duties and obligations provided for herein are subject in all

respects to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

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**EXHIBIT F**



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

**2015-2789947-94.01**

Alison Lundergan Grimes  
 Kentucky Secretary of State  
 File Date 9/22/2015 1:15:44 PM  
 Status Active  
 Fee \$10.00  
 Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**NATIONAL CORPORATE RESEARCH, LTD.**  
**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

**Print** **Reset**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) [use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name]; if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>APEX ENERGY, INC.</b>			
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
1c. MAILING ADDRESS <b>P.O. Box 2100</b>		CITY <b>Pikeville</b>	STATE POSTAL CODE COUNTRY <b>KY 41502 USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) [use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name]; if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
2c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>			
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
3c. MAILING ADDRESS <b>60 Wall Street</b>		CITY <b>New York</b>	STATE POSTAL CODE COUNTRY <b>NY 10005 USA</b>

4. COLLATERAL: This financing statement covers the following collateral:

**This financing statement covers all assets of the Debtor whether now existing or hereafter arising.**

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public Finance Transaction  Manufacture-Home Transaction  A Debtor is a Transmitting Utility  Agricultural Lien  Non-UCC Filing

6b. Check only if applicable and check only one box:  Lessor/Lessor  Consignee/Consignor  Seller/Buyer  Bailor/Bailor  Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:  
 Filed with: **Kentucky Secretary of State**

016887-0110

**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2789949-16.01**

Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 1:17:31 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<b>NATIONAL CORPORATE RESEARCH, LTD.</b> <b>115 North Calhoun Street, Suite #4</b> <b>Tallahassee, FL 32301</b>

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>Bear Branch Coal LLC</b>	FIRST PERSONAL NAME			ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 1b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME			ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c MAILING ADDRESS <b>P.O. Box 2100</b>	CITY <b>Pikeville</b>	STATE <b>KY</b>	POSTAL CODE <b>41502</b>	COUNTRY <b>USA</b>	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME	FIRST PERSONAL NAME			ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 2b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME			ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

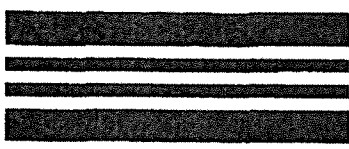
3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>	FIRST PERSONAL NAME			ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 3b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME			ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c MAILING ADDRESS <b>60 Wall Street</b>	CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10005</b>	COUNTRY <b>USA</b>	

4. COLLATERAL: This financing statement covers the following collateral:

This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility
6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessor/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailor/Bailor <input type="checkbox"/> Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State** **016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2789963-92.01**  
 Alison Lundergan Grimes  
 Kentucky Secretary of State  
 File Date 9/22/2015 1:27:54 PM  
 Status Active  
 Fee \$10.00  
 Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

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**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>C. W. AUGERING, INC.</b>				
OR				
1b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c MAILING ADDRESS <b>P.O. Box 2100</b>	CITY <b>Pikeville</b>	STATE <b>KY</b>	POSTAL CODE <b>41502</b>	COUNTRY <b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME				
OR				
2b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>				
OR				
3b INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c MAILING ADDRESS <b>60 Wall Street</b>	CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10005</b>	COUNTRY <b>USA</b>

4. COLLATERAL: This financing statement covers the following collateral:  
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5. Check only if applicable and check only one box. Collateral is  held in a Trust (see UCC1Ad, item 17 and instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessor/Lessee  Consignee/Consignor  Seller/Buyer  Bailee/Debtor  Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:  
 Filed with: **Kentucky Secretary of State** **016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2789965-14.01**  
 Alison Lundergan Grimes  
 Kentucky Secretary of State  
 File Date 9/22/2015 1:29:29 PM  
 Status Active  
 Fee \$10.00  
 Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**NATIONAL CORPORATE RESEARCH, LTD.**  
**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank; check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME  
**Cambrian Coal Corporation**

OR

1b INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX

1c MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

**P.O. Box 2100**      **Pikeville**      **KY**      **41502**      **USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank; check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME

OR

2b INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX

2c MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME  
**Deutsche Bank Trust Company Americas, as Collateral Agent**

OR

3b INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX

3c MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

**60 Wall Street**      **New York**      **NY**      **10005**      **USA**

4. COLLATERAL: This financing statement covers the following collateral:  
 This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, Item 17 and instructions)  being administered by a Debtor's Personal Representative

6a. Check only if applicable and check only one box      6b. Check only if applicable and check only one box

Public Finance Transaction     Manufacture/Home Transaction     A Debtor is a Transmitting Utility     Agricultural Lien     Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessor/Lessee     Consignee/Consignor     Seller/Buyer     Bailee/Bailor     Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:  
 Filed with: **Kentucky Secretary of State**      **016887-0110**



**2015-2789965-14.02**  
 Kentucky Secretary of State  
 File Date 11/24/2015 10:51:27 AM  
 Status Active  
 Fee \$5.00

**UCC FINANCING STATEMENT AMENDMENT**

Name and address of filer:  
  
 Frost Brown Todd LLC  
 250 West Main St., Suite 2800  
 Lexington, KY 40507

This document is a representation of a filing made electronically at the Kentucky Secretary of State's web site

INITIAL FINANCING STATEMENT FILE # **2015-2789965-14**

Type of Amendment **Change Debtor**

**DEBTOR'S EXACT FULL LEGAL NAME**

a. ORGANIZATION'S NAME <b>Cambrian Coal LLC</b>			
b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
c. MAILING ADDRESS <b>P.O. Box 2100</b>		CITY <b>Pikeville</b>	POSTAL CODE <b>KY 41502</b>
		COUNTRY <b>USA</b>	

**NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT**

a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>			
b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2789971-91.01**  
Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 1:34:30 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

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**Tallahassee, FL 32301**

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>Clintwood Elkhorn Mining LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>P.O. Box 2100</b>	<b>Pikeville</b>	<b>KY</b>	<b>41502</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>60 Wall Street</b>	<b>New York</b>	<b>NY</b>	<b>10005</b>	<b>USA</b>

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6b. Check only if applicable and check only one box:  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licensor

7. ALTERNATIVE DESIGNATION (if applicable):

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State** **016887-0110**

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

**2015-2789988-89.01**

Alison Lundergan Grimes  
 Kentucky Secretary of State  
 File Date 9/22/2015 1:47:44 PM  
 Status Active  
 Fee \$10.00  
 Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Gatliff Coal LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)INITIAL(S)	SUFFIX
1c. MAILING ADDRESS <b>P.O. Box 2100</b>		CITY <b>Pikeville</b>	STATE <b>KY</b>	POSTAL CODE <b>41502</b>
			COUNTRY <b>USA</b>	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE or ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)INITIAL(S)	SUFFIX
3c. MAILING ADDRESS <b>60 Wall Street</b>		CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10005</b>
			COUNTRY <b>USA</b>	

4. COLLATERAL: This financing statement covers the following collateral:

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6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufacture-Home Transaction  A Debtor is a Transmitting Utility  Agricultural Lien  Non-UCC Filing

6b. Check only if applicable and check only one box:  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licensor

7. ALTERNATIVE DESIGNATION (if applicable):

8. OPTIONAL FILER REFERENCE DATA:  
 Filed with: **Kentucky Secretary of State** **016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2789996-88.01**  
Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 1:52:23 PM  
Status Active  
Fee \$10.00  
Filer mmullins

**A. NAME & PHONE OF CONTACT AT FILER (optional)**

**B. E-MAIL CONTACT AT FILER (optional)**

**C. SEND ACKNOWLEDGMENT TO: (Name and Address)**

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**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME  
**MARSHALL RESOURCES, INC.**

OR

1b INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX

1c MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

**P.O. Box 2100      Pikeville      KY      41502      USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME

OR

2b INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX

2c MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME  
**Deutsche Bank Trust Company Americas, as Collateral Agent**

OR

3b INDIVIDUAL'S SURNAME      FIRST PERSONAL NAME      ADDITIONAL NAME(S)/INITIAL(S)      SUFFIX

3c MAILING ADDRESS      CITY      STATE      POSTAL CODE      COUNTRY

**60 Wall Street      New York      NY      10005      USA**

4. COLLATERAL: This financing statement covers the following collateral:  
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5a. Check only if applicable and check only one box:  Public-Finance Transaction     Manufactured Home Transaction     A Debtor is a Transmitting Utility

5b. Check only if applicable and check only one box:  Agricultural Lien     Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessor/Lessee     Consignor/Consignee     Seller/Buyer     Bailee/Bailor     Licensee/Licensee or

8. OPTIONAL FILER REFERENCE DATA:  
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**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790006-42.01**  
Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 1:59:21 PM  
Status Active  
Fee \$10.00  
Filer mmullins

**A. NAME & PHONE OF CONTACT AT FILER (optional)**

**B. E-MAIL CONTACT AT FILER (optional)**

**C. SEND ACKNOWLEDGMENT TO: (Name and Address)**

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**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

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1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Perry County Coal LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS <b>P.O. Box 2100</b>		CITY <b>Pikeville</b>	STATE <b>KY</b>	POSTAL CODE <b>41502</b>
				COUNTRY <b>USA</b>

2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. **SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY):** Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS <b>60 Wall Street</b>		CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10005</b>
				COUNTRY <b>USA</b>

4. **COLLATERAL:** This financing statement covers the following collateral:  
**This financing statement covers all assets of the Debtor whether now existing or hereafter arising.**

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessor/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensee	

8. **OPTIONAL FILER REFERENCE DATA:**  
Filed with: **Kentucky Secretary of State** **016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790008-64.01**  
Allison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:01:57 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<b>NATIONAL CORPORATE RESEARCH, LTD.</b> <b>115 North Calhoun Street, Suite #4</b> <b>Tallahassee, FL 32301</b>

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THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Pike-Letcher Land LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>P.O. Box 2100</b>	<b>Pikeville</b>	<b>KY</b>	<b>41502</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>60 Wall Street</b>	<b>New York</b>	<b>NY</b>	<b>10005</b>	<b>USA</b>

4. COLLATERAL: This financing statement covers the following collateral:  
This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

5. Check only if applicable and check only one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative
6a. Check only if applicable and check only one box <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility
6b. Check only if applicable and check only one box <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessor/Lessee <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensee

**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790031-50.01**

Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:16:58 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>TECO Coal LLC</b>			
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
<b>P.O. Box 2100</b>	<b>Pikeville</b>	<b>KY</b>	<b>41502 USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>			
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
<b>60 Wall Street</b>	<b>New York</b>	<b>NY</b>	<b>10005 USA</b>

4. COLLATERAL: This financing statement covers the following collateral.

This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignor/Consignee  Seller/Buyer  Bailor/Bailee  Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State**

016887-0110

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS

**2015-2790031-50.02**  
 Alison Lundergan Grimes  
 Kentucky Secretary of State  
 File Date 9/24/2015 1:24:51 PM  
 Status Active  
 Fee \$10.00  
 Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER  
 2015-2790031-50 filed 09/22/2015

1b.  This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Filer attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2.  **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3.  **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4.  **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5.  **PARTY INFORMATION CHANGE:**  
 Check one of these two boxes:  Debtor or  Secured Party of record  
 AND Check one of these three boxes to:  CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c  ADD name: Complete item 7a or 7b, and item 7c  DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME  
 TECO Coal LLC

OR

6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME  
 PLM Holding Company LLC

OR

7b. INDIVIDUAL'S SURNAME  
 INDIVIDUAL'S FIRST PERSONAL NAME  
 INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

7c. MAILING ADDRESS  
 P.O. Box 2100

CITY: Pikeville STATE: KY POSTAL CODE: 41502 COUNTRY: USA

8.  **COLLATERAL CHANGE:** Also check one of these four boxes:  ADD collateral  DELETE collateral  RESTATE covered collateral  ASSIGN collateral  
 Indicate collateral:

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment). If this is an Amendment authorized by a DEBTOR, check here  and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME  
 Deutsche Bank Trust Company Americas, as Collateral Agent

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10. **OPTIONAL FILER REFERENCE DATA:**  
 File with the Kentucky Secretary of State 016887-0110

**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790013-30.01**

Allison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:05:21 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**NATIONAL CORPORATE RESEARCH, LTD.**  
115 North Calhoun Street, Suite #4  
Tallahassee, FL 32301

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>Premier Elkhorn Coal LLC</b>	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 1b INDIVIDUAL'S SURNAME			
1c MAILING ADDRESS <b>P.O. Box 2100</b>	CITY <b>Pikeville</b>	STATE <b>KY</b>	POSTAL CODE <b>41502</b>
			COUNTRY <b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 2b INDIVIDUAL'S SURNAME			
2c MAILING ADDRESS	CITY	STATE	POSTAL CODE
			COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 3b INDIVIDUAL'S SURNAME			
3c MAILING ADDRESS <b>60 Wall Street</b>	CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10005</b>
			COUNTRY <b>USA</b>

4. COLLATERAL: This financing statement covers the following collateral:  
**This financing statement covers all assets of the Debtor whether now existing or hereafter arising.**

5. Check  if applicable and check only one box: Collateral is  held in a Trust (see UCC 1Ad, item 17 and instructions)  being administered by a Decedent's Personal Representative

6a. Check  if applicable and check only one box:  Public Finance Transaction  Manufactured Home Transaction  A Debtor is a Transacting Utility  Agricultural Lien  Non-UCC Pledge

6b. Check  if applicable and check only one box:  License/Licensee

7. ALTERNATIVE DESIGNATION (if applicable):  Lessor/Lessee  Consignee/Consignor  Seller/Buyer  Bailor/Bailee  Licensee/Licensee



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790015-52.01**

Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:06:56 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<b>NATIONAL CORPORATE RESEARCH, LTD.</b> <b>115 North Calhoun Street, Suite #4</b> <b>Tallahassee, FL 32301</b>

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Raven Rock Development LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S/INITIAL(S))	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>P.O. Box 2100</b>	<b>Pikeville</b>	<b>KY</b>	<b>41502</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S/INITIAL(S))	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S/INITIAL(S))	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>60 Wall Street</b>	<b>New York</b>	<b>NY</b>	<b>10005</b>	<b>USA</b>

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5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public Finance Transaction <input type="checkbox"/> Manufactured Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility
6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State** **016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790017-74.01**

Allison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:08:38 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<b>NATIONAL CORPORATE RESEARCH, LTD.</b> <b>115 North Calhoun Street, Suite #4</b> <b>Tallahassee, FL 32301</b>

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a ORGANIZATION'S NAME <b>Ray Coal LLC</b>			
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
<b>P.O. Box 2100</b>	<b>Pikeville</b>	<b>KY</b>	<b>41502 USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>			
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
<b>60 Wall Street</b>	<b>New York</b>	<b>NY</b>	<b>10005 USA</b>

4. COLLATERAL: This financing statement covers the following collateral:

This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

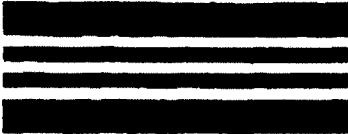
5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box  Public Finance Transaction  Manufactured Home Transaction  A Debtor is a Transmitting Utility  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessor/Lessor  Consignor/Consignor  Seller/Buyer  Bailor/Bailor  Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State**

**016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790019-96.01**  
Allison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:10:01 PM  
Status Active  
Fee \$10.00  
Filer mmullins

**A. NAME & PHONE OF CONTACT AT FILER (optional)**

**B. E-MAIL CONTACT AT FILER (optional)**

**C. SEND ACKNOWLEDGMENT TO: (Name and Address)**

**NATIONAL CORPORATE RESEARCH, LTD.**  
115 North Calhoun Street, Suite #4  
Tallahassee, FL 32301

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**1. DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of Item 1 blank, check here  and provide the individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

**1a ORGANIZATION'S NAME**  
Rich Mountain Coal LLC

**OR**

**1b. INDIVIDUAL'S SURNAME** FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

**1c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

P.O. Box 2100 Pikeville KY 41502 USA

**2. DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of Item 2 blank, check here  and provide the individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

**2a ORGANIZATION'S NAME**

**OR**

**2b. INDIVIDUAL'S SURNAME** FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

**2c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

**3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY):** Provide only one Secured Party name (3a or 3b)

**3a. ORGANIZATION'S NAME**  
Deutsche Bank Trust Company Americas, as Collateral Agent

**OR**

**3b. INDIVIDUAL'S SURNAME** FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

**3c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

60 Wall Street New York NY 10005 USA

**4. COLLATERAL:** This financing statement covers the following collateral:  
This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

**5. Check only if applicable and check only one box:** Collateral is  held in a Trust (see UCC 1A, den 17 and instructions)  Being administered by a Decedent's Personal Representative

**6a. Check only if applicable and check only one box** **6b. Check only if applicable and check only one box**

Public-Finance Transaction  Manufacture-Home Transaction  A Debtor is a Transmitting Utility  Agricultural Lien  Non-UCC Filing

**7. ALTERNATIVE DESIGNATION (if applicable):**  Lessor/Lessor  Consignee/Consignor  Seller/Buyer  Bailor/Bailor  Licensee/Licensee

**8. OPTIONAL FILER REFERENCE DATA:**  
Filed with: Kentucky Secretary of State **016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790022-40.01**

Allison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:11:25 PM  
Status Active  
Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**NATIONAL CORPORATE RESEARCH, LTD**  
**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1AD)

1a. ORGANIZATION'S NAME  
**S. T. & T. LEASING, INC.**

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

**P.O. Box 2100** **Pikeville** **KY** **41502** **USA**

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1AD)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME  
**Deutsche Bank Trust Company Americas, as Collateral Agent**

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

**60 Wall Street** **New York** **NY** **10005** **USA**

4. COLLATERAL: This financing statement covers the following collateral:  
This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

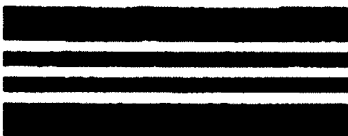
5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC 1A9, item 17 and instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailor/Bailor  Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State** **016887-0110**



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

**2015-2790025-73.01**  
 Allison Lundergan Grimes  
 Kentucky Secretary of State  
 File Date 9/22/2015 2:12:44 PM  
 Status Active  
 Fee \$10.00  
 Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
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<b>NATIONAL CORPORATE RESEARCH, LTD.</b> <b>115 North Calhoun Street, Suite #4</b> <b>Tallahassee, FL 32301</b>

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1AD)

1a. ORGANIZATION'S NAME <b>Shelby Resources, LLC</b>	OR		
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) (INITIAL(S))	SUFFIX
1c. MAILING ADDRESS <b>P.O. Box 2100</b>	CITY <b>Pikeville</b>	STATE <b>KY</b>	POSTAL CODE <b>41502</b>
		COUNTRY <b>USA</b>	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1AD)

2a. ORGANIZATION'S NAME	OR		
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) (INITIAL(S))	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE
		COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>	OR		
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S) (INITIAL(S))	SUFFIX
3c. MAILING ADDRESS <b>60 Wall Street</b>	CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10005</b>
		COUNTRY <b>USA</b>	

4. COLLATERAL: This financing statement covers the following collateral:

This financing statement covers all assets of the Debtor whether now existing or hereafter arising.

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC 1A, item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:  Public-Finance Transaction  Manufactured-Home Transaction  A Debtor is a Transmitting Utility

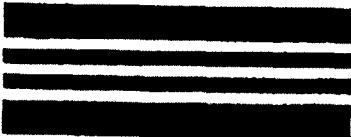
6b. Check only if applicable and check only one box:  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor  Consignee/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:

Filed with: **Kentucky Secretary of State**

**016887-0110**



**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790027-95.01**  
Allison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:14:08 PM  
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Fee \$10.00  
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**115 North Calhoun Street, Suite #4**  
**Tallahassee, FL 32301**

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**1a. ORGANIZATION'S NAME**  
**T.C. LEASING, INC.**

OR

**1b. INDIVIDUAL'S SURNAME**      **FIRST PERSONAL NAME**      **ADDITIONAL NAME(S)/INITIAL(S)**      **SUFFIX**

**1c. MAILING ADDRESS**      **CITY**      **STATE**      **POSTAL CODE**      **COUNTRY**

**P.O. Box 2100**      **Pikeville**      **KY**      **41502**      **USA**

**2. DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

**2a. ORGANIZATION'S NAME**

OR

**2b. INDIVIDUAL'S SURNAME**      **FIRST PERSONAL NAME**      **ADDITIONAL NAME(S)/INITIAL(S)**      **SUFFIX**

**2c. MAILING ADDRESS**      **CITY**      **STATE**      **POSTAL CODE**      **COUNTRY**

**3. SECURED PARTY'S NAME (or NAME OF ASSIGNEE of ASSIGNOR SECURED PARTY):** Provide only one Secured Party name (3a or 3b)

**3a. ORGANIZATION'S NAME**  
**Deutsche Bank Trust Company Americas, as Collateral Agent**

OR

**3b. INDIVIDUAL'S SURNAME**      **FIRST PERSONAL NAME**      **ADDITIONAL NAME(S)/INITIAL(S)**      **SUFFIX**

**3c. MAILING ADDRESS**      **CITY**      **STATE**      **POSTAL CODE**      **COUNTRY**

**60 Wall Street**      **New York**      **NY**      **10005**      **USA**

**4. COLLATERAL:** This financing statement covers the following collateral:  
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**6a. Check only if applicable and check only one box**      **6b. Check only if applicable and check only one box**

Public-Finance Transaction       Manufactured-Home Transaction       A Debtor is a Transmuting Utility       Agricultural Lien       Non-UCC Filing

**7. ALTERNATIVE DESIGNATION (if applicable):**  Lessor/Lessor       Consignor/Consignor       Seller/Buyer       Bailor/Bailor       Licensee/Licensee

**8. OPTIONAL FILER REFERENCE DATA:**  
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**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

**2015-2790037-16.01**  
Alison Lundergan Grimes  
Kentucky Secretary of State  
File Date 9/22/2015 2:19:34 PM  
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Fee \$10.00  
Filer mmullins

A. NAME & PHONE OF CONTACT AT FILER (optional)

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1a ORGANIZATION'S NAME <b>Whitaker Coal LLC</b>			
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
<b>P.O. Box 2100</b>	<b>Pikeville</b>	<b>KY</b>	<b>41502 USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Deutsche Bank Trust Company Americas, as Collateral Agent</b>			
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY
<b>60 Wall Street</b>	<b>New York</b>	<b>NY</b>	<b>10005 USA</b>

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6b. Check only if applicable and check only one box:  Agricultural Lien  Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable):  Lessor/Lessor  Consignor/Consignor  Seller/Buyer  Bailee/Bailor  Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:  
Filed with: **Kentucky Secretary of State** **016887-0110**

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