

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2025

OR

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

For the transition period from to

Commission File Number: 001-38735



ALPHA METALLURGICAL RESOURCES, INC.

(Exact name of registrant as specified in its charter)

Delaware

81-3015061

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

340 Martin Luther King Jr. Blvd.

Bristol, Tennessee 37620

(Address of principal executive offices, zip code)

(423) 573-0300

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock	AMR	New York Stock Exchange

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (Sec.232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Non-accelerated filer ☐

Accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

Number of shares of the registrant's Common Stock, \$0.01 par value per share, outstanding as of April 30, 2025: 13,052,684

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report includes statements of our expectations, intentions, plans and beliefs that constitute “forward-looking statements.” These statements, which involve risks and uncertainties, relate to analyses and other information that are based on forecasts of future results and estimates of amounts not yet determinable and may also relate to our future prospects, developments and business strategies. We have used the words “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “should” and similar terms and phrases, including references to assumptions, in this report to identify forward-looking statements, but these terms and phrases are not the exclusive means of identifying such statements. These forward-looking statements are made based on expectations and beliefs concerning future events affecting us and are subject to uncertainties and factors relating to our operations and business environment, all of which are difficult to predict and many of which are beyond our control, that could cause our actual results to differ materially from those expressed in or implied by these forward-looking statements.

The following factors are among those that may cause actual results to differ materially from our forward-looking statements:

- depressed levels or declines in coal prices;
- the financial performance of the company;
- our liquidity, results of operations and financial condition;
- our ability to generate sufficient cash or obtain financing to fund our business operations;
- worldwide market demand for coal and steel, including demand for U.S. coal exports, and competition in coal markets;
- railroad, barge, truck, port and other transportation availability, performance and costs;
- steel and coke producers switching to alternative energy sources such as natural gas, renewables and coal from basins where we do not operate;
- our ability to meet collateral requirements for, and fund, employee benefit obligations;
- our ability to self-insure certain of our black lung obligations following a significant increase in required collateral;
- our ability to obtain or renew surety bonds on acceptable terms or maintain our current bonding status;
- the imposition, continuation or modification of barriers to trade, such as tariffs, and the present unpredictability of these events;
- attracting and retaining key personnel and other employee workforce factors, such as labor relations;
- our ability to consummate financing or refinancing transactions, and other services, and the form and degree of these services available to us, which may be significantly limited by the lending, investment and similar policies of financial institutions and insurance companies regarding carbon energy producers, the environmental impacts of coal combustion or other factors;
- our costs of complying with health and safety regulations, including but not limited to MSHA’s silica regulations;
- changes in domestic or international environmental laws and regulations, and court decisions, including those directly affecting our coal mining and production and those affecting our customers’ coal usage, including potential climate change initiatives;
- failures in performance, or non-performance, of services by third-party contractors, including contract mining and reclamation contractors;
- disruptions in delivery or changes in pricing from third-party vendors of key equipment and materials that are necessary for our operations, such as diesel fuel, steel products, explosives, tires and purchased coal;
- our production capabilities and costs;
- inflationary pressures on supplies and labor and significant or rapid increases in commodity prices;
- our indebtedness as we may incur it from time to time;
- our ability to execute our share repurchase program;
- cybersecurity attacks or failures, threats to physical security, extreme weather conditions or other natural disasters;
- increased volatility and uncertainty regarding worldwide markets, seaborne transportation and our customers as a result of developments in and around Ukraine and the Middle East;
- changes in, renewal or acquisition of, terms of and performance of customers under coal supply arrangements and the refusal by our customers to receive coal under agreed-upon contract terms;
- reductions or increases in customer coal inventories and the timing of those changes;
- our ability to obtain, maintain or renew any necessary permits or rights;
- inherent risks of coal mining, including those that are beyond our control;
- changes in, interpretations of, or implementations of domestic or international tax or other laws and regulations, including the Inflation Reduction Act of 2022 and its related regulations;
- our relationships with, and other conditions affecting, our customers, including the inability to collect payments from our customers if their creditworthiness declines;
- reclamation and mine closure obligations;

- our assumptions concerning economically recoverable coal reserve estimates; and
- other factors, including the other factors discussed in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section included elsewhere in this Quarterly Report on Form 10-Q and the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” sections included elsewhere in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2024.

The list of factors identified above is not exhaustive. We caution readers not to place undue reliance on any forward looking statements, which are based on information currently available to us and speak only as of the dates on which they are made. When considering these forward-looking statements, you should keep in mind the cautionary statements in this report. We do not undertake any responsibility to publicly revise these forward-looking statements to take into account events or circumstances that occur after the date of this report. Additionally, except as expressly required by federal securities laws, we do not undertake any responsibility to update you on the occurrence of any unanticipated events, which may cause actual results to differ from those expressed or implied by the forward-looking statements contained in this report.

GLOSSARY

Alpha. Alpha Metallurgical Resources, Inc. (the “Company”) (previously named Contura Energy, Inc.).

Ash. Impurities consisting of iron, alumina and other incombustible matter that are contained in coal. Since ash increases the weight of coal, it adds to the cost of handling and can affect the burning characteristics of coal.

British Thermal Unit or BTU. A measure of the thermal energy required to raise the temperature of one pound of pure liquid water one degree Fahrenheit at the temperature at which water has its greatest density (39 degrees Fahrenheit).

Central Appalachia or CAPP. Coal producing area in eastern Kentucky, Virginia, southern West Virginia and a portion of eastern Tennessee.

Coal reserves. The economically mineable part of a measured or indicated coal resource, which includes diluting materials and allowances for losses that may occur when coal is mined or extracted.

Coal resources. Coal deposits in such form, quality, and quantity that there are reasonable prospects for economic extraction.

Coal seam. Coal deposits occur in layers. Each layer is called a “seam.”

Coke. A hard, dry carbon substance produced by heating coal to a very high temperature in the absence of air. Coke is used in the manufacture of iron and steel. Its production results in a number of useful byproducts.

ESG. Environmental, social and governance sustainability criteria.

Indicated coal resource. That part of a coal resource for which quantity and quality are estimated on the basis of adequate geological evidence and sampling sufficient to establish geological and quality continuity with reasonable certainty.

Measured coal resource. That part of a coal resource for which quantity and quality are estimated on the basis of conclusive geological evidence and sampling sufficient to test and confirm geological and quality continuity.

Merger. Merger with ANR, Inc. and Alpha Natural Resources Holdings, Inc. completed on November 9, 2018.

Metallurgical coal. The various grades of coal suitable for carbonization to make coke for steel manufacture. Also known as “met” coal, its quality is primarily differentiated based on volatility or its percent of volatile matter. Met coal typically has a particularly high BTU but low ash and sulfur content.

MSHA. The United States Mine Safety and Health Administration, which has responsibility for developing and enforcing safety and health rules for U.S. mines.

Operating Margin. Coal revenues less cost of coal sales.

Preparation plant. A preparation plant is a facility for crushing, sizing and washing coal to remove impurities and prepare it for use by a particular customer. The washing process has the added benefit of removing some of the coal’s sulfur content. A preparation plant is usually located on a mine site, although one plant may serve several mines.

Probable mineral reserve. The economically mineable part of an indicated and, in some cases, a measured coal resource.

Productivity. As used in this report, refers to clean metric tons of coal produced per underground man hour worked, as published by MSHA.

Proven mineral reserve. The economically mineable part of a measured coal resource.

Reclamation. The process of restoring land and the environment to their original state following mining activities. The process commonly includes “recontouring” or reshaping the land to its approximate original appearance, restoring topsoil and planting native grass and ground covers. Reclamation operations are usually underway before the mining of a particular site is completed. Reclamation is closely regulated by both state and federal law.

Roof. The stratum of rock or other mineral above a coal seam; the overhead surface of a coal working place.

Surface mine. A mine in which the coal lies near the surface and can be extracted by removing the covering layer of soil.

Thermal coal. Coal used by power plants and industrial steam boilers to produce electricity, steam or both. It generally is lower in BTU heat content and higher in volatile matter than metallurgical coal.

Tons. A “short” or net ton is equal to 2,000 pounds. A “long” or British ton is equal to 2,240 pounds; a “metric” ton (or “tonne”) is approximately 2,205 pounds. Tonnage amounts in this report are stated in short tons, unless otherwise indicated.

Underground mine. Also known as a “deep” mine. Usually located several hundred feet below the earth’s surface, an underground mine’s coal is removed mechanically and transferred by shuttle car and conveyor to the surface.

Part I - Financial Information

Item 1. *Financial Statements*

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited) (Amounts in thousands, except share and per share data)

	Three Months Ended March 31,	
	2025	2024
Revenues:		
Coal revenues	\$ 529,667	\$ 861,283
Other revenues	2,290	2,789
Total revenues	531,957	864,072
Costs and expenses:		
Cost of coal sales (exclusive of items shown separately below)	504,584	648,313
Depreciation, depletion and amortization	43,910	40,701
Accretion on asset retirement obligations	5,614	6,143
Amortization of acquired intangibles, net	1,357	1,675
Selling, general and administrative expenses (exclusive of depreciation, depletion and amortization shown separately above)	15,424	22,377
Other operating loss	1,243	2,985
Total costs and expenses	572,132	722,194
(Loss) income from operations	(40,175)	141,878
Other (expense) income:		
Interest expense	(763)	(1,086)
Interest income	4,046	3,971
Equity loss in affiliates	(4,960)	(1,640)
Miscellaneous expense, net	(3,532)	(1,963)
Total other expense, net	(5,209)	(718)
(Loss) income before income taxes	(45,384)	141,160
Income tax benefit (expense)	11,437	(14,165)
Net (loss) income	\$ (33,947)	\$ 126,995
Basic (loss) income per common share	\$ (2.60)	\$ 9.77
Diluted (loss) income per common share	\$ (2.60)	\$ 9.59
Weighted average shares – basic	13,047,607	13,002,127
Weighted average shares – diluted	13,047,607	13,236,596

Refer to accompanying Notes to Condensed Consolidated Financial Statements.

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME (Unaudited)
(Amounts in thousands)

	Three Months Ended March 31,	
	2025	2024
Net (loss) income	\$ (33,947)	\$ 126,995
Other comprehensive income, net of tax:		
Employee benefit plans:		
Amortization of and adjustments to employee benefit costs	1,390	964
Income tax expense	(303)	(214)
Total other comprehensive income, net of tax	1,087	750
Total comprehensive (loss) income	<u>\$ (32,860)</u>	<u>\$ 127,745</u>

Refer to accompanying Notes to Condensed Consolidated Financial Statements.

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)
(Amounts in thousands, except share and per share data)

	March 31, 2025	December 31, 2024
Assets		
Current assets:		
Cash and cash equivalents	\$ 447,990	\$ 481,578
Trade accounts receivable, net of allowance for credit losses of \$2,291 and \$2,396 as of March 31, 2025 and December 31, 2024, respectively	341,991	362,141
Inventories, net	190,093	169,269
Prepaid expenses and other current assets	27,460	23,681
Total current assets	1,007,534	1,036,669
Property, plant, and equipment, net of accumulated depreciation and amortization of \$701,951 and \$667,260 as of March 31, 2025 and December 31, 2024, respectively	629,045	634,871
Owned and leased mineral rights, net of accumulated depletion and amortization of \$132,229 and \$124,965 as of March 31, 2025 and December 31, 2024, respectively	435,852	443,467
Other acquired intangibles, net of accumulated amortization of \$42,801 and \$41,444 as of March 31, 2025 and December 31, 2024, respectively	38,522	39,879
Long-term restricted cash	124,185	122,583
Long-term restricted investments	42,960	43,131
Deferred income taxes	6,852	6,516
Other non-current assets	115,550	111,592
Total assets	<u>\$ 2,400,500</u>	<u>\$ 2,438,708</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Current portion of long-term debt	\$ 2,669	\$ 2,916
Trade accounts payable	110,195	96,633
Accrued expenses and other current liabilities	147,293	151,560
Total current liabilities	260,157	251,109
Long-term debt	2,365	2,868
Workers' compensation and black lung obligations	181,278	182,961
Pension obligations	99,830	100,597
Asset retirement obligations	191,970	189,805
Deferred income taxes	29,709	40,486
Other non-current liabilities	20,353	21,385
Total liabilities	785,662	789,211
Commitments and Contingencies (Note 13)		
Stockholders' Equity		
Preferred stock - par value \$0.01, 5,000,000 shares authorized, none issued	—	—
Common stock - par value \$0.01, 50,000,000 shares authorized, 22,436,240 issued and 13,052,684 outstanding at March 31, 2025 and 22,383,325 issued and 13,016,390 outstanding at December 31, 2024	224	224
Additional paid-in capital	841,870	839,804
Accumulated other comprehensive loss	(48,995)	(50,082)
Treasury stock, at cost: 9,383,556 shares at March 31, 2025 and 9,366,935 shares at December 31, 2024	(1,300,700)	(1,296,916)
Retained earnings	2,122,439	2,156,467
Total stockholders' equity	1,614,838	1,649,497
Total liabilities and stockholders' equity	<u>\$ 2,400,500</u>	<u>\$ 2,438,708</u>

Refer to accompanying Notes to Condensed Consolidated Financial Statements.

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(Amounts in thousands)

	Three Months Ended March 31,	
	2025	2024
Operating activities:		
Net (loss) income	\$ (33,947)	\$ 126,995
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation, depletion and amortization	43,910	40,701
Amortization of acquired intangibles, net	1,357	1,675
Amortization of debt issuance costs and accretion of debt discount	280	280
(Gain) loss on disposal of assets	(37)	1,610
Accretion on asset retirement obligations	5,614	6,143
Employee benefit plans, net	5,618	3,833
Deferred income taxes	(11,416)	1,614
Stock-based compensation	3,437	2,769
Equity loss in affiliates	4,960	1,640
Other, net	(145)	(197)
Changes in operating assets and liabilities	2,550	9,011
Net cash provided by operating activities	22,181	196,074
Investing activities:		
Capital expenditures	(38,450)	(63,618)
Proceeds on disposal of assets	81	287
Purchases of investment securities	(14,663)	(7,230)
Sales and maturities of investment securities	15,080	10,172
Capital contributions to equity affiliates	(9,836)	(8,476)
Other, net	13	6
Net cash used in investing activities	(47,775)	(68,859)
Financing activities:		
Principal repayments of long-term debt	(480)	(632)
Dividend and dividend equivalents paid	(415)	(3,000)
Common stock repurchases and related expenses	(5,155)	(116,089)
Other, net	(342)	(306)
Net cash used in financing activities	(6,392)	(120,027)
Net (decrease) increase in cash and cash equivalents and restricted cash	(31,986)	7,188
Cash and cash equivalents and restricted cash at beginning of period	604,161	384,125
Cash and cash equivalents and restricted cash at end of period	<u>\$ 572,175</u>	<u>\$ 391,313</u>
Supplemental disclosure of noncash investing and financing activities:		
Accrued capital expenditures	<u>\$ 10,785</u>	<u>\$ 14,525</u>
Accrued common stock repurchases and stock repurchase excise tax	<u>\$ —</u>	<u>\$ 4,665</u>
Accrued dividend payable	<u>\$ 90</u>	<u>\$ 525</u>

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within the Condensed Consolidated Balance Sheets that sum to the total of the same such amounts shown in the Condensed Consolidated Statements of Cash Flows.

	As of March 31,	
	2025	2024
Cash and cash equivalents	\$ 447,990	\$ 269,386
Long-term restricted cash	124,185	121,927
Total cash and cash equivalents and restricted cash shown in the Condensed Consolidated Statements of Cash Flows	<u>\$ 572,175</u>	<u>\$ 391,313</u>

Refer to accompanying Notes to Condensed Consolidated Financial Statements.

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (Unaudited)
(Amounts in thousands)

	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Treasury Stock at Cost	Retained Earnings	Total Stockholders' Equity
Balances, December 31, 2023	\$ 221	\$ 834,482	\$ (40,587)	\$(1,189,715)	\$ 1,969,527	\$ 1,573,928
Net income	—	—	—	—	126,995	126,995
Other comprehensive income, net	—	—	750	—	—	750
Stock-based compensation, issuance of common stock for share vesting, and common stock reissuances	3	(3,946)	—	6,712	—	2,769
Common stock repurchases and related expenses	—	—	—	(112,636)	—	(112,636)
Dividend equivalents	—	—	—	—	(662)	(662)
Balances, March 31, 2024	<u>\$ 224</u>	<u>\$ 830,536</u>	<u>\$ (39,837)</u>	<u>\$(1,295,639)</u>	<u>\$ 2,095,860</u>	<u>\$ 1,591,144</u>
Balances, December 31, 2024	\$ 224	\$ 839,804	\$ (50,082)	\$(1,296,916)	\$ 2,156,467	\$ 1,649,497
Net loss	—	—	—	—	(33,947)	(33,947)
Other comprehensive income, net	—	—	1,087	—	—	1,087
Stock-based compensation, issuance of common stock for share vesting, and common stock reissuances	—	2,066	—	1,371	—	3,437
Common stock repurchases and related expenses	—	—	—	(5,155)	—	(5,155)
Dividend equivalents	—	—	—	—	(81)	(81)
Balances, March 31, 2025	<u>\$ 224</u>	<u>\$ 841,870</u>	<u>\$ (48,995)</u>	<u>\$(1,300,700)</u>	<u>\$ 2,122,439</u>	<u>\$ 1,614,838</u>

Refer to accompanying Notes to Condensed Consolidated Financial Statements.

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited, amounts in thousands except share and per share data)

(1) Business and Basis of Presentation

Business

Alpha is a Tennessee-based mining company with operations in Virginia and West Virginia. With customers across the globe, high-quality reserves and significant port capacity, Alpha is a leading U.S. supplier of metallurgical coal products for the steel industry.

Basis of Presentation

Together, the condensed consolidated statements of operations, comprehensive (loss) income, balance sheets, cash flows and stockholders' equity for the Company are referred to as the "Condensed Consolidated Financial Statements." The Condensed Consolidated Financial Statements are also referenced across periods as "Condensed Consolidated Statements of Operations," "Condensed Consolidated Statements of Comprehensive (Loss) Income," "Condensed Consolidated Balance Sheets," "Condensed Consolidated Statements of Cash Flows," and "Condensed Consolidated Statements of Stockholders' Equity."

The Condensed Consolidated Financial Statements include all wholly-owned subsidiaries' results of operations for the three months ended March 31, 2025 and 2024. All significant intercompany transactions have been eliminated in consolidation.

The accompanying interim Condensed Consolidated Financial Statements are unaudited and have been prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") and in accordance with the rules and regulations of the United States Securities and Exchange Commission ("SEC") for Form 10-Q. Such rules and regulations allow the omission of certain information and footnote disclosures normally included in the financial statements prepared in accordance with U.S. GAAP as long as the financial statements are not misleading. In the opinion of management, these interim Condensed Consolidated Financial Statements reflect all normal and recurring adjustments necessary for a fair presentation of the results for the periods presented. Results of operations for the three months ended March 31, 2025 are not necessarily indicative of the results to be expected for the year ending December 31, 2025 or any other period. These interim Condensed Consolidated Financial Statements should be read in conjunction with the Company's Consolidated Financial Statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2024.

Recent Accounting Guidance

Refer to the Recent Accounting Guidance Issued Not Yet Effective section of Note 2 contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2024.

(2) Revenue

Disaggregation of Revenue from Contracts with Customers

The Company earns revenues primarily through the sale of coal produced by Company operations and coal purchased from third parties. The Company extracts, processes and markets met and thermal coal from deep and surface mines for sale to steel and coke producers, industrial customers, and electric utilities.

The Company has disaggregated revenue between met coal and thermal coal and export and domestic revenues which depicts the pricing and contract differences between the two. Export revenue generally is derived by spot or short-term contracts with pricing determined at the time of shipment or based on a market index, whereas domestic revenue is characterized by contracts that typically have a term of one year or longer and with fixed pricing terms. The following tables disaggregate the Company's coal revenues by product category and by market to depict how the nature, amount, timing, and uncertainty of the Company's coal revenues and cash flows are affected by economic factors:

ALPHA METALLURGICAL RESOURCES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited, amounts in thousands except share and per share data)

	Three Months Ended March 31,	
	2025	2024
Export met coal revenues	\$ 376,740	\$ 672,739
Export thermal coal revenues	18,975	28,562
Total export coal revenues	\$ 395,715	\$ 701,301
Domestic met coal revenues	\$ 128,662	\$ 153,295
Domestic thermal coal revenues	5,290	6,687
Total domestic coal revenues	\$ 133,952	\$ 159,982
Total met coal revenues	\$ 505,402	\$ 826,034
Total thermal coal revenues	24,265	35,249
Total coal revenues	\$ 529,667	\$ 861,283

Performance Obligations

The following table includes estimated revenue expected to be recognized in the future related to performance obligations that are unsatisfied as of March 31, 2025:

	Remainder of 2025	2026	2027	2028	2029	Total
Estimated coal revenues ⁽¹⁾	\$ 8,635	\$ 12,000	\$ —	\$ —	\$ —	\$ 20,635

⁽¹⁾ Amounts only include estimated coal revenues associated with customer contracts with fixed pricing and original expected duration of more than one year. Refer to Note 3 in the Company's Annual Report on Form 10-K for the year ended December 31, 2024.

(3) Accumulated Other Comprehensive Loss

The following tables summarize the changes to accumulated other comprehensive loss during the three months ended March 31, 2025 and 2024:

	Balance January 1, 2025	Other comprehensive income (loss) before reclassifications	Amounts reclassified from accumulated other comprehensive loss	Balance March 31, 2025
Employee benefit costs	\$ (50,082)	\$ —	\$ 1,087	\$ (48,995)

	Balance January 1, 2024	Other comprehensive income (loss) before reclassifications	Amounts reclassified from accumulated other comprehensive loss	Balance March 31, 2024
Employee benefit costs	\$ (40,587)	\$ —	\$ 750	\$ (39,837)

The following table summarizes the amounts reclassified from accumulated other comprehensive loss and the Condensed Consolidated Statements of Operations line items affected by reclassification during the three months ended March 31, 2025 and 2024:

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Details about accumulated other comprehensive loss components	Amounts reclassified from accumulated other comprehensive loss		Affected line item in the Condensed Consolidated Statements of Operations
	Three Months Ended March 31,		
	2025	2024	
Employee benefit costs:			
Amortization of net actuarial loss ⁽¹⁾	\$ 1,390	\$ 964	Miscellaneous expense, net
Income tax expense	(303)	(214)	Income tax benefit (expense)
Total, net of income tax	\$ 1,087	\$ 750	

⁽¹⁾ These accumulated other comprehensive loss components are included in the computation of net periodic benefit costs for certain employee benefit plans. Refer to Note 11.

(4) Net (Loss) Income Per Share

The number of shares of common stock used to calculate basic net (loss) income per common share is based on the weighted average number of the Company's outstanding common shares during the respective period. The number of shares of common stock used to calculate diluted net (loss) income per common share is based on the number of common shares used to calculate basic net (loss) income per common share plus the effect of potentially dilutive securities outstanding during the period, which is determined by the application of the treasury stock method.

When applying the treasury stock method, anti-dilution generally occurs when the exercise prices or unrecognized compensation cost per share of common stock are higher than the Company's average price per share of common stock during an applicable period. For the three months ended March 31, 2025 and 2024, 26,677 and 0 securities, respectively, were excluded from the computation of dilutive net income per common share because they would have been anti-dilutive.

Anti-dilution also occurs in periods of a net loss, and the dilutive impact of all share-based compensation awards are excluded. For the three months ended March 31, 2025, the weighted average share impact of securities excluded from the shares due to the Company incurring a net loss for the period was 44,687.

The following table presents the net (loss) income per common share for the three months ended March 31, 2025 and 2024:

	Three Months Ended March 31,	
	2025	2024
Basic		
Net (loss) income	\$ (33,947)	\$ 126,995
Weighted average common shares outstanding - basic	13,047,607	13,002,127
Net (loss) income per common share - basic	<u>\$ (2.60)</u>	<u>\$ 9.77</u>
Diluted		
Weighted average common shares outstanding - basic	13,047,607	13,002,127
Dilutive effect of stock-based instruments	—	234,469
Weighted average common shares outstanding - diluted	13,047,607	13,236,596
Net (loss) income per common share - diluted	<u>\$ (2.60)</u>	<u>\$ 9.59</u>

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(5) Inventories, net

Inventories, net consisted of the following:

	March 31, 2025	December 31, 2024
Raw coal	\$ 41,429	\$ 39,689
Saleable coal	82,319	65,129
Materials, supplies and other, net	66,345	64,451
Total inventories, net	<u>\$ 190,093</u>	<u>\$ 169,269</u>

(6) Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following:

	March 31, 2025	December 31, 2024
Wages and benefits	\$ 57,595	\$ 48,642
Workers' compensation	9,444	9,444
Black lung	11,209	11,209
Taxes other than income taxes	22,551	27,995
Asset retirement obligations	25,633	29,938
Freight accrual	8,077	16,144
Other	12,784	8,188
Total accrued expenses and other current liabilities	<u>\$ 147,293</u>	<u>\$ 151,560</u>

(7) Long-Term Debt

Long-term debt consisted of the following:

	March 31, 2025	December 31, 2024
Notes payable and other	\$ 1,378	\$ 1,786
Financing leases	3,656	3,998
Total long-term debt	5,034	5,784
Less current portion	(2,669)	(2,916)
Long-term debt, net of current portion	<u>\$ 2,365</u>	<u>\$ 2,868</u>

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ABL Agreement

On October 27, 2023, the Company, along with certain of its directly and indirectly owned subsidiaries (the “Borrowers”), entered into a credit agreement (the “ABL Agreement”) with Regions Bank, as lender, swingline lender, letter of credit (“LC”) issuer, administrative agent, collateral agent, and lead arranger, along with ServisFirst Bank and Texas Capital Bank, as joint lead arrangers and the other lenders party thereto. The ABL Agreement included an asset-based revolving credit facility (the “ABL Facility”) which allowed the Company to borrow cash or obtain LCs, on a revolving basis, in an aggregate amount of up to \$155,000.

On May 6, 2025, the Company amended and extended the ABL Agreement to increase the size of the ABL Facility to \$225,000. In addition, the Company may request an increase to the capacity of the facility of up to an additional \$75,000 provided that \$25,000 shall be solely for the purpose of providing additional availability to obtain cash collateralized LCs. Availability under the ABL Facility is calculated monthly and fluctuates based on qualifying amounts of coal inventory, trade accounts receivable, and in certain circumstances specified amounts of cash. Following the amendment, the ABL Facility matures on May 4, 2029.

Under the amended terms of the ABL Facility, LC fees will be calculated at a rate of 2.25%, 2.50% or 2.75% depending on the level of available capacity under the facility, plus a fronting fee of 0.25%. Any future borrowings will bear interest based on the character of the loan (defined as either a “Term Secured Overnight Financing Rate Loan” (or “Term SOFR Loan”) or a “Base Rate Loan”). Term SOFR Loans bear interest at a rate equal to Term SOFR, plus 0.10% SOFR Adjustment plus an applicable rate of 2.25%, 2.50% or 2.75%, and Base Rate Loans bear interest at a rate equal to the Base Rate plus an applicable margin rate of 1.25%, 1.50% or 1.75%, in each case, depending on the level of available capacity under the facility at the time of the loan. The Company may elect the character and interest period for each loan. All amounts borrowed may be repaid prior to maturity without penalty. A commitment fee of 0.375% will be charged on any unused capacity. As of March 31, 2025 and December 31, 2024, the Company had no amounts borrowed and \$42,149 LCs outstanding under the ABL Facility.

The ABL agreement limits the Company’s ability to make certain restricted payments, including the payment of cash dividends and the repurchase of equity shares under its share repurchase program, if the level of cash it maintains at Regions Bank falls below \$100,000. The ABL Agreement also contains negative and affirmative covenants and requires the Company to maintain minimum Liquidity, as defined in the ABL Agreement, of \$75,000. As of March 31, 2025, the Company’s cash balance at Regions Bank exceeded the \$100,000 threshold and the Company is in compliance with all covenants under the ABL Agreement.

(8) Asset Retirement Obligations

The following table summarizes the changes in asset retirement obligations for the three months ended March 31, 2025:

Total asset retirement obligations at December 31, 2024	\$ 219,743
Accretion for the period	5,614
Sites added during the period	476
Revisions in estimated cash flows ⁽¹⁾	(2,972)
Expenditures for the period	(5,258)
Total asset retirement obligations at March 31, 2025	217,603
Less current portion ⁽²⁾	(25,633)
Long-term portion	<u>\$ 191,970</u>

⁽¹⁾ The revisions in estimated cash flows resulted primarily from changes in mine plans and reclamation timing.

⁽²⁾ Included within Accrued expenses and other current liabilities on the Company’s Condensed Consolidated Balance Sheets. Refer to Note 6.

(9) Fair Value of Financial Instruments and Fair Value Measurements

The estimated fair values of financial instruments are determined based on relevant market information. These estimates involve uncertainty and cannot be determined with precision.

The carrying amounts for cash and cash equivalents, trade accounts receivable, net, prepaid expenses and other current assets, restricted cash, deposits, trade accounts payable, notes payable and other, financing leases, and accrued expenses and

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other current liabilities approximate fair value as of March 31, 2025 and December 31, 2024 due to the short maturity of these instruments.

The following tables set forth by level, within the fair value hierarchy, the Company's financial and non-financial assets and liabilities that were accounted for at fair value on a recurring basis as of March 31, 2025 and December 31, 2024. Financial and non-financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment and may affect the determination of fair value for assets and liabilities and their placement within the fair value hierarchy levels.

March 31, 2025				
	Total Fair Value	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Trading securities	\$ 42,960	\$ —	\$ 42,960	\$ —

December 31, 2024				
	Total Fair Value	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Trading securities	\$ 43,131	\$ —	\$ 43,131	\$ —

The following methods and assumptions were used to estimate the fair values of the assets and liabilities in the tables above:

Level 2 Fair Value Measurements

Trading Securities - Typically includes U.S. government securities. The fair values are obtained from a third-party pricing service provider. The fair values provided by the pricing service provider are based on observable market inputs including credit spreads and broker-dealer quotes, among other inputs. The Company classifies the prices obtained from the pricing services within Level 2 of the fair value hierarchy because the underlying inputs are directly observable from active markets. However, the pricing models used entail a certain amount of subjectivity and therefore differing judgments in how the underlying inputs are modeled could result in different estimates of fair value.

(10) Income Taxes

For the three months ended March 31, 2025, the Company recorded income tax benefit of \$11,437 on loss before income taxes of \$45,384. The income tax benefit differs from the expected statutory amount primarily due to the change in valuation allowance, the permanent impact of percentage depletion, and stock compensation, partially offset by the impact of capital loss carryforward expirations and non-deductible compensation. For the three months ended March 31, 2024, the Company recorded income tax expense of \$14,165 on income before income taxes of \$141,160. The income tax expense differs from the expected statutory amount primarily due to the permanent impact of percentage depletion, foreign-derived intangible income deductions, and stock compensation, partially offset by the impact of non-deductible compensation and state income taxes, net of federal impact.

(11) Employee Benefit Plans

The components of net periodic benefit cost other than the service cost component for black lung are included in the line item Miscellaneous expense, net in the Condensed Consolidated Statements of Operations.

Pension

The following table details the components of the net periodic benefit cost for pension obligations:

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	Three Months Ended March 31,	
	2025	2024
Interest cost	\$ 5,805	\$ 5,749
Expected return on plan assets	(4,920)	(5,742)
Amortization of net actuarial loss	378	298
Net periodic benefit cost	<u>\$ 1,263</u>	<u>\$ 305</u>

The Company expects to pay \$16,516 in minimum required contributions to the pension plan in 2025.

Black Lung

The following table details the components of the net periodic benefit cost for black lung obligations:

	Three Months Ended March 31,	
	2025	2024
Service cost	\$ 535	\$ 601
Interest cost	1,463	1,307
Expected return on plan assets	(13)	(13)
Amortization of net actuarial loss	1,076	721
Net periodic benefit cost	<u>\$ 3,061</u>	<u>\$ 2,616</u>

(12) Related Party Transactions

There were no material related party transactions for the three months ended March 31, 2025 or 2024.

As described in Note 10 in the Company's Annual Report on Form 10-K, the Company routinely provides capital contributions to DTA, its equity method investee. Refer to Notes 13 and 14 for further information.

(13) Commitments and Contingencies

(a) General

Estimated losses from loss contingencies are accrued by a charge to income when information available indicates that it is probable that an asset has been impaired or a liability has been incurred and the amount of the loss can be reasonably estimated.

If a loss contingency is not probable or reasonably estimable, disclosure of the loss contingency is made in the Condensed Consolidated Financial Statements when it is at least reasonably possible that a loss may be incurred and that the loss could be material.

(b) Commitments and Contingencies

Commitments

The Company leases coal mining and other equipment under long-term financing and operating leases with varying terms. In addition, the Company leases mineral interests and surface rights from landowners under various terms and royalty rates.

Coal royalty expense was \$24,085 and \$43,828 for the three months ended March 31, 2025 and 2024, respectively.

Other Commitments

Under the terms of its partnership related agreements with respect to its investment in Dominion Terminal Associates ("DTA"), the Company is required to fund its proportionate share of DTA's ongoing operating and capital costs. In November 2023, the Company, together with DTA management announced that DTA needs additional capital investment to maximize

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functionality and minimize downtime due to mechanical issues. Beyond the Company's share of routine operating costs, it expects to invest an average of approximately \$27,000 per year for infrastructure and equipment upgrades at DTA over the next 5 years. In addition, to mitigate the risk of shipment delays during the upgrade period, in April 2024, the Company entered into a 3-year agreement which allows for the loading of 1,200 to 2,000 tons of coal annually at a third party terminal in Newport News, VA. The Company's 2025 funding of DTA includes routine operating and capital costs and infrastructure and equipment upgrades.

Contingencies

Extensive regulation of the impacts of mining on the environment and of maintaining workplace safety has had, and is expected to continue to have, a significant effect on the Company's costs of production and results of operations. Further regulations, legislation or litigation in these areas may also cause the Company's sales or profitability to decline by increasing costs or by hindering the Company's ability to continue mining at existing operations or to permit new operations.

During the normal course of business, contract-related matters arise between the Company and its customers. When a loss related to such matters is considered probable and can reasonably be estimated, the Company records a liability.

(c) Guarantees and Financial Instruments with Off-Balance Sheet Risk

In the normal course of business, the Company is a party to certain guarantees and financial instruments with off-balance sheet risk, such as bank LCs, performance or surety bonds, and other guarantees and indemnities related to the obligations of affiliated entities which are not reflected in the Company's Condensed Consolidated Balance Sheets. However, the underlying liabilities that they secure, such as asset retirement obligations, workers' compensation liabilities, and royalty obligations, are reflected in the Company's Condensed Consolidated Balance Sheets.

The Company is required to provide financial assurance in order to perform the post-mining reclamation required by its mining permits, pay workers' compensation claims under workers' compensation laws in various states, pay federal black lung benefits, and perform certain other obligations. In order to provide the required financial assurance, the Company generally uses surety bonds for post-mining reclamation and workers' compensation obligations. The Company can also use bank LCs to collateralize certain obligations and commitments.

As of March 31, 2025, the Company had \$42,149 LCs outstanding under the ABL Facility.

As of March 31, 2025, the Company had outstanding surety bonds with a total face amount of \$181,079 to secure various obligations and commitments. To secure the Company's reclamation-related obligations, the Company has \$35,002 of collateral in the form of restricted cash and restricted investments supporting these obligations as of March 31, 2025.

The Company meets frequently with its surety providers and has discussions with certain providers regarding the extent of and the terms of their participation in the program. These discussions may cause the Company to shift surety bonds between providers or to alter the terms of their participation in our program. To the extent that surety bonds become unavailable or the Company's surety bond providers require additional collateral, the Company would seek to secure its obligations with LCs, cash deposits, or other suitable forms of collateral. The Company's failure to maintain, or inability to acquire, surety bonds or to provide a suitable alternative would have a material adverse effect on its liquidity. These failures could result from a variety of factors including the lack of availability, higher cost or unfavorable market terms of new surety bonds, and the exercise by third-party surety bond issuers of their right to refuse to renew the surety bonds.

Amounts included in restricted cash provide collateral to secure the following obligations:

	March 31, 2025	December 31, 2024
Workers' compensation and black lung obligations	\$ 114,094	\$ 113,144
Reclamation-related obligations	1,199	697
Financial payments and other performance obligations	8,892	8,742
Total long-term restricted cash	<u>\$ 124,185</u>	<u>\$ 122,583</u>

Amounts included in restricted investments provide collateral to secure the following obligations:

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	March 31, 2025	December 31, 2024
Workers' compensation obligations	\$ 3,134	\$ 3,119
Reclamation-related obligations	33,803	34,018
Financial payments and other performance obligations	6,023	5,994
Total restricted investments ⁽¹⁾	<u>\$ 42,960</u>	<u>\$ 43,131</u>

⁽¹⁾ Classified as long-term trading securities as of March 31, 2025 and December 31, 2024.

Amounts included in deposits provide collateral to secure the following obligations:

	March 31, 2025	December 31, 2024
Workers' compensation obligations	\$ 4,108	\$ 4,108
Other operating agreements	845	866
Total deposits	4,953	4,974
Less current portion	—	(21)
Total deposits, net of current portion ⁽¹⁾	<u>\$ 4,953</u>	<u>\$ 4,953</u>

⁽¹⁾ Included within Other non-current assets on the Company's Condensed Consolidated Balance Sheets.

DCMWC Reauthorization Process

In January 2025, the U.S. Department of Labor ("DOL") published a final rule revising the requirements and procedures for authorizing operators to self-insure their liabilities under the Black Lung Benefits Act (the "2025 Final Rule"), and the Company anticipates it would require a substantial increase in the collateral required to secure self-insured federal black lung obligations. Under the 2025 Final Rule's 100% minimum collateral requirement, if this requirement is not modified or stayed through legal action, the Company estimates it would be required to provide approximately \$80,000 to \$100,000 of collateral to secure certain of its black lung obligations. The 2025 Final Rule permits the Company to use combinations of letters of credit, surety bonds, and cash to meet the collateral requirement. The Company received a letter from the Division of Coal Mine Workers' Compensation ("DCMWC") dated January 14, 2025, outlining the new procedures and application process for authorizing operators to self-insure under the new regulation. The letter outlined authorization form requirements and provided a 60-day period for the submission of the required documents. Subsequently, on February 20, 2025, the Company received a letter from the DCMWC stating that the 60-day deadline to provide information was no longer applicable and no information was required to be submitted at this time. DCMWC stated that additional guidance would be provided in due course after consultation with new DOL leadership. The Company continues to evaluate the potential impact of the 2025 Final Rule and awaits further communication from the DCMWC.

(d) Legal Proceedings

In December 2024, the state of New York adopted the Climate Change Superfund Act, purporting to impose significant, ongoing cash charges upon a variety of companies involved in the production and use of fossil fuels, including the Company (the "Act"). Other states are contemplating adopting similar laws. The Company believes that the new law is unconstitutional under the U.S. Constitution. In February 2025, the Company, along with numerous U.S. states and other entities involved in the fossil fuel industry, filed a complaint against the attorney general of New York and other New York officials. The complaint was filed in the federal district court for the Northern District of New York and requests that the court (a) declare that the Act is preempted by federal statutes and otherwise violates the U.S. Constitution, (b) declare that the Act is unenforceable, and (c) enjoin the state of New York and its officials from taking any action to implement or enforce the Act. On May 1, 2025, the U.S. Department of Justice and the Environmental Protection Agency filed a similar complaint against the State of New York, Kathleen Hochul in her capacity as Governor, Letitia James in her capacity as New York Attorney General and Amanda Lefton in her capacity as Acting Commissioner of the New York Department of Environmental Conservation in the Southern District of New York, requesting that the court declare the Act unconstitutional and permanently enjoin its implementation or enforcement. Although we believe that the Act is very unlikely to be upheld, the outcome cannot be predicted with certainty. If the Act, or similar acts adopted in other U.S. states, were upheld, the Company's liquidity would be materially, adversely affected.

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In addition, the Company is party to other legal proceedings from time to time. These proceedings, as well as governmental examinations, could involve various business units and a variety of claims including, but not limited to, contract disputes, personal injury claims, property damage claims (including those resulting from blasting, trucking and flooding), environmental and safety issues, securities-related matters and employment matters. While some legal matters may specify the damages claimed by the plaintiffs, many seek an unquantified amount of damages. Even when the amount of damages claimed against the Company or its subsidiaries is stated, (i) the claimed amount may be exaggerated or unsupported; (ii) the claim may be based on a novel legal theory or involve a large number of parties; (iii) there may be uncertainty as to the likelihood of a class being certified or the ultimate size of the class; (iv) there may be uncertainty as to the outcome of pending appeals or motions; and/or (v) there may be significant factual issues to be resolved. As a result, if such legal matters arise in the future, the Company may be unable to estimate a range of possible loss for matters that have not yet progressed sufficiently through discovery and the development of important factual information and legal issues. The Company records accruals based on an estimate of the ultimate outcome of these matters, but these estimates can be difficult to determine and involve significant judgment.

(14) Segment Information

The Company currently conducts its mining operations within the Central Appalachia (“CAPP”) coal basin located in the United States. The Company has one reportable operating segment: Met, which consists of six active mining complexes whose primary product is metallurgical quality coal that is extracted, processed, and marketed to domestic and international steel and coke producers. In addition to its primary product, thermal quality coal may also be produced as a by-product and marketed to domestic and international utilities and industrial customers. The segment’s equity method investment in DTA facilitates the export of coal to international customers. Segment operating results are regularly reviewed by the Company’s Chief Executive Officer, who is considered its Chief Operating Decision Maker (“CODM”).

Due to the cessation of mining activity within the Company’s former CAPP – Thermal operating segment in 2023, the Company’s CODM began to manage the Company on a consolidated basis in 2024. As a result, beginning with 2024, Met segment assets and operating results are consistent with consolidated assets and operating results.

During the fourth quarter of 2024, the Company adopted Accounting Standards Update (“ASU”) 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which required the Company to present the measure of profit or loss used by the CODM to allocate resources and assess performance whose measurement principles were most consistent with those used in its Consolidated Financial Statements. As a result, the Company changed its reported segment measure of profit and loss to net income.

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Met reportable segment results for the three months ended March 31, 2025 and 2024 are as follows:

	Three Months Ended March 31,	
	2025	2024
Coal revenues	\$ 529,667	\$ 861,283
Other revenues	2,290	2,789
Total revenues	\$ 531,957	\$ 864,072
Non-GAAP Cost of coal sales	\$ 414,669	\$ 504,814
Freight and handling costs	83,924	133,724
Idled and closed mine costs	5,991	9,775
Cost of coal sales (exclusive of items shown separately below)	\$ 504,584	\$ 648,313
Depreciation, depletion and amortization	\$ 43,910	\$ 40,701
Accretion on asset retirement obligations	5,614	6,143
Amortization of acquired intangibles	1,357	1,675
Selling, general and administrative expenses	15,424	22,377
Interest expense	763	1,086
Interest income	(4,046)	(3,971)
Equity loss in affiliates	4,960	1,640
Other segment items ⁽¹⁾	4,775	4,948
Income tax (benefit) expense	(11,437)	14,165
Total other expenses	\$ 61,320	\$ 88,764
Net (loss) income	\$ (33,947)	\$ 126,995

⁽¹⁾ Other segments items include Other operating loss and Miscellaneous expense, net.

Refer to the Company's Condensed Consolidated Balance Sheets and Statements of Cash Flows for information on its consolidated assets and capital expenditures. The Company's investment in equity method investees as of March 31, 2025 and December 31, 2024 was \$45,448 and \$41,072, respectively. No further segment level asset information is reviewed by the CODM.

The Company markets produced, processed and purchased coal to customers in the United States and in international markets. Revenue is tracked within the Company's accounting records based on the product destination. The following tables present additional information on the Company's revenues and top customers:

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	Three Months Ended March 31,	
	2025	2024
Total coal revenues	\$ 529,667	\$ 861,283
Total revenues	\$ 531,957	\$ 864,072
Export coal revenues	\$ 395,715	\$ 701,301
Export coal revenues as % of total coal revenues	75 %	81 %
Countries with export coal revenue exceeding 10% of total revenues	India	India, Brazil
Top customer as % of total revenues	18 %	16 %
Top 10 customers as % of total revenues	73 %	81 %
Number of customers exceeding 10% of total revenues	3	4
	As of March 31,	
	2025	2024
Number of customers exceeding 10% of total trade accounts receivable, net	3	3

(15) Subsequent Events

Refer to Note 7 for a subsequent event disclosure regarding an amendment and extension of the ABL Facility.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis provides a narrative of our results of operations and financial condition for the three months ended March 31, 2025 and 2024. The following discussion and analysis should be read in conjunction with our Condensed Consolidated Financial Statements and related notes included elsewhere in this Quarterly Report on Form 10-Q and our Consolidated Financial Statements and related notes and risk factors included elsewhere in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2024.

The following discussion includes forward-looking statements about our business, financial condition and results of operations, including discussions about management's expectations for our business. These statements represent projections, beliefs and expectations based on current circumstances and conditions and in light of recent events and trends, and you should not construe these statements either as assurances of performance or as promises of a given course of action. Instead, various known and unknown factors are likely to cause our actual performance and management's actions to vary, and the results of these variances may be both material and adverse. See "Cautionary Statement Regarding Forward-Looking Statements" and "Item 1A. Risk Factors."

Market Overview

Metallurgical coal markets remained under pressure during the first few months of 2025, with pricing levels deteriorating during Q1 due to depressed steel demand across the globe. Increased economic uncertainty, exacerbated by significant shifts in trade policy in recent weeks, is expected to elicit continued volatility.

In their *World Economic Outlook* published on April 22, 2025, the International Monetary Fund ("IMF") projected a slowdown in economic growth across the world because of newly announced United States tariffs that, if sustained, will be the highest in a century and likely result in a considerably higher global rate if counter tariffs are imposed. The IMF also noted the likelihood of inflation rising in connection with higher tariff rates. The authors of the report acknowledged the complexities and unpredictability of potentially worsening trade tensions, tightened financial conditions, and the effect of tariffs on exchange rates. Importantly, the IMF noted that easing trade policy stances or new trade agreements could immediately and positively influence global growth prospects.

Moving forward, additional shifts in trade, monetary and fiscal policies will influence the health of the global economy and, by extension, the metallurgical coal market. Depending on the severity and longevity of these policy effects, they may result in changes to natural coal trade flows, inflationary pressure on the cost of supplies and materials, or an adverse impact to Alpha's international competitiveness.

Metallurgical coal prices have experienced further deterioration during the first quarter of 2025. All four indices that Alpha closely monitors fell 8% or more throughout the quarter, with the Australian Premium Low Volatile index representing the most significant drop of 15.5%. The Australian Premium Low Volatile index decreased from \$199.90 per metric ton at the beginning of January, to \$169.00 per metric ton at the end of March. The U.S. East Coast Low Volatile index fell from \$190.00 per metric ton in January to \$174.00 per metric ton in March. The U.S. East Coast High Volatile A index decreased from \$185.00 per metric ton at the beginning of the quarter to \$168.00 per metric ton at quarter close, and the U.S. East Coast High Volatile B index moved from \$173.00 per metric ton to \$157.00 per metric ton at quarter end. Since then, all four indices have increased from their quarter-end levels. As of April 22, 2025, the Australian Premium Low Volatile index increased from quarter-close levels to \$187.60 per metric ton. The U.S. East Coast Low Volatile, High Volatile A, and High Volatile B indices measured \$178.00, \$170.50, and \$159.50 per ton, respectively, as of the same date.

The world manufacturing Purchasing Managers' Index ("PMI") recorded a decline in March's PMI of 50.3, representing a drop from February's level of 50.6 but remaining above the 50.0 neutral mark. India, a key market for Alpha, indicates healthy manufacturing activity, with a March PMI of 58.1, marking its highest level in eight months, up from 56.3 in February. China's PMI of 51.2 in March represents a four-month high, rising from its February level of 50.8. The United States' March PMI fell to 50.2 from 52.7 in February. Brazil's manufacturing sector PMI of 51.8 in March decreased from February's PMI of 53.0. Europe's March PMI of 48.6, up from February's PMI of 47.6, marks an increase for the third consecutive month but remains in a contractionary environment.

The March 2025 global crude steel production of 166.1 million metric tons from 69 countries, as reported by the World Steel Association, represented an increase of 2.9% compared to March 2024. China, the largest steel-producing country, produced 92.8 million metric tons in March, a 4.6% increase from its year-ago production level. India recorded the largest year-over-year percentage increase in March 2025 steel production, with its 13.8 million metric tons being 7.0% higher than its March 2024 levels. Japan's 7.2 million metric tons of steel produced in March 2025 was up 0.2% compared to March 2024,

while the United States produced 6.7 million metric tons of crude steel in March, down 1.5% from the year-ago period. Of the top ten steel-producing countries, Germany posted the most significant percentage drop of the group, as its 3.1 million metric tons of March production represented an 11.7% decrease from its year-ago figure. Regionally, the Asia and Oceania region, which contains both India and China, produced 123.6 million metric tons of crude steel in March 2025, an increase of 3.9% compared to its March 2024 mark. The European Union's March 2025 crude steel production of 11.7 million metric tons represented a slight increase of 0.2% from its year-ago period. North America produced 9.2 million metric tons in March, 1.4% more than its March 2024 level.

The American Iron and Steel Institute's capacity utilization rate for U.S. steel mills was 74.9% for the week ending April 19, 2025. This is down from the year-ago period when the capacity utilization rate was 76.3%.

In the seaborne thermal market, the API2 index was \$111.30 per metric ton as of the beginning of January and decreased to \$104.25 per metric ton on March 31, 2025.

Business Overview

We are a Tennessee-based mining company with operations in Virginia and West Virginia. With customers across the globe, high-quality reserves and significant port capacity, we are a leading supplier of metallurgical coal products to the steel industry. We operate high-quality, cost-competitive met coal mines across the CAPP coal basin. As of March 31, 2025, our operations consisted of nineteen active mines and eight active coal preparation and load-out facilities, with approximately 3,960 employees. We produce, process, and sell met coal and thermal coal as a byproduct. We also sell coal produced by others, some of which is processed and/or blended with coal produced from our mines prior to resale, with the remainder purchased for resale. As of December 31, 2024, we had 298.6 million tons of reserves, which included 287.8 million tons of proven and probable metallurgical reserves and 10.8 million tons of proven and probable thermal reserves.

For the three months ended March 31, 2025 and 2024, sales of met coal were 3.5 million tons and 4.0 million tons, respectively, and accounted for approximately 92% and 90%, respectively, of our coal sales volume in each period. Sales of thermal coal were 0.3 million tons and 0.4 million tons, respectively, and accounted for approximately 8% and 10%, respectively, of our coal sales volume.

Our sales of met coal were made primarily in several countries in Asia, Europe, and the Americas and to steel companies in the northeastern and midwestern regions of the United States. Our sales of thermal coal were made primarily to large utilities and industrial customers both in the United States and across the world. For the three months ended March 31, 2025 and 2024 approximately 75% and 81%, respectively, of our coal revenues were derived from coal sales made to customers outside the United States.

In addition, we generate other revenues from equipment sales, rentals, terminal and processing fees, coal and environmental analysis fees, royalties and the sale of natural gas. We also record freight and handling fulfillment revenue within coal revenues for freight and handling services provided in delivering coal to certain customers, which are a component of the contractual selling price.

As of March 31, 2025, we have one reportable segment: Met. Refer to Note 14 to our Condensed Consolidated Financial Statements for additional disclosures on reportable segments, geographic areas, and export coal revenue information.

As discussed in the "Market Overview" presented above, metallurgical coal prices remain at lower levels than in recent years due to weak global steel demand which has been influenced by a slowdown in manufacturing activity. Economic pressures, geopolitical uncertainty, and shifting trade policies have also contributed to metallurgical market challenges. Our results of operations for the three months ended March 31, 2025 were impacted by these factors.

Factors Affecting Our Results of Operations

Sales Agreements. We manage our commodity price risk for coal sales through the use of coal supply agreements. As of May 1, 2025, we had sales commitments for 2025 as follows:

	Tons	% Priced	Average Realized Price per Ton
Met - Domestic			\$152.05
Met - Export			\$113.29
Met Total	14.3 million	50 %	\$133.04
Thermal	1.0 million	100 %	\$80.75
Met Segment	15.3 million	55 %	\$125.90

Realized Pricing. Our realized price per ton of coal is influenced by many factors that vary by region, including (i) coal quality, which includes energy (heat content), sulfur, ash, volatile matter and moisture content; (ii) differences in market conventions concerning transportation costs and volume measurement; and (iii) regional supply and demand.

Costs. Our results of operations are dependent upon our ability to maximize productivity and control costs. Our primary expenses are for operating supply costs, repair and maintenance expenditures, costs of purchased coal, royalties, wages and benefits, freight and handling costs and taxes incurred in selling our coal. The principal goods and services we use in our operations include maintenance and repair parts and services, electricity, fuel, roof control and support items, explosives, tires, conveyance structures, ventilation supplies and lubricants. Our management strives to aggressively control costs and improve operating performance to mitigate external cost pressures. We experience volatility in operating costs related to fuel, explosives, steel, tires, contract services and healthcare, among others, and take measures to mitigate the increases in these costs at all operations. We have a centralized sourcing group for major supplier contract negotiation and administration, for the negotiation and purchase of major capital goods, and to support the business units. We promote competition between suppliers and seek to develop relationships with suppliers that focus on lowering our costs. We seek suppliers who identify and concentrate on implementing continuous improvement opportunities within their area of expertise. To the extent upward pressure on costs exceeds our ability to realize sales increases, or if we experience unanticipated operating or transportation difficulties, our operating margins would be negatively impacted. We may also experience difficult geologic conditions, delays in obtaining permits, labor shortages, unforeseen equipment problems, and unexpected shortages of critical materials such as tires, fuel and explosives that may result in adverse cost increases and limit our ability to produce at forecasted levels.

Results of Operations

Our results of operations for the three months ended March 31, 2025 and 2024 are discussed below.

Three Months Ended March 31, 2025 Compared to the Three Months Ended March 31, 2024

Revenues

The following table summarizes information about our revenues during the three months ended March 31, 2025 and 2024:

(In thousands, except for per ton data)	Three Months Ended March 31,		Increase (Decrease)	
	2025	2024	\$ or Tons	%
Coal revenues	\$ 529,667	\$ 861,283	\$ (331,616)	(38.5)%
Other revenues	2,290	2,789	(499)	(17.9)%
Total revenues	<u>\$ 531,957</u>	<u>\$ 864,072</u>	<u>\$ (332,115)</u>	<u>(38.4)%</u>
Tons sold	3,758	4,365	(607)	(13.9)%

Coal revenues. Coal revenues decreased \$331.6 million, or 38.5%, for the three months ended March 31, 2025 compared to the prior year period. The decrease was primarily attributable to a 28.6% decline in average coal sales realization as metallurgical coal pricing declined significantly as a result of weakened global steel demand. Coal sales volumes also declined 13.9% due to weather related production and transportation disruptions. Refer to the “Non-GAAP Coal revenues” section below for further detail on coal revenues for the three months ended March 31, 2025 compared to the prior year period.

Cost and Expenses

The following table summarizes information about our costs and expenses during the three months ended March 31, 2025 and 2024:

(In thousands)	Three Months Ended March 31,		Increase (Decrease)	
	2025	2024	\$	%
Cost of coal sales (exclusive of items shown separately below)	\$ 504,584	\$ 648,313	\$ (143,729)	(22.2)%
Depreciation, depletion and amortization	43,910	40,701	3,209	7.9 %
Accretion on asset retirement obligations	5,614	6,143	(529)	(8.6)%
Amortization of acquired intangibles, net	1,357	1,675	(318)	(19.0)%
Selling, general and administrative expenses (exclusive of depreciation, depletion and amortization shown separately above)	15,424	22,377	(6,953)	(31.1)%
Other operating loss	1,243	2,985	(1,742)	(58.4)%
Total costs and expenses	<u>\$ 572,132</u>	<u>\$ 722,194</u>	<u>\$ (150,062)</u>	<u>(20.8)%</u>

Cost of coal sales. Cost of coal sales decreased \$143.7 million, or 22.2%, for the three months ended March 31, 2025 compared to the prior year period, primarily related to a 13.9% decline in coal sales volumes due to weather related production and transportation disruptions. In addition, average cost of coal sales per ton decreased 9.6% primarily due to reductions in royalties and taxes as well as freight rates as a result of a lower coal pricing environment.

Depreciation, depletion and amortization. Depreciation, depletion and amortization increased \$3.2 million, or 7.9%, for the three months ended March 31, 2025 compared to the prior year period. The increase was primarily due to an increase in assets placed in service through March 2025.

Selling, general and administrative. Selling, general and administrative expenses decreased \$7.0 million, or 31.1%, for the three months ended March 31, 2025 compared to the prior year period. This decrease was primarily related to decreases of \$3.9 million in incentive pay, \$2.0 million in wages and benefits expenses, and \$0.7 million in professional fees.

Other operating loss. Other operating loss decreased \$1.7 million, or 58.4%, for the three months ended March 31, 2025 compared to the prior year period, primarily due to an increase in gain on sale of assets in the current period.

Total Other Expense, Net

The following table summarizes information about our total other expense, net during the three months ended March 31, 2025 and 2024:

(In thousands)	Three Months Ended March 31,		Increase (Decrease)	
	2025	2024	\$	%
Total other expense, net	\$ 5,209	\$ 718	\$ 4,491	625.5 %

Total other expense, net increased \$4.5 million, or 625.5%, for the three months ended March 31, 2025 compared to the prior year period, primarily related to increases in equity loss in affiliates and net periodic benefit costs for pension and black lung obligations.

Income Tax (Benefit) Expense

The following table summarizes information about our income tax (benefit) expense during the three months ended March 31, 2025 and 2024:

(In thousands)	Three Months Ended March 31,		Increase (Decrease)	
	2025	2024	\$	%
Income tax (benefit) expense	\$ (11,437)	\$ 14,165	\$ (25,602)	(180.7)%

Income tax benefit of \$11.4 million was recorded for the three months ended March 31, 2025 on a loss before income taxes of \$45.4 million. The effective tax rate of 25.2 % differs from the federal statutory rate of 21% primarily due to the change in valuation allowance, the permanent impact of percentage depletion, and stock compensation, partially offset by the impact of capital loss carryforward expirations and non-deductible compensation.

Income tax expense of \$14.2 million was recorded for the three months ended March 31, 2024 on income before income taxes of \$141.2 million. The effective tax rate of 10.0% differs from the federal statutory rate of 21% primarily due to the permanent impact of percentage depletion, foreign-derived intangible income deductions, and stock compensation, partially offset by the impact of non-deductible compensation and state income taxes, net of federal impact. Refer to Note 10 for additional information.

Non-GAAP Financial Measures

The discussion below contains “non-GAAP financial measures.” These are financial measures that either exclude or include amounts that are not excluded or included in the most directly comparable measures calculated and presented in accordance with generally accepted accounting principles in the United States (“U.S. GAAP” or “GAAP”). Specifically, we make use of the non-GAAP financial measures “Adjusted EBITDA,” “non-GAAP coal revenues,” “non-GAAP cost of coal sales,” and “non-GAAP coal margin.” In addition to net income, we use Adjusted EBITDA to measure the operating performance of our reportable segment. Adjusted EBITDA does not purport to be an alternative to net income as a measure of operating performance or any other measure of operating results, financial performance, or liquidity presented in accordance with GAAP. Moreover, this measure is not calculated identically by all companies and therefore may not be comparable to similarly titled measures used by other companies. Adjusted EBITDA is presented because management believes it is a useful indicator of the financial performance of our coal operations. We use non-GAAP coal revenues to present coal revenues generated, excluding freight and handling fulfillment revenues. Non-GAAP coal sales realization per ton for our operations is calculated as non-GAAP coal revenues divided by tons sold. We use non-GAAP cost of coal sales to adjust cost of coal sales to remove freight and handling costs, depreciation, depletion and amortization - production (excluding the depreciation, depletion and amortization related to selling, general and administrative functions), accretion on asset retirement obligations, amortization of acquired intangibles, net, and idled and closed mine costs. Non-GAAP cost of coal sales per ton for our operations is calculated as non-GAAP cost of coal sales divided by tons sold. Non-GAAP coal margin per ton for our coal operations is calculated as non-GAAP coal sales realization per ton for our coal operations less non-GAAP cost of coal sales per ton for our coal operations. The presentation of these measures should not be considered in isolation, or as a substitute for analysis of our results as reported under GAAP.

Management uses non-GAAP financial measures to supplement GAAP results to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. The definition of these non-GAAP measures may be changed periodically by management to adjust for significant items important to an understanding of operating trends and to adjust for items that may not reflect the trend of future results by excluding transactions that are not indicative of our core operating performance. Furthermore, analogous measures are used by industry analysts to evaluate the Company’s operating performance. Because not all companies use identical calculations, the presentations of these measures may not be comparable to other similarly titled measures of other companies and can differ significantly from company to company depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which companies operate, capital investments and other factors.

Included below are reconciliations of non-GAAP financial measures to GAAP financial measures.

The following tables summarizes certain financial information relating to our coal operations for the three months ended March 31, 2025 and 2024:

	Three Months Ended March 31,		Increase (Decrease)	
	2025	2024	\$ or Tons	%
<i>(In thousands, except for per ton data)</i>				
Coal revenues	\$ 529,667	\$ 861,283	\$ (331,616)	(38.5)%
Less: Freight and handling fulfillment revenues	(83,924)	(133,724)	49,800	37.2 %
Non-GAAP Coal revenues	\$ 445,743	\$ 727,559	\$ (281,816)	(38.7)%
Non-GAAP Coal sales realization per ton	\$ 118.61	\$ 166.68	\$ (48.07)	(28.8)%
Cost of coal sales (exclusive of items shown separately below)	\$ 504,584	\$ 648,313	\$ (143,729)	(22.2)%
Depreciation, depletion and amortization - production ⁽¹⁾	43,592	40,396	3,196	7.9 %
Accretion on asset retirement obligations	5,614	6,143	(529)	(8.6)%
Amortization of acquired intangibles, net	1,357	1,675	(318)	(19.0)%
Total Cost of coal sales	555,147	696,527	(141,380)	(20.3)%
Less: Freight and handling costs	(83,924)	(133,724)	49,800	37.2 %
Less: Depreciation, depletion and amortization - production ⁽¹⁾	(43,592)	(40,396)	(3,196)	(7.9)%
Less: Accretion on asset retirement obligations	(5,614)	(6,143)	529	8.6 %
Less: Amortization of acquired intangibles, net	(1,357)	(1,675)	318	19.0 %
Less: Idled and closed mine costs	(5,991)	(9,775)	3,784	38.7 %
Non-GAAP Cost of coal sales	\$ 414,669	\$ 504,814	\$ (90,145)	(17.9)%
Non-GAAP Cost of coal sales per ton	\$ 110.34	\$ 115.65	\$ (5.31)	(4.6)%
GAAP Coal margin	\$ (25,480)	\$ 164,756	\$ (190,236)	(115.5)%
GAAP Coal margin per ton	\$ (6.78)	\$ 37.74	\$ (44.52)	(118.0)%
Non GAAP Coal margin	\$ 31,074	\$ 222,745	\$ (191,671)	(86.0)%
Non GAAP Coal margin per ton	\$ 8.27	\$ 51.03	\$ (42.76)	(83.8)%
Tons sold	3,758	4,365	(607)	(13.9)%

⁽¹⁾ Depreciation, depletion and amortization - production excludes the depreciation, depletion and amortization related to selling, general and administrative functions.

Non-GAAP Coal revenues. Non-GAAP coal revenues decreased \$281.8 million, or 38.7%, for the three months ended March 31, 2025 compared to the prior year period. The decrease was primarily due to a \$48.07, or 28.8%, reduction in non-GAAP coal sales realization per ton as pricing declined significantly as a result of weakened global steel demand. Coal sales volumes also declined 13.9% due to weather related production and transportation disruptions.

Non-GAAP Cost of coal sales. Non-GAAP cost of coal sales decreased \$90.1 million, or 17.9%, for the three months ended March 31, 2025 compared to the prior year period, primarily related to a 13.9% decline in coal sales volumes due to weather related production and transportation disruptions. Average non-GAAP cost of coal sales per ton also decreased \$5.31, or 4.6%, due to reductions in royalties and taxes as a result of a lower coal pricing environment.

Adjusted EBITDA

The following table presents a reconciliation of net (loss) income to Adjusted EBITDA for the three months ended March 31, 2025 and 2024:

<i>(In thousands)</i>	Three Months Ended March 31,	
	2025	2024
Net (loss) income	\$ (33,947)	\$ 126,995
Interest expense	763	1,086
Interest income	(4,046)	(3,971)
Income tax (benefit) expense	(11,437)	14,165
Depreciation, depletion, and amortization	43,910	40,701
Non-cash stock compensation expense	3,437	2,769
Accretion on asset retirement obligations	5,614	6,143
Amortization of acquired intangibles, net	1,357	1,675
Adjusted EBITDA	<u>\$ 5,651</u>	<u>\$ 189,563</u>

The following table summarizes Adjusted EBITDA:

<i>(In thousands)</i>	Three Months Ended March 31,		Increase (Decrease)	
	2025	2024	\$	%
Adjusted EBITDA	\$ 5,651	\$ 189,563	\$ (183,912)	(97.0)%

Adjusted EBITDA decreased \$183.9 million, or 97.0%, for the three months ended March 31, 2025 compared to the prior year period, primarily driven by decreased coal margin due to lower non-GAAP coal sales realization per ton in the current period.

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are derived from existing unrestricted cash balances, proceeds from future coal sales, and amounts available under our revolving credit agreement. Our primary capital resource requirements stem from the cost of our coal production and purchases, selling and administrative expenses, taxes, capital expenditures, debt service obligations, reclamation obligations, and collateral requirements. As of March 31, 2025, we had \$2.4 million of long-term indebtedness outstanding, net of current portion, and no indebtedness and \$42.1 million letters of credit (“LCs”) outstanding under our ABL Facility (as defined below).

We believe that cash on hand and cash generated from our operations will be sufficient to meet our working capital, anticipated capital expenditure, income tax, debt service, collateral and reclamation obligations requirements for the next 12 months and the reasonably foreseeable future. We may also use cash in accordance with our share repurchase program. We rely on a number of assumptions in budgeting for our future activities. These include the costs for mine development to sustain capacity of our operating mines, our cash flows from operations, effects of regulation and taxes by governmental agencies, mining technology improvements and reclamation costs. These assumptions are inherently subject to significant business, political, economic, regulatory, environmental and competitive uncertainties, pending and existing climate-related initiatives, contingencies and risks, all of which are difficult to predict and many of which are beyond our control. For example, if the new authorization process for all self-insured coal mine operators is adopted, it would substantially increase the collateral required to secure our self-insured federal black lung obligations. Refer to the DCMWC Reauthorization Process section below for more information. Increased scrutiny of ESG matters specific to the coal sector could negatively influence our ability to raise capital in the future and result in a reduced number of surety and insurance providers. We may need to raise additional funds if market conditions deteriorate, if one or more of our assumptions prove to be incorrect or if we choose to expand our acquisition or development efforts or any other activity more rapidly than we presently anticipate and we may not be able to do so in a timely fashion, on terms acceptable to us, or at all. Additionally, we may elect to raise additional funds before we need them if the conditions for raising capital are favorable. We may seek to sell equity or debt securities or obtain additional bank credit facilities. The sale of equity securities could result in dilution to our stockholders. The incurrence of additional indebtedness could result in increased fixed obligations and additional covenants that could restrict our operations.

Liquidity

The following table summarizes our total liquidity as of March 31, 2025:

<i>(in thousands)</i>	March 31, 2025
Cash and cash equivalents	\$ 447,990
Credit facility availability ⁽¹⁾	112,851
Minimum liquidity requirement	(75,000)
Total liquidity	<u>\$ 485,841</u>

⁽¹⁾ Comprised of our unused commitments available under our credit agreement entered into on October 27, 2023 (the “ABL Agreement”) after considering \$42.1 million of outstanding LCs, subject to limitations described therein.

Cash Collateral

We are required to provide cash collateral to secure our obligations under certain workers’ compensation, black lung, reclamation-related obligations, financial payments and other performance obligations, and other operating agreements. Future regulatory changes relating to these obligations could result in increased obligations, additional costs, or additional collateral requirements which could require greater use of alternative sources of funding for this purpose, which would reduce our liquidity. Refer to the DCMWC Reauthorization Process section below for information related to the new authorization process for self-insured coal mine operators being implemented by the U.S. Department of Labor (Division of Coal Mine Workers’ Compensation). As of March 31, 2025, we had the following cash collateral on our Condensed Consolidated Balance Sheet:

<i>(in thousands)</i>	March 31, 2025
Long-term restricted cash	\$ 124,185
Long-term restricted investments	42,960
Long-term deposits	4,953
Total cash collateral	<u>\$ 172,098</u>

Off-Balance Sheet Arrangements

We are required to provide financial assurance in order to perform the post-mining reclamation required by our mining permits, pay workers’ compensation claims under workers’ compensation laws in various states, pay federal black lung benefits, and perform certain other obligations. In order to provide the required financial assurance, we generally use surety bonds for post-mining reclamation and workers’ compensation obligations. We also use bank LCs to collateralize certain obligations. As of March 31, 2025, we had the following outstanding surety bonds and LCs:

<i>(in thousands)</i>	March 31, 2025
Surety bonds	\$ 181,079
Letters of credit ⁽¹⁾	\$ 42,149

⁽¹⁾ The LCs outstanding are under the ABL Agreement.

Refer to Note 13, part (c) for further disclosures on off-balance sheet arrangements.

Debt Financing

Refer to Note 7 for disclosures on long-term debt including a subsequent event disclosure regarding an amendment and extension of the ABL Facility.

Capital Requirements

Our capital expenditures for the three months ended March 31, 2025 were \$38.5 million. We expect to spend between \$130 million and \$150 million on capital expenditures during 2025. At the midpoint of guidance, this total includes approximately \$98 million in sustaining maintenance capital, approximately \$32 million in planned projects to invest in mine development, and approximately \$10 million in carryover from 2024 due to timing and availability of supplies and contract labor.

Contractual Obligations

Our contractual obligations are discussed in the “Liquidity and Capital Resources—Contractual Obligations” section contained in our Annual Report on Form 10-K for the year ended December 31, 2024. There have been no material changes to our contractual obligations during the three months ended March 31, 2025.

Refer to Note 7 and Note 13 for additional disclosures on long-term debt and other commitments, respectively.

Business Updates

On March 25, 2025, Moody’s Investors Service assessed our Senior Secured Bank Credit Facility with a B1/LGD4 Rating and maintained our B1 Corporate Family Rating and SGL-2 Speculative Grade Liquidity Rating. The rating outlook was noted as stable. Should we receive any negative outlook ratings in the future, such negative outlook ratings would result in potential liquidity risks for us, including the risks of declines in our stock value, declines in our cash and cash equivalents, less availability and higher costs of additional credit, and requests for additional collateral by surety providers.

We own a 65.0% interest in DTA, a coal export terminal in Newport News, Virginia. DTA provides us with the ability to fulfill a broad range of customer coal quality requirements through coal blending, while also providing storage capacity and transportation flexibility. DTA needs capital investment to maximize functionality and minimize downtime due to mechanical issues. Under the terms of our partnership related agreements with respect to our investment in DTA, we are required to fund our proportionate share of DTA’s ongoing operating and capital costs. Beyond our share of routine operating costs, we expect we will invest an average of approximately \$27.0 million per year for infrastructure and equipment upgrades at DTA over the next 5 years. In addition, to mitigate the risk of shipment delays during the upgrade period, in April 2024, we entered into a 3-year agreement which would allow for the loading of 1.2 to 2.0 million tons of coal annually at a third party terminal in Newport News, VA.

We continually strive to enhance our capital structure and financial flexibility. We may refinance or repay outstanding debt, seek to amend our credit facility, undertake additional borrowings, sell assets or businesses or take other measures as we believe circumstances warrant. We may decide to pursue or not pursue these opportunities at any time. Access to additional funds from liquidity-generating transactions or other sources of external financing is subject to market conditions and certain limitations, including our credit rating and covenant restrictions in our credit facilities.

As a regular part of our business, we review opportunities for, and engage in discussions and negotiations concerning, the acquisition or disposition of coal mining and related infrastructure assets and interests in coal mining companies, and acquisitions or dispositions of, or combinations or other strategic transactions involving companies with coal mining or other energy assets. When we believe that these opportunities are consistent with our strategic plans and our acquisition or disposition criteria, we may make bids or proposals and/or enter into letters of intent and other similar agreements. These bids or proposals, which may be binding or non-binding, are customarily subject to a variety of conditions and usually permit us to terminate the discussions and any related agreement if, among other things, we are not satisfied with the results of due diligence. Any acquisition opportunities we pursue could materially affect our liquidity and capital resources and may require us to incur indebtedness, seek equity capital or both. There can be no assurance that additional financing will be available on terms acceptable to us, or at all.

Income Taxes

As of March 31, 2025, the Company has recorded federal income taxes receivable of \$0.5 million. Refer to Note 10 for further disclosures related to income taxes.

Pension Plan

We expect to pay \$16.5 million in minimum required contributions to the pension plan in 2025. Refer to Note 11 for further disclosures related to this obligation.

DCMWC Reauthorization Process

In January 2025, the DOL published a final rule revising the requirements and procedures for authorizing operators to self-insure their liabilities under the Black Lung Benefits Act (the “2025 Final Rule”), and we anticipate it would require a substantial increase in the collateral required to secure self-insured federal black lung obligations. Under the 2025 Final Rule’s 100% minimum collateral requirement, if this requirement is not modified or stayed through legal action, we estimate we would be required to provide approximately \$80.0 million to \$100.0 million of collateral to secure certain of our black lung obligations. The 2025 Final Rule permits us to use combinations of letters of credit, surety bonds, and cash to meet the collateral requirement. We received a letter from the Division of Coal Mine Workers’ Compensation (“DCMWC”) dated January 14, 2025, outlining the new procedures and application process for authorizing operators to self-insure under the new regulation. The letter outlined authorization form requirements and provided a 60-day period for the submission of the required documents. Subsequently, on February 20, 2025, we received a letter from the DCMWC stating that the 60-day deadline to provide information was no longer applicable and no information was required to be submitted at this time. DCMWC stated that additional guidance would be provided in due course after consultation with new DOL leadership. We continue to evaluate the potential impact of the 2025 Final Rule and await further communication from the DCMWC.

New York State Act

In December 2024, the state of New York adopted the Climate Change Superfund Act, purporting to impose significant, ongoing cash charges upon a variety of companies involved in the production and use of fossil fuels, including our company (the “Act”). Other states are contemplating adopting similar laws.

We believe that the new law is unconstitutional under the U.S. Constitution. In February 2025, we, along with numerous U.S. states and other entities involved in the fossil fuel industry, filed a complaint against the attorney general of New York and other New York officials. The complaint was filed in the federal district court for the Northern District of New York and requests that the court (a) declare that the Act is preempted by federal statutes and otherwise violates the U.S. Constitution, (b) declare that the Act is unenforceable, and (c) enjoin the state of New York and its officials from taking any action to implement or enforce the Act. On May 1, 2025, the U.S. Department of Justice and the Environmental Protection Agency filed a similar complaint against the State of New York, Kathleen Hochul in her capacity as Governor, Letitia James in her capacity as New York Attorney General and Amanda Lefton in her capacity as Acting Commissioner of the New York Department of Environmental Conservation in the Southern District of New York, requesting that the court declare the Act unconstitutional and permanently enjoin its implementation or enforcement.

Although we believe that the Act is very unlikely to be upheld, the outcome cannot be predicted with certainty. If the Act, or similar acts adopted in other U.S. states, were upheld, our liquidity would be materially, adversely affected.

Respirable Crystalline Silica Final Rule

In April 2024, MSHA issued its final rule, Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection, to reduce miner exposures to respirable crystalline silica and improve respiratory protection for all airborne hazards. The final rule lowers the permissible exposure limit of respirable crystalline silica at 50 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) for a full shift exposure, calculated as an 8-hour time weighted average, for all miners. The final rule also includes other requirements to protect miner health and update existing respiratory protection requirements. For coal mine operators, the deadline for compliance with the new rule is April 14, 2025. On April 4, 2025, the U.S. Court of Appeals for the Eighth Circuit (“Court”) granted a temporary administrative stay on the enforcement of the final rule. The Court will now consider whether to block enforcement permanently or allow enforcement to begin. Our compliance with these or any other new health and safety regulations could increase our mining costs substantially. Further, if we were ever found to be in violation of these regulations, we could face penalties or restrictions that may materially and adversely affect our operations, financial results and liquidity.

Climate Effect Disclosures

In March 2024, the Securities and Exchange Commission (“SEC”) adopted new rules requiring issuers to disclose certain climate-related information beginning in 2025. Shortly following their release, the rules were stayed by a federal court. The SEC subsequently stayed the rules pending resolution of ongoing litigation. On February 11, 2025, the SEC announced it will pause litigation of the climate disclosure rule. We cannot be certain whether or when these rules will take effect or what form they may ultimately take. It is therefore not presently possible to estimate reliably the potential effects of the rules upon the

company, including the potential costs associated with compliance.

Share Repurchase Program

Refer to “Unregistered Sales of Equity Securities and Use of Proceeds” for information on the share repurchase program.

Cash Flows

Cash, cash equivalents, and restricted cash decreased by \$32.0 million and increased by \$7.2 million over the three months ended March 31, 2025 and 2024, respectively. The net change in cash, cash equivalents, and restricted cash was attributable to the following:

	Three Months Ended March 31,	
	2025	2024
<i>Cash flows (in thousands):</i>		
Net cash provided by operating activities	\$ 22,181	\$ 196,074
Net cash used in investing activities	(47,775)	(68,859)
Net cash used in financing activities	(6,392)	(120,027)
Net (decrease) increase in cash and cash equivalents and restricted cash	<u>\$ (31,986)</u>	<u>\$ 7,188</u>

Operating Activities. Net cash provided by operating activities for the three months ended March 31, 2025 decreased compared to the prior year primarily due to a reduction in Met segment non-GAAP coal margin as discussed above in “Results of Operations”.

Investing Activities. The decrease in net cash used in investing activities for the three months ended March 31, 2025 compared to the prior year period was primarily related to a reduction in the level of capital expenditures. In recent years, capital expenditures were above routine maintenance levels as we invested in upgrading and improving facilities and equipment and the development of new mines. Capital expenditures for 2025 are lower given the significant expenditures in prior years combined with the temporary idling of our Checkmate mine in the fourth quarter of 2024 and an increased focus on cost control given the softening in the metallurgical coal pricing environment.

Financing Activities. The decrease in net cash used in financing activities for the three months ended March 31, 2025 compared to the prior year period was primarily driven by a reduction in the level of common stock repurchases, as share repurchases under our share repurchase program were suspended in the second quarter of 2024, and a reduction in common shares repurchased upon the vesting of stock grants.

Analysis of Material Debt Covenants

We were in compliance with all covenants under the ABL Agreement as of March 31, 2025, including the requirement that we maintain minimum liquidity, as defined in the ABL Agreement, of \$75.0 million. A breach of the covenants in the ABL Agreement could result in a default under the terms of the agreement, and the respective lenders could then elect to declare any amounts borrowed due and payable and require outstanding LCs to be cash collateralized. In addition, a default under the terms of the agreement would inhibit our ability to make certain restricted payments, as defined in the ABL Agreement, including the Company’s ability to repurchase shares of the Company’s common stock.

Critical Accounting Policies and Estimates

The preparation of financial statements in accordance with GAAP requires management to make estimates and assumptions that affect reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other factors and assumptions, including the current economic environment, that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis and adjust such estimates and assumptions as facts and circumstances require. Foreign currency and energy markets, and fluctuations in demand for steel products, have combined to increase the uncertainty inherent in such estimates and assumptions. As future events and their effects cannot be determined with precision, actual results may differ significantly from these estimates. Changes in these estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

Our critical accounting policies are discussed in the “Critical Accounting Policies and Estimates” section contained in our Annual Report on Form 10-K for the year ended December 31, 2024. Our critical accounting policies remain unchanged at March 31, 2025. During the quarter ended March 31, 2025, due to recent declines in metallurgical coal spot pricing, our Power Mountain, Elk Run and Kepler mining complexes were tested for impairment. Estimated future undiscounted cash flows were projected to significantly exceed each complex’s respective carrying value and no impairment charges were required. However, estimates of future cash flows are based on assumptions including future sales volumes, coal pricing, and production costs and changes in any of these assumptions could materially impact projected cash flows. Future impairment charges may occur if projected coal pricing weakens further or if mines are required to be idled for extended periods.

Additionally, refer to the Recent Accounting Guidance section in Note 1 for further information.

Item 3. *Quantitative and Qualitative Disclosures about Market Risk*

Commodity Price Risk

We manage our commodity price risk for coal sales through the use of coal supply agreements. Refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Factors Affecting Our Results of Operations” for information on our sales commitments for 2025.

We have exposure to commodity price risk for supplies that are used directly or indirectly in the normal course of production such as diesel fuel, steel and other items such as explosives. We manage our risk for these items through strategic sourcing contracts in normal quantities with our suppliers.

The market price of diesel fuel fluctuates due to changes in production, seasonality, and other market factors generally outside of our control. Increased fuel costs may have a negative impact on our results of operations and financial condition. As of March 31, 2025, our forecasted diesel fuel usage and fixed price diesel fuel purchase commitments for 2025 are as follows:

	Budgeted Usage in Gallons	% Priced	Average Realized Price per Gallon
Diesel fuel	21.4 million	81.6 %	\$2.81

Interest Rate Risk

As of March 31, 2025, we maintain a senior secured asset-based revolving credit facility, under which we may borrow up to \$155.0 million (less amounts outstanding for LCs). Any cash borrowings under the facility would bear a floating rate of interest. No cash borrowings were outstanding under the facility as of March 31, 2025 or December 31, 2024. Refer to Note 7 for additional information. Also refer to the “Financial Statements and Supplementary Data—Note 13” section contained in our Annual Report on Form 10-K for the year ended December 31, 2024 for discussion on the terms of our long-term debt.

As of March 31, 2025 and December 31, 2024, we had investments in trading securities of \$43.0 million and \$43.1 million, respectively, primarily consisting of U.S. government securities. While the fair value of these investments is exposed to risk with respect to changes in market rates of interest, we do not believe exposure to changes in interest rates is material to our Condensed Consolidated Financial Statements. We manage risk by investing in shorter term highly rated debt obligations. As of March 31, 2025 and December 31, 2024, the remaining maturities of our acquired debt securities was less than 12 months.

Foreign Currency Risk

Our transactions are denominated in U.S. dollars, and, as a result, we do not have material exposure to currency exchange-rate risks. However, our coal is sold internationally in U.S. dollars and, as a result, general economic conditions in foreign markets and changes in foreign currency exchange rates may provide our foreign competitors with a competitive advantage. If our competitors’ currencies decline against the U.S. dollar or against our foreign customers’ local currencies, those competitors may be able to offer lower prices for coal to customers. Furthermore, if the currencies of our overseas customers were to significantly decline in value in comparison to the U.S. dollar, those customers may seek decreased prices for the coal we sell to them. Consequently, currency fluctuations could adversely affect the competitiveness of our coal in international markets, which could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”), as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In accordance with Rule 13a-15(b) of the Exchange Act, we have evaluated, under the supervision of our CEO and our CFO, the effectiveness of disclosure controls and procedures as of March 31, 2025. Based on this evaluation, our CEO and our CFO concluded that our disclosure controls and procedures were effective as of March 31, 2025.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that occurred during the period covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Disclosure Controls and Procedures

Our CEO, our CFO and other members of management do not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Part II - Other Information

Item 1. Legal Proceedings

For a description of the Company’s legal proceedings, refer to Note 13, part (d), to the unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

Item 1A. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the risk factor below and the factors discussed in the “Risk Factors” section contained in the Company’s Annual Report on Form 10-K for the year ended December 31, 2024, together with the cautionary statement under the caption “Cautionary Note Regarding Forward-Looking Statements” included elsewhere in this Quarterly Report on Form 10-Q. These described risks are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

A period of sustained low demand for metallurgical coal (or “met coal”) by U.S. and foreign customers and the potential for negative trade impacts resulting from changing and unpredictable tariff policies could reduce the price of our coal, which would reduce our revenues.

Alpha produces coal that is sold directly to both U.S. and foreign customers and indirectly to foreign customers through U.S.-based companies. For the three months ended March 31, 2025 and the year ended December 31, 2024, coal export revenues accounted for approximately 75% and 78% of our coal revenues, respectively.

For the three months ended March 31, 2025 and the year ended December 31, 2024, met coal accounted for approximately 95% and 97% of our coal revenues, respectively. Any deterioration in conditions in the U.S. or foreign steel industries, including the demand for steel and the continued financial viability of the industry, could reduce the demand for our met coal and could impact the collectability of our accounts receivable from U.S. or foreign steel industry customers.

The demand for foreign-produced steel both in foreign markets and in the U.S. market also depends substantially on other factors such as tariff rates on steel. For example, in March 2025, President Trump implemented 25% tariffs, in addition to any existing special rates, on steel and aluminum pursuant to Section 232 of the Trade Expansion Act of 1962. These tariffs may lead to generally higher rates of steel production in the U.S. and therefore greater domestic demand for met coal. However, Alpha's export customers include foreign steel producers who may be markedly affected by these and similar tariffs to the extent their imports into the U.S. are curtailed as a result of tariffs. Retaliatory tariffs by foreign nations have already limited international trade and may adversely impact global economic conditions. Additional or augmented tariffs proposed and enacted under the Trump administration could in turn provoke additional retaliatory tariffs.

Further, as noted by the Federal Reserve's April 2025 Beige Book, "uncertainty around international trade policy was pervasive" in early 2025, and in many sectors companies have, because of "on-again, off-again tariffs," delayed capital expenditures and expressed concern regarding increasing inflationary pressures and the health of the U.S. economy generally. Alpha's ability to plan for future economic conditions is similarly limited by unpredictably evolving trade policies, and this limitation could negatively affect our future operating results.

In addition, the steel industry's demand for met coal is affected by a number of factors, including the variable nature of that industry's business, technological developments in the steel-making process and the availability of substitutes for steel, such as aluminum, composites and plastics. The U.S. steel industry increasingly relies on processes to make steel that do not use coke, such as electric arc furnaces or pulverized coal processes. As this trend continues, the amount of met coal that we sell and the prices that we receive for it in the U.S. could decrease, thereby reducing our revenues and adversely impacting our earnings and the value of our coal reserves. Lower demand for met coal in international markets for any reason would reduce the amount of met coal that we sell and the prices that we receive for it, thereby reducing our revenues and adversely impacting our earnings and the value of our coal reserves. Foreign government policies related to coal production and consumption could also negatively impact pricing and demand for our products.

Item 2. *Unregistered Sales of Equity Securities and Use of Proceeds*

Repurchase of Common Stock

The following table reflects the remaining amount available for repurchases pursuant to the Company's common share repurchase programs:

	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ⁽²⁾	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (In thousands) ⁽²⁾⁽³⁾⁽⁴⁾
January 1, 2025 through January 31, 2025	26,519	\$ 194.39	—	\$ 401,283
February 1, 2025 through February 28, 2025	—	\$ —	—	\$ 401,283
March 1, 2025 through March 31, 2025	—	\$ —	—	\$ 401,283
	<u>26,519</u>		<u>—</u>	

⁽¹⁾ All 26,519 common shares were repurchased from employees to satisfy the employees' statutory tax withholdings upon the vesting of stock grants. Shares that are repurchased to satisfy the employees' statutory tax withholdings are recorded in treasury stock at cost.

⁽²⁾ The total authorization to repurchase the Company's stock under the existing common share repurchase program adopted by the Company's Board of Directors on March 4, 2022 is \$1.5 billion.

⁽³⁾ The Company adopted a capital return program in 2019, including a stock repurchase plan with no expiration date that permitted the Company to repurchase up to an aggregate amount of \$100 million of the Company's common stock, of which \$67.6 million remains available. This amount is not included in the table above as the Company suspended this stock repurchase plan on October 1, 2019 and does not currently intend to make further repurchases under it.

⁽⁴⁾ The Company cannot estimate the number of shares that will be repurchased because decisions to purchase are subject to market and business conditions, levels of available liquidity, our cash needs, restrictions under agreements or obligations, legal or regulatory requirements or restrictions, and other relevant factors. This amount does not include stock repurchase related fees and excise taxes.

Item 4. *Mine Safety Disclosures*

Information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Quarterly Report on Form 10-Q.

Item 5. *Other Information*

(a) On May 6, 2025, the Company entered into the First Amendment to Credit Agreement and Security Agreement (the “First Amendment”), which amends (i) the Credit Agreement dated as of October 27, 2023 (the “Credit Agreement”), by and among the Company, certain Subsidiaries of the Company, as borrowers (the “Borrowers”), the other credit parties party thereto from time to time, as guarantors (the “Guarantors”), the lenders party thereto from time to time and Regions Bank, as administrative agent, collateral agent, swingline lender and LC issuer (the “Agent”), and (ii) the Security Agreement dated as of October 27, 2023, by and among the Company, the other Borrowers, the Guarantors and the Agent.

Pursuant to the First Amendment, the Credit Agreement was amended to, among other changes, (i) increase the revolving commitments, and the letter of credit sublimit, under the Credit Agreement to \$225 million, (ii) increase the swingline sublimit to \$22.5 million, (iii) reduce the interest rate margin range to 2.25%-2.75% for Term SOFR Loans and 1.25%-1.75% for Base Rate Loans, in each case, based on quarterly average excess availability, (iv) extend the stated revolving commitment termination date to May 4, 2029, and (v) permit the incurrence of up to \$500 million of senior secured notes or senior unsecured convertible notes subject to the satisfaction of certain terms and conditions, including, without limitation, the execution and delivery of an acceptable intercreditor agreement in connection with the incurrence of any indebtedness in the form of senior secured notes.

The above summary of the First Amendment is not a complete description thereof and is qualified in its entirety by the full text of such agreement which is filed as Exhibit 10.1 and incorporated herein by reference.

(b) None.

(c) Trading Plans

During the quarter ended March 31, 2025, no director or officer adopted or terminated:

- (i) Any contract, instruction or written plan for the purchase or sale of securities of the Company intended to satisfy the affirmative defense conditions of Rule 10b5-1(c); or
- (ii) Any “non-Rule 10b5-1 trading arrangement” as defined in paragraph (c) of item 408(a) of Regulation S-K.

Item 6. *Exhibits*

Refer to the Exhibit Index.

Exhibit Index

Exhibit No.	Description of Exhibit
3.1	<u>Third Amended and Restated Certificate of Incorporation of Alpha Metallurgical Resources, Inc. (Incorporated by reference to Exhibit 3.1 on Form 8-K of Alpha Metallurgical Resources, Inc. filed on May 23, 2024)</u>
3.2	<u>Fourth Amended and Restated Bylaws of Alpha Metallurgical Resources, Inc. (Incorporated by reference to Exhibit 3.1 on Form 8-K of Alpha Metallurgical Resources, Inc. filed on December 2, 2022)</u>
10.1*	<u>First Amendment to Credit Agreement and Security Agreement, dated as of May 6, 2025, by and among Alpha Metallurgical Resources, Inc. and certain of its subsidiaries as Borrowers and/or Guarantors, Regions Bank as Lender, Swing Line Lender, LC Issuer, Administrative Agent and Collateral Agent, and other Lenders from time to time party thereto</u>
31*	<u>Certifications Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to §302 of the Sarbanes-Oxley Act of 2002</u>
32**	<u>Certifications Pursuant to 18 U.S.C. §1350, As Adopted Pursuant to §906 of the Sarbanes-Oxley Act of 2002</u>
95*	<u>Mine Safety Disclosure Exhibit</u>
101*	The following financial information from Alpha Metallurgical Resources, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2025 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) Condensed Consolidated Statements of Operations, (ii) Condensed Consolidated Statements of Comprehensive (Loss) Income, (iii) Condensed Consolidated Balance Sheets, (iv) Condensed Consolidated Statements of Cash Flows, (v) Condensed Consolidated Statements of Stockholders' Equity, and (vi) Notes to the Condensed Consolidated Financial Statements.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith

** Furnished herewith

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the duly authorized undersigned.

ALPHA METALLURGICAL RESOURCES, INC.

Date: May 9, 2025

By: /s/ J. Todd Munsey

Name: J. Todd Munsey

Title: Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

FIRST AMENDMENT TO CREDIT AGREEMENT AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT AND SECURITY AGREEMENT (this “Amendment”) is made and entered into as of this 6th day of May, 2025, by and among (A) **ALPHA METALLURGICAL RESOURCES, INC.**, a Delaware corporation (the “Company”); (B) the Subsidiaries of the Company identified on the signature pages hereto as “Borrowers” (each of such Subsidiaries, together with the Company, jointly and severally, the “Borrowers” and each, individually, a “Borrower”); (C) the Subsidiaries of the Company identified on the signature pages hereto as “Guarantors” (each of such Subsidiaries, jointly and severally, the “Guarantors” and each, individually, a “Guarantor”); Guarantors and Borrowers, collectively referred to herein as “Credit Parties” and each, individually, a “Credit Party”; (D) the financial institutions party hereto (each, a “Lender” and, collectively, the “Lenders”); (E) **REGIONS BANK**, an Alabama bank (“Regions Bank”), in its capacities as a Lender, the Swing Line Lender (as defined in the Credit Agreement (as defined below)) and LC Issuer (as defined in the Credit Agreement); and (F) Regions Bank, in its capacities as administrative agent and collateral agent (together with its successors and assigns in such capacities, “Administrative Agent,” “Collateral Agent” or “Agent”) for Lenders, LC Issuer, and other Secured Parties (as defined in the Credit Agreement).

Recitals:

Borrowers, Guarantors, the Lenders, Swing Line Lender, LC Issuer, and Agent are parties to a certain Credit Agreement, dated as of October 27, 2023 (as at any time heretofore amended, restated, supplemented, or otherwise modified, the “Credit Agreement”), pursuant to which the Lenders have made loans and other financial accommodations to Borrowers.

Borrowers, Guarantors, and Agent are parties to a certain Security Agreement, dated as of October 27, 2023 (as at any time heretofore amended, restated, supplemented, or otherwise modified, the “Security Agreement”), pursuant to which Borrowers and Guarantors granted to Agent, for the benefit of Secured Parties, Liens on certain of its assets.

Borrowers, Guarantors, and Agent are parties to a certain Pledge Agreement, dated as of October 27, 2023 (as at any time heretofore amended, restated, supplemented, or otherwise modified, the “Pledge Agreement”), pursuant to which certain Borrowers and Guarantors pledged to Agent, for the benefit of Secured Parties, all of their Equity Interests in the Issuers (as defined therein).

Each of FirstBank and Goldman Sachs Lending Partners LLC (collectively, “New Lenders” and each, individually, a “New Lender”) desires to provide a Revolving Commitment and, in connection therewith, to become a Lender under the Credit Agreement pursuant to **Section 5** below.

The parties desire to amend the Credit Agreement and the Security Agreement in certain respects as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby severally acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Capitalized terms used in this Amendment, unless otherwise defined herein, shall have the meaning ascribed to such terms in the Credit Agreement.

2. **Amendments to Credit Agreement.** Subject to satisfaction of the conditions precedent set forth in **Section 11** hereof, the Credit Agreement is hereby amended as follows:

(a) The Credit Agreement (excluding any exhibits, schedules, annexes, appendices or other attachments thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the Credit Agreement attached hereto as **Exhibit A**.

(b) The Credit Agreement is hereby amended by deleting Appendix A to the Credit Agreement and by substituting in lieu thereof Appendix A attached hereto.

(c) The Credit Agreement is hereby amended by adding in the appropriate sequence Exhibit I in the form attached hereto.

(d) The Credit Agreement is hereby amended by deleting Schedule 1.1(c) to the Credit Agreement and by substituting in lieu thereof Schedule 1.1(c) attached hereto.

(e) The Credit Agreement is hereby amended by deleting Schedule 7.7 to the Credit Agreement and by substituting in lieu thereof Schedule 7.7 attached hereto.

3. Amendments to Security Agreement. Subject to satisfaction of the conditions precedent set forth in **Section 11** hereof, the Security Agreement is hereby amended as follows:

(a) The Security Agreement (excluding any exhibits, schedules, annexes, appendices or other attachments thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the Security Agreement attached hereto as **Exhibit B**.

(b) The Security Agreement is hereby amended by deleting Schedule 4 to the Security Agreement and by substituting in lieu thereof Schedule 4 attached hereto.

4. Amendment to Pledge Agreement. Subject to satisfaction of the conditions precedent set forth in **Section 11** hereof, (i) Agent's Lien on the Equity Interests of Alpha Metallurgical Terminal, LLC is hereby released and (ii) the Pledge Agreement is hereby amended by deleting the following from Annex A to the Pledge Agreement:

Alpha Metallurgical Terminal, LLC (FKA Contura Terminal, LLC)	Alpha Metallurgical Resources, LLC (FKA Contura Energy, LLC)	LLC membership interest	N/A	100%	N/A

5. Joinder of New Lenders; Representations, Warranties, and Agreements of New Lenders. Each New Lender, by its signature hereto, hereby agrees to become a "Lender" under the Credit Agreement and the other Loan Documents with the same force and effect as if originally party thereto as a Lender. Additionally, in connection with its agreement to become a Lender, each New Lender hereby makes the following representations, warranties, and agreements:

(a) Each New Lender hereby represents and warrants that it has full power and authority, and has taken all action necessary, to execute and deliver this Amendment and to consummate the transactions contemplated hereby and to join to the Credit Agreement as a Lender thereunder;

(b) Each New Lender hereby agrees that from and after the date hereof, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and shall have the obligations of a Lender thereunder;

(c) Each New Lender represents and warrants that it qualifies as an Eligible Assignee under the Credit Agreement;

(d) Each New Lender represents and warrants that it is sophisticated with respect to its decision to become a Lender under the Credit Agreement and either it or the Person exercising discretion in making such decisions is experienced in making its decision to be a Lender;

(e) Each New Lender confirms that it has received copies of the Credit Agreement and has received, or has been accorded an opportunity to receive, copies of the most recent financial statements delivered pursuant to Section 8.6 of the Credit Agreement and such other documents and information that it has deemed appropriate;

(f) Each New Lender confirms that it has made its own credit analysis and decision to enter into this Amendment and to join as a New Lender to the Credit Agreement;

(g) Each New Lender agrees that it will, independently and without reliance on Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; and

(h) Each New Lender will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by such New Lender as a Lender.

6. Ratification and Reaffirmation. Each Credit Party hereby ratifies and reaffirms the Obligations, each of the Loan Documents, and all of such Credit Party's covenants, duties, indebtedness and liabilities under the Loan Documents. Each Guarantor affirms that nothing contained herein shall modify in any respect whatsoever its respective guaranty of the Obligations and reaffirms that such guaranty is and shall remain in full force and effect.

7. Acknowledgments and Stipulations. Each Credit Party acknowledges and stipulates that (a) each of the Loan Documents executed by such Credit Party creates legal, valid, and binding obligations of such Credit Party that are enforceable against such Credit Party in accordance with the terms thereof; (b) all of the Obligations are owing and payable without defense, offset or counterclaim (and to the extent there exists any such defense, offset or counterclaim on the date hereof, the same is hereby knowingly and voluntarily waived by such Credit Party); (c) the security interests and Liens granted by Credit Parties in favor of Agent are duly perfected, first priority security interests and Liens (subject, in the case of priority, only to Permitted Liens which are expressly permitted by the Loan Documents to have priority); and (d) on and as of May 2, 2025, the unpaid principal amount of the Revolving Loans totaled \$-0- and LC Obligations totaled \$42,148,751.00.

8. Representations and Warranties. Each Credit Party represents and warrants to Agent and Lenders, to induce Agent and Lenders to enter into this Amendment, that (a) no Default or Event of Default exists on the date hereof or would occur after giving effect to this Amendment; (b) the execution, delivery and performance of this Amendment have been duly authorized by all requisite limited liability

company or corporate, as applicable, action on the part of such Credit Party and this Amendment and the other Loan Documents delivered in connection herewith have been duly executed and delivered by such Credit Party; and (c) all of the representations and warranties made by such Credit in the Credit Agreement and the other Loan Documents are true and correct in all material respects (provided in the case of any representation or warranty qualified as to “materiality, “Material Adverse Effect” or similar language shall be true and correct, after giving effect to such qualification, in all respects) on and as of the date hereof, except for representations and warranties in the Credit Agreement and other Loan Documents that expressly relate to an earlier date, which representations and warranties shall be true and correct in all material respects (or in all respects, as applicable) as of such earlier date.

9. Reference to Credit Agreement. Upon the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement,” “hereunder,” or words of like import shall mean and be a reference to the Credit Agreement, as amended by this Amendment.

10. Breach of Amendment. This Amendment shall be part of the Credit Agreement and a breach of any representation, warranty or covenant herein shall constitute an Event of Default.

11. Conditions Precedent. The effectiveness of the amendments contained in **Section 2**, **Section 3** and **Section 4** hereof is subject to the satisfaction of each of the following conditions precedent, in form and substance satisfactory to Agent, unless satisfaction thereof is specifically waived in writing by Agent:

(a) Agent shall have received duly executed counterparts of this Amendment from each Credit Party, each Lender, and LC Issuer;

(b) each Lender, where applicable, shall have received from Borrowers a duly executed Revolving Note or an amended and restated Revolving Note, as applicable, and Swing Line Lender shall have received from Borrowers an amended and restated Swing Line Note;

(c) Agent shall have received an omnibus certificate from the secretary, assistant secretary, or other authorized officer of each Credit Party (but excluding for avoidance of doubt any Immaterial Restricted Subsidiary), dated as of the date hereof, (i) attaching and certifying resolutions of the board of directors (or other equivalent governing body) of such Credit Party authorizing the execution and delivery of this Amendment and all other documents, instruments, or other agreements referenced herein or executed in connection herewith, (ii) certifying that there have been no amendments or modifications to the Organizational Documents of such Credit Party since its Organizational Documents were certified to Agent and Lenders on the Closing Date (or otherwise attaching true, correct, and complete copies of its Organizational Documents and all amendments thereto), (iii) certifying that there have been no changes to the officers since the officers and their respective incumbencies were certified to Agent and Lenders on the Closing Date (or otherwise attaching updated officer slates and their respective incumbencies), and (iv) attaching and certifying certificates of good standing or existence from the Secretary of State of the jurisdiction of organization of each Credit Party as of recent date;

(d) Agent shall have received a certificate, dated as of the date hereof and signed by a Responsible Officer of the Company, in its capacity as Borrower Representative, certifying that (i) no Default or Event of Default exists after giving effect to this Amendment, (ii) the conditions of this **Section 10** and **Section 6.2** of the Credit Agreement are satisfied (it being understood that such conditions in **Section 6.2** of the Credit Agreement shall be required to be satisfied as if a Loan were being made on the date hereof regardless of whether a Loan is actually made on such date), (iii) after giving effect to this Amendment and the transactions contemplated hereby, the representations and warranties in **Section 7** of this Amendment shall be true and correct in all material respects (provided in the case of any representation or warranty

qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct, after giving effect to such qualification, in all respects) on the date hereof, and (iv) after giving effect to this Amendment and the transactions contemplated hereby, the Company and its Subsidiaries are Solvent;

(e) Agent shall have received appropriate UCC and Lien searches requested by Agent;

(f) as contemplated by **Section 12** hereof, Agent shall have received the fees as contemplated by that certain Fee Letter, dated February 25, 2025, between Regions Bank, Regions Capital Markets, and the Company, together with all reasonable and documented fees and expenses of Agent required to be paid or reimbursed by Credit Parties, including all reasonable and documented fees and expenses of counsel to Agent;

(g) Agent shall have received written opinion(s) of counsel to Credit Parties (but excluding for avoidance of doubt any opinions as to any Immaterial Restricted Subsidiary), including any local counsel to Credit Parties, in form and substance satisfactory to Agent; and

(h) Agent shall have received such other agreements, documents, and instruments as Agent and Lenders may reasonably require.

12. Fees and Expenses of Agent. Borrowers shall pay to Agent the fees described in the Fee Letter in accordance therewith. Additionally, Borrowers, jointly and severally, agree to pay, **on demand**, all costs and expenses incurred by Agent in connection with the preparation, negotiation and execution of this Amendment and any other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable and documented costs and fees of Agent’s legal counsel and any taxes, filing fees and other expenses associated with or incurred in connection with the execution, delivery or filing of any instrument or agreement referred to herein or contemplated hereby.

13. Governing Law. This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any conflict of law principles or other rule of law that would cause the application of the law of any jurisdiction other than the law of the State of New York (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

14. No Novation, etc. Except as otherwise expressly provided in this Amendment, nothing herein shall be deemed to amend or modify any provision of the Credit Agreement or any of the other Loan Documents, each of which shall remain in full force and effect. This Amendment is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction, and the Credit Agreement as herein modified shall continue in full force and effect.

15. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. Further Assurances. Each Credit Party agrees to take such further actions as Agent shall reasonably request from time to time in connection herewith to evidence or give effect to the amendments set forth herein or any of the transactions contemplated hereby.

17. Miscellaneous. This Amendment may be executed in any number of counterparts and by different parties to this Amendment on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any manually executed signature page to this Amendment delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature hereto. Section titles and references used in this

Amendment shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreements among the parties hereto. This Amendment expresses the entire understanding of the parties with respect to the subject matter hereof and may not be amended except in a writing signed by the parties.

18. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AMENDMENT.

[Remainder of page left intentionally blank; signatures begin on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers on the date first above written.

BORROWERS:

ALPHA METALLURGICAL RESOURCES, INC., as
“Borrower Representative” and as a “Borrower”

By: /s/ J. Todd Munsey
Name: **J. Todd Munsey**
Title: Chief Financial Officer

**ALPHA NATURAL RESOURCES HOLDINGS,
INC.**

By: /s/ J. Todd Munsey
Name: **J. Todd Munsey**
Title: Chief Financial Officer

**ALPHA METALLURGICAL COAL SALES, LLC
ARACOMA COAL COMPANY, LLC
BLACK CASTLE MINING COMPANY, LLC
DICKENSON-RUSSELL CONTURA, LLC
ELK RUN COAL COMPANY, LLC
KINGSTON MINING, INC.
MARFORK COAL COMPANY, LLC
NICHOLAS CONTURA, LLC
PARAMONT CONTURA, LLC
REPUBLIC ENERGY, LLC
SPARTAN MINING COMPANY, LLC**

By: /s/ J. Todd Munsey
Name: **J. Todd Munsey**
Title: Treasurer

ALPHA METALLURGICAL RESOURCES, LLC

By: /s/ J. Todd Munsey
Name: **J. Todd Munsey**
Title: President

[Signatures continue on the following page.]

GUARANTORS:

**ALPHA METALLURGICAL SERVICES, LLC
ANR, INC.**

By: /s/ J. Todd Munsey
Name: **J. Todd Munsey**
Title: Chief Financial Officer

**CONTURA CAPP LAND, LLC
BOONE EAST DEVELOPMENT CO., LLC
SIDNEY COAL COMPANY, LLC
LAXARE, INC.
APPALACHIA COAL SALES COMPANY, LLC
ALPHA APPALACHIA SERVICES, LLC
ALPHA METALLURGICAL TERMINAL, LLC
BARNABUS LAND COMPANY
ALPHA NATURAL RESOURCES SERVICES,
LLC
MAXXIM SHARED SERVICES, LLC
GOALS COAL COMPANY
ALPHA NATURAL RESOURCES, LLC
DELBARTON MINING COMPANY, LLC
ALPHA LAND AND RESERVES, LLC
MAXXIM REBUILD CO., LLC
BLACK KING MINE DEVELOPMENT CO.
PIONEER FUEL CORPORATION
FOUNDATION ROYALTY COMPANY
LITWAR PROCESSING COMPANY, LLC
RIVERSIDE ENERGY COMPANY, LLC
HIGHLAND MINING COMPANY
POWER MOUNTAIN CONTURA, LLC
ALEX ENERGY, LLC
BANDMILL COAL LLC
BROOKS RUN SOUTH MINING, LLC
KEPLER PROCESSING COMPANY, LLC
RUM CREEK COAL SALES, INC.
MOUNTAIN EMPIRE LAND &
CONSERVATION, LLC
ALPHA AMERICAN COAL COMPANY, LLC
ALPHA AMERICAN COAL HOLDING, LLC
ALPHA APPALACHIA HOLDINGS, LLC**

By: /s/ J. Todd Munsey
Name: J. Todd Munsey
Title: Treasurer

[Signatures continue on the following page.]

ALPHA COAL SALES CO., LLC
ALPHA EUROPEAN MARKETING, LLC
ALPHA EUROPEAN SALES, LLC
ALPHA INDIA, LLC
ALPHA NATURAL RESOURCES
INTERNATIONAL, LLC
APPALACHIA HOLDING COMPANY, LLC
BARBARA HOLDINGS INC.
BELFRY COAL CORPORATION
CLEAR FORK COAL COMPANY
CONTURA FREEPORT, LLC
ENTERPRISE MINING COMPANY, LLC
INDEPENDENCE COAL COMPANY, LLC
JACKS BRANCH COAL COMPANY
KANAWHA ENERGY COMPANY, LLC
KNOX CREEK COAL CORPORATION
LOGAN I, LLC
LOGAN III, LLC
LYNN BRANCH COAL COMPANY, INC.
MARTIN COUNTY COAL, LLC
NICEWONDER CONTRACTING, INC.
OLD ANR, LLC
OMAR MINING COMPANY, LLC
PERFORMANCE COAL COMPANY, LLC
PREMIUM ENERGY, LLC
RAWL SALES & PROCESSING CO., LLC
ROAD FORK DEVELOPMENT COMPANY, LLC
ROSTRAVER ENERGY COMPANY
TRACE CREEK COAL COMPANY
WABASH MINE HOLDING COMPANY

By: /s/ J. Todd Munsey
Name: **J. Todd Munsey**
Title: Treasurer

[Signatures continue on the following page.]

AGENT, LC ISSUER, AND LENDERS:

REGIONS BANK, an Alabama bank,
as “Agent” “LC Issuer,” and as a “Lender”

By: /s/ Will M. Decamps
Name: **Will M. Decamps**
Title: Vice President

[Signatures continue on the following page.]

TEXAS CAPITAL BANK, as a “Lender”

By: /s/ Megan Perkins

Name: Megan Perkins

Title: Vice President

[Signatures continue on the following page.]

SERVISFIRST, as a “Lender”

By: /s/ Matt Bontrager

Name: Matt Bontrager

Title: Vice President

[Signatures continue on the following page.]

**WEBSTER BUSINESS CREDIT, A DIVISION OF
WEBSTER BANK, N.A., as a “Lender”**

By: /s/ John R. Saffioti
Name: John R. Saffioti
Title: Director

[Signatures continue on the following page.]

NEW LENDERS:

FIRSTBANK, as a “Lender”

By: /s/ Jerry C. Greene

Name: Jerry C. Greene

Title: Senior Vice President

[Signatures continue on the following page.]

GOLDMAN SACHS LENDING PARTNERS LLC,
as a “Lender”

By: /s/ Andrew B. Vernon

Name: Andrew Vernon

Title: Authorized Signatory

EXHIBIT A

Conformed Copy of Credit Agreement

(See attached.)

EXHIBIT A
MARKED VERSION REFLECTING CHANGES
PURSUANT TO THE FIRST AMENDMENT
TO CREDIT AGREEMENT
ADDED TEXT SHOWN UNDERScoreD
DELETED TEXT SHOWN ~~STRIKETHROUGH~~

CREDIT AGREEMENT

by and among

ALPHA METALLURGICAL RESOURCES, INC.,
AND CERTAIN OF ITS SUBSIDIARIES,
JOINTLY AND SEVERALLY, as the “Borrowers”

ANY OTHER CREDIT PARTIES PARTY HERETO FROM TIME TO TIME,
THE FINANCIAL INSTITUTIONS PARTY HERETO FROM TIME TO TIME, as the “Lenders”

and

REGIONS BANK, as the “Administrative Agent”

and

REGIONS CAPITAL MARKETS, a division of Regions Bank as Book Runner and Lead Arranger

and

SERVISFIRST BANK and TCBI SECURITIES, INC., as Joint Book Runners and Joint Lead
Arrangers

October 27, 2023,

as amended by that certain First Amendment to Credit Agreement and Security Agreement dated as of
May 6, 2025

Information has been redacted from this exhibit, as indicated by black boxes, that is (i) not material and (ii) would likely cause competitive harm to the company if publicly disclosed. If requested by the SEC or its staff, the company will promptly provide an unredacted copy of the exhibit on a supplemental basis.

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APPENDICES, EXHIBITS AND SCHEDULES

APPENDICES

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EXHIBITS

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Exhibit B	Form of Assignment Agreement
Exhibit C	Form of Notice of Borrowing
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Exhibit E	Form of Borrowing Base Certificate
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SCHEDULES

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Schedule 7.10	Intellectual Property
Schedule 7.16	Litigation
Schedule 7.17	Restrictive Agreements
Schedule 7.22	ERISA Plans
Schedule 7.23	Environmental Matters
Schedule 7.25	Labor Relations and Related Matters
Schedule 9.1	Existing Debt
Schedule 9.2	Existing Liens
Schedule 9.4(a)	Existing Investments
Schedule 9.4(x)	Existing Joint Ventures
Schedule 9.9	Affiliate Transactions

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “Agreement”) dated as of October 27, 2023, is made by and among (A) **ALPHA METALLURGICAL RESOURCES, INC.**, a Delaware corporation (the “Company”); (B) the Subsidiaries of the Company identified on the signature pages hereto and any other Subsidiaries of the Company that may become Borrowers hereunder pursuant to **Section 8.14** (each of such Subsidiaries, together with the Company, jointly and severally, the “Borrowers” and, each, a “Borrower”); (C) any other Credit Parties party hereto from time to time; (D) the financial institutions from time to time party hereto (each, a “Lender” and, collectively, the “Lenders”); (E) **REGIONS BANK**, an Alabama bank (as further defined below, “Regions Bank”), in its capacities as a Lender, the Swing Line Lender (as defined below) and LC Issuer (as defined below); and (F) Regions Bank, in its capacities as administrative agent and collateral agent for Lenders, LC Issuer and other Secured Parties (defined below) (Regions Bank, acting in such latter capacities, and as further defined below, “Administrative Agent,” “Collateral Agent” or “Agent”).

WITNESSETH:

WHEREAS, Credit Parties have requested that Administrative Agent and the Lenders establish a revolving credit facility in favor of Borrowers and that LC Issuer establish a letter of credit sub-facility for the account of Borrowers, all for the purposes set forth herein; and

WHEREAS, Administrative Agent, the Lenders, and LC Issuer are willing to provide such revolving credit facility and letter of credit sub-facility to Borrowers subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, each Credit Party, Administrative Agent, each Lender, and LC Issuer, each intending to be legally bound, hereby covenant and agree as follows:

SECTION 1.

DEFINITIONS; RULES OF CONSTRUCTION

1.1 **Definitions.** Capitalized terms that are not otherwise defined herein or, as applicable, any other Loan Documents, shall have the meanings set forth in this **Section 1.1**. As used in this Agreement (including in the introductory paragraph, the recitals, and the Annexes, Exhibits and Schedules hereto) and, as applicable, any other Loan Documents, the following terms shall have the following meanings:

“ABL Priority Collateral” means the Collateral other than Term Priority Collateral.

“Acceptable Credit Support” means (a) a credit insurance policy satisfactory to Administrative Agent in its Reasonable Credit Judgment (including, without limitation, as to the creditworthiness of the insurance company issuing such policy, the scope and amount of coverage, any deductibles and any other terms and conditions applicable thereto, with it being understood that the existing credit insurance policies issued by Euler Hermes North America Insurance Company are satisfactory to Administrative Agent as of the Closing Date), so long as the limits and terms of such credit insurance policy are being complied with and for which Administrative Agent is named as the beneficiary, loss payee or additional insured so as to insure that Administrative Agent has the right to receive payments thereunder or (b) an irrevocable letter of credit satisfactory to Administrative Agent in its Reasonable Credit Judgment

(including, without limitation, as to the issuer or domestic confirming bank with respect thereto, and the form and substance thereof), in each case, that has been delivered to Administrative Agent.

“Acceptable Foreign Jurisdiction” means each of Luxembourg, Italy, Spain, France, Sweden, Austria, Finland, Germany and Switzerland.

“Accounts Receivable Report” has the meaning set forth in **Section 8.6(a)(i)**.

“ACH” has the meaning given to such term in the definition of “Bank Products.”

“Acquisition” means any acquisition (whether by purchase, exchange, issuance of stock, or other equity or Debt securities, merger, Division, reorganization, amalgamation, or any other method and whether by a single transaction or a series of related or unrelated transactions) by any Credit Party or Subsidiary of (a) any Voting Equity Interests issued by any other Person, but only if such acquisition results in such Credit Party or Subsidiary’s owning fifty percent (50%) or more of such Voting Equity Interests or otherwise obtaining Control of such Person; (b) all or substantially all of the assets of any other Person; or (c) assets that constitute all or any substantial part of any division, line of business or other operating unit of the business of any other Person.

“Administrative Agent,” “Collateral Agent” or “Agent” means Regions Bank, in its capacity as administrative agent, collateral agent or agent for Lenders, LC Issuer and each other Secured Party, together with its successors and assigns.

“Administrative Agent Indemnitees” means Administrative Agent, its Related Parties and all Administrative Agent Professionals.

“Administrative Agent Professionals” means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Administrative Agent at any time or from to time in connection with, or pursuant to, the terms of this Agreement or any other Loan Document.

“Administrative Questionnaire” means an administrative questionnaire provided by each Lender to Administrative Agent in connection herewith in a form supplied or approved by Administrative Agent for such purpose.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the knowledge of any Credit Party or any of its Subsidiaries, threatened in writing, in each case, against any Credit Party or any of its Subsidiaries or any material Property of any Credit Party or any of its Subsidiaries (including an Insolvency Proceeding or appellate proceeding).

“Affected Financial Institution” means (i) any EEA Financial Institution, and (ii) any UK Financial Institution.

“Affected Lender” has the meaning set forth in **Section 14.1(b)**.

“Affected Loan” has the meaning set forth in **Section 14.1(b)**.

“Affiliate” means, with respect to a specified Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with the Person specified, or that is a

director, officer, manager or partner of such Person. Without limitation of the foregoing, for purposes of this definition, “Control,” when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

“Agent Party” and “Agent Parties” have the respective meanings given to such term in **Section 15.1(d)(i)**.

“Aggregate Revolving Obligations” means, at any time of determination, the sum (without duplication) of (a) the outstanding principal amount of all Revolving Loans (including Swing Line Loans, Over Advance Loans and Protective Advances) and (b) the outstanding amount of all LC Obligations.

“Agreement” has the meaning set forth in the preamble hereto.

“Allocable Amount” has the meaning given such term in **Section 5.7(c)(ii)**.

“Anti-Corruption Laws” means the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq, the UK Bribery Act of 2010 and all other laws, rules, and regulations of any jurisdiction applicable to any Credit Party or any of its Affiliates from time to time concerning or relating to bribery or corruption.

“Anti-Terrorism Laws” means any laws relating to the prevention of terrorism or money laundering, including the PATRIOT Act and all OFAC rules and regulations, including Executive Order 13224.

“Applicable Law” means all laws, rules and regulations applicable to the Person, conduct, transaction, agreement, or matter in question, including all applicable statutory law, common law, and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders, and decrees of Governmental Authorities. Without limitation of the foregoing, “Applicable Law” includes all Anti-Corruption Laws, Anti-Terrorism Laws, the Beneficial Ownership Regulation, the Code, the Commodity Exchange Act, all Debtor Relief Laws, any Bail-In Legislation, all Environmental Laws, ERISA, the Exchange Act, FACTA, the FDPA, the FLSA, all Mining Laws, and the UCC.

“Applicable Margin” means, subject to the terms of this definition, with respect to any Type of Loan and at any time of determination, the percentage rate per annum set forth in the following table, as determined by reference to Average Excess Availability for the calendar quarter preceding each Determination Date, as further described below:

<u>Level</u>	<u>Average Excess Availability</u>	<u>Term SOFR</u>	<u>Base Rate</u>
<u>I</u>	<u>Greater than 75% of the Loan Limit</u>	<u>2.25%</u>	<u>1.25%</u>
<u>II</u>	<u>Greater than or equal to 50% of the Loan Limit but less than or equal to 75% of the Loan Limit</u>	<u>2.50%</u>	<u>1.50%</u>
<u>III</u>	<u>Less than 50% of the Loan Limit</u>	<u>2.75%</u>	<u>1.75%</u>

“Applicable Margin” means as to Revolving Loans, made as (a) Base Rate Loans, two percent (2.0%) per annum, and (b) Term SOFR Loans, three percent (3.0%) per annum.

The Applicable Margin shall be subject to reduction or increase, as applicable and as set forth in the table above, on a quarterly basis on each Determination Date, and any such reduction or increase shall be

automatic and without notice to any Person. Without limiting Administrative Agent's or Required Lenders' rights to invoke the Default Rate, as provided in Section 3.1(a), if (a) the Borrowing Base Certificate and related reports setting forth the Borrowing Base and the basis therefor are not received by Administrative Agent on or before the applicable dates required pursuant to Section 8.6(a), as applicable, or (b) an Event of Default occurs and, in either case, Administrative Agent or Required Lenders so elect, then, in each case, from the date such Borrowing Base Certificate or related reports were required to be delivered or the date such Event of Default occurred, as applicable, the Applicable Margin shall, at the option of Administrative Agent or the Required Lenders, be at the Level with the highest rates of interest until such time as such Borrowing Base Certificate and related reports are received by Administrative Agent and any Event of Default (whether resulting from a failure to timely deliver such Borrowing Base Certificate and related reports or otherwise) is waived in accordance with the terms of this Agreement.

Any of the foregoing to the contrary notwithstanding, on and after the First Amendment Date to, but not including, the first Determination Date, the Applicable Margin shall be equal to the rates set forth in Level I. As used herein, "Determination Date" means the first day of each January, April, July, and October, beginning with the first of such quarterly dates immediately following the First Amendment Date.

If any Borrowing Base Certificate or any other report on which Excess Availability or Average Excess Availability is determined or reported to Administrative Agent is shown to be inaccurate (regardless of whether this Agreement or any Commitments are or remain in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin actually applied for such Applicable Period, then (A) Borrowers shall immediately deliver to Administrative Agent a correct Borrowing Base Certificate or related report for the Applicable Period; (B) the Applicable Margin for such Applicable Period shall be determined by reference to such Borrowing Base Certificate or related report; and (C) Borrowers shall pay Administrative Agent, **ON DEMAND**, the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period and any other additional fee or charge that was based, in whole or in part, on the Applicable Margin, which payment shall be promptly applied by Administrative Agent for its own account and the account of Lenders and LC Issuer, as applicable, in accordance with the terms hereof. If any inaccurate Borrowing Base Certificate or other report on which Excess Availability or Average Excess Availability is determined would, if corrected, have led to the application of a lower Applicable Margin for any period for which interest has already been paid, none of the Secured Parties shall be required to refund or return any portion of such interest. The foregoing payment obligation shall survive any termination of this Agreement.

"Approved Fund" means any Entity that (a) is (or will be) engaged in making, purchasing, holding, or otherwise investing in commercial loans and similar extensions of credit in its ordinary course of activities and (b) is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) an Entity or an Affiliate of an Entity that administers or manages a Lender.

"Approved Intercreditor Agreement" means an intercreditor agreement to be entered into by the Administrative Agent and Senior Notes Agent in connection with a Permitted Bond Transaction, which shall be in substantially the form of Exhibit I hereto with such modifications to which Administrative Agent may agree in its reasonable discretion, provided that the definition of "ABL Priority Collateral" includes Accounts, Inventory, As Extracted Collateral, cash, Deposit Accounts, and Securities Accounts, in each case, with substantially the same scope as set forth in Exhibit I.

“**Arranger**” means RCM, acting in its capacity as book runner and lead arranger together with any other Lender or Affiliate of any other Lender so designated as book runner and lead arranger on the cover page to this Agreement.

“**Article 9 Control**” means, with respect to any asset, right, or Property with respect to which a security interest therein is perfected by a secured party’s having “control” thereof (whether pursuant to the terms of an agreement or through the existence of certain facts and circumstances), that Administrative Agent or a Lender, as the case may be, has “control” of such asset, right, or Property in accordance with the terms of Article 8 or Article 9 of the UCC. Without limitation of the foregoing, so long as Regions Bank is Administrative Agent, Administrative Agent shall be deemed to have “control” of any Funding Account, Collections Account, Securities Account, Commodity Account or Deposit Account maintained with Regions Bank or any Affiliate of Regions Bank, including any maintained by or through Regions Bank or any agents or correspondents acting on behalf of Regions Bank without the necessity of having an Article 9 Control Agreement executed in connection therewith; provided, that, without limiting the generality of the foregoing, each Credit Party owning any Deposit Accounts, Commodity Accounts or Securities Accounts, other than any Excluded Account, shall promptly, upon request from Administrative Agent (but in any event not later than thirty (30) days after receipt of such request, unless otherwise approved by Administrative Agent), execute and deliver to Administrative Agent an Article 9 Control Agreement in its favor, in its capacities as secured party and depository institution, regarding such Deposit Accounts and Securities Accounts.

“**Article 9 Control Agreement**” means an agreement among Administrative Agent or a Lender, as the case may be, any one or more of Credit Parties and another Person pursuant to which Article 9 Control is established in favor of Administrative Agent or such Lender with respect to any asset, right or Property of a Credit Party, or Credit Parties, including any Deposit Account, Commodity Account or Securities Account, or any funds or securities, respectively, on deposit therein, situated at or with such Person(s).

“**Asset Disposition**” means, with respect to any Person, a sale, assignment, Division, lease, license, Consignment, transfer, abandonment, or other disposition of such Person’s Property, including a disposition of Property in connection with a sale-leaseback transaction, synthetic lease, securitization or similar arrangement. Notwithstanding the foregoing, none of the following shall constitute an Asset Disposition: (a) the sale or issuance of any Convertible Notes Debt by the Company in connection with a Permitted Convertible Debt Transaction, (b) the purchase, sale, or entry into a Permitted Convertible Debt Hedge by the Company in connection with the issuance of Convertible Notes Debt, or any amendment, restatement, supplement or other modification permitted by this Agreement, (c) the settlement, unwinding or termination of any Permitted Convertible Debt Hedge permitted by this Agreement, or (d) the issuance of cash or capital stock (other than Disqualified Equity Interests) of the Company pursuant to the conversion or redemption of Convertible Notes Debt permitted by this Agreement.

“**Assignment Agreement**” means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of each other party hereto whose consent is required by **Section 13.1(b)**) and accepted by Administrative Agent, in substantially the form of Exhibit B or any other form (including electronic documentation generated by MarkitClear or other electronic Platform in which said parties are participants) requested or approved by Administrative Agent in its discretion from time to time.

“**Auto Borrow Agreement**” has the meaning specified in **Section 2.3(b)(vi)**.

“Auto-Extension Letter of Credit” has the meaning specified in **Section 2.4(a)(vi)**.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date.

“Average Excess Availability” means, for any tested period, Excess Availability for each day of such period, divided by the number of days in such period.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of the applicable Resolution Authority.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank Product Agreement” means any agreement between one or more Credit Parties and a Bank Product Provider evidencing the making available of any Bank Product by such Bank Product Provider to such Credit Party. The foregoing includes, without limitation, Swap Agreements.

“Bank Product Obligations” means, without duplication, (a) all Debts, liabilities and other obligations of any Credit Party to any Bank Product Provider arising under, pursuant to or in connection with Bank Products, and (b) without duplication, all amounts that Administrative Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Administrative Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to any Bank Products provided by such Bank Product Provider to a Credit Party or any of its Subsidiaries.

“Bank Product Provider” means (a) any of Regions Bank and its Affiliates, and (b) any other Person that (i) at the time it enters into a Bank Product Agreement, is a Lender or an Affiliate of a Lender, or (ii) in the case of a Bank Product Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or becomes, within thirty (30) days thereafter, a Lender or an Affiliate of a Lender. For purposes hereof, the term “Lender” shall be deemed to include Administrative Agent.

“Bank Product Reserve” means an amount determined from time to time by Administrative Agent in its Reasonable Credit Judgment as a Reserve for Bank Product Obligations.

“Bank Products” means all bank, banking, financial, and other similar or related products, services, and facilities offered or provided by any Bank Product Provider to any Credit Party, including (a) merchant card services, credit or stored value cards and corporate purchasing cards; (b) cash management, treasury, and related products and services, including depository and checking services, Deposit Accounts (whether operating, money market, investment, collections, payroll, trust, disbursement, or other Deposit Accounts), Securities Accounts, automated clearinghouse (“ACH”) transfers of funds and any other ACH services, remote deposit capture, lockboxes, account reconciliation and information reporting, controlled disbursements, wire and other electronic funds transfers, e-payable,

overdraft protection, stop payment services and fraud protection services (all of the products and services described in this clause (b), collectively, “Treasury Services”); (c) bankers’ acceptances, drafts, documentary services, foreign currency exchange services; (d) Swap Obligations and other Obligations arising under Swap Agreements; (e) supply chain finance arrangements; and (f) leases and other banking products or services, other than (for avoidance of any doubt) Letters of Credit and Loans.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Event of Default” means an Event of Default under either **Section 11.1(k)** or **Section 11.1(l)**.

“Base Rate” means, for any day, the rate per annum equal to the greatest of (a) the Prime Rate in effect on such day; (b) the Federal Funds Rate in effect on such day plus one-half of one percent (1/2%) per annum; and (c) Term SOFR for a one-month tenor in effect on such day plus the SOFR Adjustment plus one percent (1%) per annum. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Term SOFR shall be effective on the effective date of such change in the Prime Rate, Federal Funds Rate or Term SOFR, respectively, automatically and without notice to any Person. Notwithstanding anything contained herein to the contrary, if the Base Rate, as so determined, is ever less than zero percent (0%) per annum, then, the Base Rate shall be deemed to be zero percent (0%) per annum for all purposes of this Agreement and the other Loan Documents.

“Base Rate Loan” means a Loan that bears interest at a rate based on the Base Rate plus the Applicable Margin.

“Base Rate Revolving Loan” means a Revolving Loan bearing interest at a rate based on the Base Rate.

“Benchmark” means, initially, the Term SOFR Reference Rate; or, if any Benchmark Replacement is incorporated into this Agreement pursuant to **Section 14.1**, then, “Benchmark” means the applicable Benchmark Replacement.

“Benchmark Conforming Changes” means, with respect to the use, administration of or any conventions associated with Term SOFR or any implementation of a Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Term SOFR,” the definition of “Term SOFR Reference Rate,” the definition of “SOFR Adjustment,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such applicable rate and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides in its reasonable discretion that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines in its reasonable discretion that no market practice for the administration of such applicable rate exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Benchmark Illegality/Impracticability Event” means that the making, maintaining or continuation of the then current Benchmark (i) 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) any successor administrator of the published screen rate for such Benchmark or a Governmental Authority having jurisdiction over Administrative Agent or the administrator of such Benchmark has made a public statement establishing a specific date (whether expressly or by virtue of such public statement) after which an Available Tenor of such Benchmark or the published screen rate for such Benchmark shall or will no longer be representative or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to Administrative Agent, that will continue to provide such representative interest periods of such Benchmark after such specific date, or (iii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the ability of a Lender to make, maintain or continue its Loans at the then-current Benchmark (including, without limitation, because the published screen rate for such Benchmark in any relevant tenor is not available or published on a current basis and such circumstances are unlikely to be temporary) or (iv) the then-current Benchmark (including any related mathematical or other adjustments thereto) will not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining its Loans at the then-current Benchmark. For the avoidance of doubt, a “Benchmark Illegality/Impracticability Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Replacement” means the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document:

(x) the sum of: (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment; and

(y) the sum of: (i) the alternate benchmark rate that has been selected by Administrative Agent and Borrowers giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Borrowers giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” has the meaning specified in **Section 14.1(b)(ii)**.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership of any Credit Party as required by the Beneficial Ownership Regulation, and otherwise to be in form and substance satisfactory to Administrative Agent.

“Beneficial Ownership Regulation” means 31 CFR Section 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

“Black Lung Act” means, collectively, the Black Lung Benefits Revenue Act of 1977, as amended and the Black Lung Benefits Reform Act of 1977, as amended.

“Board of Governors” means the Board of Governors of the Federal Reserve System.

“Borrower” and “Borrowers” have the respective meanings set forth in the preamble hereto.

“Borrower Representative” has the meaning given such term in **Section 4.3**.

“Borrowing” means a group of Loans of one Type that are made on the same day or are converted into Loans of one Type on the same day.

“Borrowing Base” means, at any time:

(a) The sum of (i) 90% of the total amount of Eligible Billed Accounts that are subject to Acceptable Credit Support and (ii) 85% of the total amount of Eligible Billed Accounts that are not subject to Acceptable Credit Support; plus

(b) 75% of the total amount of Eligible Unbilled Accounts not to exceed the lesser of (i) \$35,000,000 and (ii) an amount equal to 50% of the amount determined pursuant to clauses (a) and (b) of this definition (disregarding the effect of this clause (ii)); plus

(c) (i) Until receipt by Administrative Agent of the initial Qualified Appraisal with respect to Borrower’s Coal Inventory, 55% of the Inventory Value of Borrower’s Eligible Inventory; and (ii) at all times thereafter, the lesser of (i) 85% of the NOLV Percentage of Eligible Inventory (as determined by reference to the most recent Qualified Appraisal) and (ii) 85% of the Inventory Value of Eligible Inventory; provided, that the aggregate amount included under this clause (c) shall not exceed 50% of the amount equal to the sum of clauses (a), (b), (c) (disregarding the effect of this proviso) and (d) of this definition;

(d) 100% of Borrowing Base Qualified Cash; minus

(e) Reserves.

“Borrowing Base Certificate” means a borrowing base certificate substantially in the form of Exhibit E or such other form as may be requested by or acceptable to Administrative Agent from time to time in its Reasonable Credit Judgment.

“Borrowing Base Qualified Cash” means the Qualified Cash set forth on the most recent Borrowing Base Certificate (it being understood that any Borrowing Base Qualified Cash maintained at

Regions Bank shall be held in a Deposit Account used exclusively for such purposes as identified by Borrowers and Administrative Agent).

“Building” means a Building as defined in 12 CFR Chapter III, Section 339.2 (Loans in Areas Having Special Flood Hazards).

“Business Day” means (a) 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 provided, that with respect to notices and determinations in connection with, and payments of principal and interest on, Term SOFR Loans, such day is also a U.S. Government Securities Business Day.

“Capital Expenditures” means, with respect to any Person for any fiscal period, the aggregate amount of all expenditures incurred by any Person to acquire or repair and maintain fixed assets, plant, and equipment (including renewals and replacements) during such period, that would be required to be capitalized on the balance sheet of such Person in accordance with GAAP.

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

“Cash Collateral” has the meaning given to such term in the definition of “Cash Collateralize.”

“Cash Collateralize” means, to pledge and deposit with or deliver to Administrative Agent, LC Issuer or Swing Line Lender, as applicable (including in the LC Cash Collateral Account), as collateral for the LC Obligations or Swing Line Loans, as applicable, or obligations of Lenders to fund participations in respect thereof, cash or Deposit Account balances or, if Administrative Agent, LC Issuer or Swing Line Lender, as applicable, may agree, each in its discretion, other credit support, in each case pursuant to documentation in form and substance, and in an amount (but not less than one hundred three percent (103%) of the obligated amount), in each case, satisfactory to Administrative Agent, such LC Issuer and/or Swing Line Lender, as applicable, in its or their discretion. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support including any cash and any interest or other income earned thereon.

“Cash Dominion Event” means (a) the occurrence of an Event of Default or (b) the failure of Borrowers to maintain Liquidity equal to or greater than \$90,000,000 at any time.

“Cash Dominion Period” means the period beginning on the date of a Cash Dominion Event and ending on the date that (a) no Event of Default exists and (b) Liquidity has been equal to or greater than \$90,000,000 for a period of thirty (30) consecutive calendar days as of such date; provided, that the termination of a Cash Dominion Period pursuant to the foregoing shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions to the occurrence of a Cash Dominion Event again arise.

“Cash Equivalents” means, as of any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally Guaranteed as to interest and principal by the United States government, or (ii) 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 (1) year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) 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; (c) commercial paper maturing no more than one (1) year from the date of creation thereof 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; (d) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender's submission or re-submission of a capital plan under 12 C.F.R. Section 225.8 or a Governmental Authority's assessment thereof, shall, in each case of clauses (i), (ii) or (iii) above, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means (a) an event or series of events by which any "Person" or "Group" (within the meaning of Sections 13(d) and 14(d) under the Exchange Act) is or shall (i) be the "beneficial owner" (as so defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act) of thirty-five percent (35%) or more on a fully diluted basis of the voting and/or economic interest in the capital stock or other Equity Interests of the Company, or (ii) has obtained the power (whether or not exercised) to elect a majority of the members of the board of directors or other equivalent Governing Body of the Company; or (b) a "Change of Control" (or any term of similar import) under and as defined in, as applicable, the Permitted Bond Agreement or the documentation for a Permitted Convertible Debt Transaction.

"Chesapeake Bay Piers" means Curtis Bay Piers, 1910 Benhill Avenue, Baltimore, Maryland 21226.

"Claims" means all liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs, disbursements, and expenses of any kind (including the reasonable fees and costs, and expenses of attorneys and paralegals, experts, agents, consultants, and advisors (provided, that, the fees and expenses of counsel that are reimbursable pursuant hereto shall in any event be limited to one primary counsel to Administrative Agent Indemnitees and one primary counsel to any other Indemnitees, one local counsel to the Indemnitees in each jurisdiction, that it determines to be necessary, one specialty counsel to the Indemnitees in each specialty area that they determine to be necessary (including insolvency law), and one or more additional counsel to the Indemnitees in the case of an actual or potential conflict of interest), and Extraordinary Expenses) at any time (including before or after the Closing Date, after Payment in Full of the Obligations, or resignation or replacement of Administrative Agent) incurred by or asserted against or imposed on any Indemnatee as a result of, or arising from or in connection with, (a) any Loans, Letters of Credit, Loan Documents, or the use thereof or transactions

relating thereto; (b) any action taken or omitted to be taken by any Indemnitee in connection with any Loan Documents; (c) the existence or perfection of any Liens, or realization upon any Collateral; (d) exercise of any rights or remedies under any Loan Documents or Applicable Law; or (e) failure by any Credit Party to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any Adverse Proceeding, whether or not the applicable Indemnitee is a party thereto.

“Clean Coal” means Coal having been extracted from a Mine and having been put through the washing process.

“Closing Date” means the date first inscribed hereinabove, unless pursuant to **Section 6.1** the date on which the initial Loan is made or initial Letter of Credit is issued occurs after such date, in which case the term “Closing Date” shall mean such later date unless otherwise elected by Administrative Agent.

“Coal” means (a) coal owned by the Company or any of its Subsidiaries, or coal that the Company or any of its Subsidiaries has the right to extract, in each case located on, under or within, or produced or severed from the Real Estate owned by, or leased or licensed to, the Company or any of its Subsidiaries and (b) coal purchased by the Company or any of its Subsidiaries from a third party.

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

“Coal Inventory” means any Inventory consisting of Coal that has been extracted and severed from a Mine.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

“Collateral Disclosure Certificate” shall have the meaning set forth in the Security Agreement.

“Collection Account” means a Deposit Account established or maintained by a Credit Party at Regions Bank or another bank acceptable to Administrative Agent, that is utilized solely for purposes of receiving or collecting payments made by such Credit Party’s Account Debtors and other Proceeds of Collateral and over which Administrative Agent shall have exclusive Article 9 Control to withdraw or otherwise direct the disposition of funds on deposit therein.

“Colona Dock” means 1755 Pennsylvania Avenue, Monaca, Pennsylvania 15061.

“Commitment” means, for any Lender, the amount of such Lender’s Revolving Commitment. “Commitments” means the aggregate amount of all Revolving Commitments.

“Commitment Termination Date” means the earliest to occur of the following: (a) the Stated Revolving Commitment Termination Date; (b) the date on which Borrowers terminate the Revolving Commitments pursuant to **Section 2.1(c)**; and (c) the date on which the Revolving Commitments are terminated pursuant to **Section 11.2**.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

“Compliance Certificate” means a certificate in the form of Exhibit F or such other form as may be requested or approved by Administrative Agent from time to time.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) on a consolidated basis in accordance with the applicable principles of consolidation under GAAP consistently applied. The term “Consolidating” when used in such regard shall have a correlative meaning.

“Consolidated Net Tangible Assets” means, as of any particular time, the total of all the assets appearing on the most recent consolidated balance sheet prepared in accordance with GAAP of the Credit Parties as of the end of the last fiscal quarter for which financial information is available (less applicable reserves and other properly deductible items) after deducting from such amount (a) all current liabilities, including current maturities of long-term debt and current maturities of obligations under Financing Leases (other than any portion thereof maturing after, or renewable or extendable at the option of the Credit Parties beyond, twelve months from the date of determination); and (b) the total of the net book values of all assets of the Credit Parties properly classified as intangible assets under GAAP (including goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangible assets).

“Contamination” means the presence or Environmental Release or threat of Environmental Release of Hazardous Materials in, on, under or emanating to or from the real property, whether owned or leased, of any Credit Party or any Subsidiary of a Credit Party, which pursuant to Environmental Laws requires notification or reporting to a Governmental Authority, or which pursuant to Environmental Laws requires performance of a Remedial Action or which otherwise constitutes a violation of Environmental Laws.

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

“Control” (and any correlative terms, including “common control,” “controlling” and “controlled by”) means the power to direct or control, or have a controlling influence over, the management or policies of a Person or any Property, whether by ownership, the voting of Equity Interests, by contract or otherwise.

“Convertible Notes Debt” means the Debt incurred in connection with a Permitted Convertible Debt Transaction.

“Credit Party” means (a) each Borrower and each Guarantor that is party to this Agreement as of the Closing Date or that, by execution of a Joinder Agreement, agrees to become a “Borrower,” a “Guarantor” or a “Credit Party” under this Agreement on or after the Closing Date, and (b) each other Person (including any Subsidiary) that is or becomes liable for payment of any Obligations or that has granted or grants a Lien in favor of Administrative Agent on any of its Properties to secure the payment or performance of any Obligations.

“CSX Toledo Docks” means the coal terminal located at 600 Millard Avenue, Oregon, Ohio 43616.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if Administrative Agent decides that any such convention is not administratively feasible for Administrative Agent, then Administrative Agent may establish another convention in its reasonable discretion.

“Debt” means, with respect to any Person and without duplication as to such Person, any indebtedness, obligation or liability, (a) that (i) arises in respect of borrowed money, (ii) is evidenced by bonds, notes, debentures, or similar instruments, including, for the avoidance of doubt, any Convertible Notes Debt (other than obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, reclamation bonds, wage bonds, bonds issued in favor of any Governmental Authority and completion guarantees, bank guarantees and similar contingent obligations or with respect to worker’s compensation benefits), or (iii) accrues interest or is a type upon which interest or finance charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), (b) representing the balance deferred and unpaid of the purchase price of any Property or services (other than (x) an account payable to a trade creditor incurred in the Ordinary Course of Business of such Person, (y) obligations under coal leases (including federal coal leases), and (z) obligations for take-or-pay arrangements), (c) representing obligations of a lessee under leases that have been, or should be, in accordance with GAAP, recorded as Capital Lease Obligations, (d) all Guarantees of such Person in respect of any of the foregoing Debt of any other Person (but excluding any performance and completion Guarantees of such Person), (e) representing obligations with respect to redeemable stock and mandatory redemption or repurchase obligations under any Equity Interests or other equity securities issued by such Person, except to the extent such obligations can be satisfied with Equity Interests of such Person, (f) representing reimbursement obligations and other liabilities of such Person with respect to letters of credit, bankers’ acceptances, drafts or similar documents or instruments issued for such Person’s account (solely to the extent such surety bonds, letters of credit, bankers’ acceptances or other similar documents or instruments have been drawn and remain unreimbursed), (g) representing any net obligations, liabilities, and debt of such Person (marked-to-market) arising under Swap Agreements, (h) representing any indebtedness, obligation or liability of any partnership or joint venture in which such Person is a general partner or a joint venture member to the extent such Person is liable therefor as a result of such Person’s ownership interest in such Entity, except to the extent that the terms of such arrangement expressly provide that such Person is not liable therefor or such Person has no liability therefor under Applicable Law, (i) representing the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP, (j) representing indebtedness, liabilities or obligations of such Person under conditional sale or other title retention agreements relating to Property purchased by such Person, and (k) representing Earn-Outs (but only to the extent that such Earn-Out is required to be included as a liability on the balance sheets of such person in accordance with GAAP); provided, that in no event shall Debt include (i) deferred or prepaid revenues; (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, (iii) asset retirement obligations, ~~or~~ (iv) obligations (other than obligations with respect to Debt for borrowed money or other Debt evidenced by loan agreements, bonds, notes or debentures or similar instruments or letters of credit (solely to the extent such letters of credit or other similar instruments have been drawn and remain unreimbursed) (or, without duplication, reimbursement agreements in respect thereof)) related to surface rights under an agreement for the acquisition of surface rights for the production of coal reserves in the ordinary course of business in a manner consistent with historical practice of the

Company and its Subsidiaries, or (v) any Permitted Convertible Debt Hedge. Debt shall be calculated without giving effect to the effects of Accounting Standards Codification Topic 815 “Derivatives and Hedging” and related interpretations to the extent such effects would otherwise increase or decrease an amount of Debt for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Debt.

“Debt Rating” means, as of any date of determination, the monitored rating as determined by S&P and Moody’s of a Person’s non-credit-enhanced, senior unsecured long-term debt.

“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 laws providing debtor relief or otherwise affecting the enforcement of creditors’ rights generally, of the United States or other applicable jurisdictions from time to time in effect.

“Default” means an event or condition that, with the lapse of time or giving of notice, or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to (a) with respect to Base Rate Loans, the Base Rate plus the Applicable Margin applicable to such Base Rate Loans, plus an additional two percent (2%) per annum, (b) with respect to Term SOFR Loans, Term SOFR plus the SOFR Adjustment plus the Applicable Margin applicable to Term SOFR Loans plus an additional two percent (2%) per annum, and (c) with respect to any other Obligations, the interest rate otherwise specified in regard thereto when a Specified Event of Default exists (or if no interest rate is specified, the Base Rate for Revolving Loans plus the Applicable Margin applicable to such Base Rate Loans), plus an additional two percent (2%) per annum. The Default Rate applicable to Letter of Credit Fees is specified in **Section 3.2(c)**.

“Defaulting Lender” means, subject to **Section 4.2(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days after the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower Representative in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, LC Issuer, Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two (2) Business Days after the date when due, (b) has notified Borrower Representative, Administrative Agent, LC Issuer or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied, (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower Representative, to confirm in writing to Administrative Agent and Borrower Representative that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower Representative), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In

Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 4.2(b)**) upon delivery of written notice of such determination to Borrower Representative, each LC Issuer, each Swing Line Lender and each Lender.

“Delivery at Possession Inventory” means Inventory that is in transit for delivery to a customer of Borrowers for which title remains in such Borrower until delivery has occurred under the applicable customer contract, regardless of whether the Coal is physically located in the United States.

“Delivery at Possession Inventory Reserve” means an amount determined from time to time by Administrative Agent in its Reasonable Credit Judgment as a Reserve for shipping charges, customs tariffs and duties, insurance and other amounts that may adversely impact the realizable value of such Eligible Delivery at Possession Inventory.

“Deposit Account” means any checking or other demand deposit account maintained by the Credit Parties, including any “Deposit Accounts” within the meaning given to such term in Article 9 of the UCC. All funds in such Deposit Accounts shall be conclusively presumed to be Collateral and proceeds of Collateral and Administrative Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the Deposit Accounts.

“Designated Non-Cash Consideration” means the fair market value (as reasonably determined by the Company in good faith) of non-cash consideration received by any Borrowers or any of their Subsidiaries in connection with an Asset Disposition that is so designated as “Designated Non-Cash Consideration” at the time of the applicable Asset Disposition.

“Dilution” means, as of any date of determination, an amount, expressed as a percentage, equal to (a) the Dollar amount of non-cash reduction to Borrowers’ Accounts, including bad debt write-downs, discounts, advertising allowances, rebates, credits, or other dilutive items during the most recently ended period of twelve (12) Fiscal Months, divided by (b) Borrowers’ billings with respect to Accounts during such period.

“Dilution Reserve” means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts and Eligible Unbilled Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five percent (5%), or such lesser (or greater) amount as Administrative Agent, in its Reasonable Credit Judgment shall determine from time to time.

“Disqualified Equity Interests” means, with respect to any Person, any Equity Interest that by its terms (or by the terms of any other Equity Interest into which it is convertible or exchangeable) or otherwise (a) matures or is subject to mandatory redemption or repurchase (other than solely for Equity Interests that are not Disqualified Equity Interests) pursuant to a sinking fund obligation or otherwise (except as a result of a Change of Control or asset sale so long as any rights of the holder thereof upon the occurrence of a Change of Control or asset sale event shall be subject to the prior Payment in Full of the Obligations (other than any Obligations that expressly survive termination) and termination of the Commitments); (b) is convertible into or exchangeable or exercisable for Debt or any Disqualified Equity

Interest at the option of the holder thereof; (c) may be required to be redeemed or repurchased at the option of the holder thereof (other than solely for Equity Interests that are not Disqualified Equity Interests), in whole or in part, in each case on or before the date that is one hundred twenty (120) days after the Stated Revolving Commitment Termination Date; or (d) provides for scheduled payments of dividends to be made in cash.

“Disqualified Institution” means, on any date, (a) any competitors of the Company identified by the Company to Administrative Agent by name in writing on the Closing Date and no more than one time per year thereafter and (b) affiliates of the foregoing that are readily identifiable solely on the basis of similarity of their names; provided, that (i) in the case of clauses (a) and (b) herein, “Disqualified Institutions” shall not include any bona fide diversified debt fund or a diversified investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in, acquiring or trading commercial loans, bonds and similar extensions of credit in the ordinary course; (ii) neither Administrative Agent nor any Arranger shall have any responsibility for monitoring compliance with any provisions of this Agreement with respect to Disqualified Institutions and (iii) updates to the Disqualified Institution schedule shall not retroactively invalidate or otherwise affect any (A) assignments or participations made to, (B) any trades entered into with or (C) information provided to any Person before it was designated as a Disqualified Institution. It is acknowledged and agreed by the Company that the identity of Disqualified Institutions will be made available to the Lenders.

“Division,” in reference to any Person that is an Entity, means the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other Applicable Law with respect to any corporation, limited liability company, partnership or other Entity. The word “Divide,” when capitalized, shall have a correlative meaning. Any Division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, Joint Venture or any other like term shall also constitute such a Person or Entity).

“Dollars” or “\$” means lawful money of the United States.

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

“DTA” means Dominion Terminal Associates, a Virginia limited liability partnership.

“DTA Coal Export Terminal” means the location of DTA at 600 Harbor Road, Pier 11, Newport News, Virginia 23607.

“Earn-Outs” means unsecured liabilities of a Credit Party arising under an agreement to make any deferred payment as a part of the aggregate consideration payable for an Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Acquisition.

“EBITDA” means EBITDA as reported in the Company’s most recent 10-K or 10-Q, as applicable, and consistent with the Company’s historical practices for the definition and calculation thereof on their publicly reported financial statements.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any Entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Accounts” means, at any time of determination, the aggregate amount of all Accounts due to any of Borrowers; provided, that unless otherwise approved from time to time in writing by Administrative Agent in its Reasonable Credit Judgment, no Account shall constitute an Eligible Account if, without duplication:

(a) except as provided in clause (w) of this definition, such Account does not arise from the sale of goods or the performance of services by any of Borrowers in the Ordinary Course of Business;

(b) such Account is contingent in any respect or for any reason, or the applicable Borrower’s right to receive payment with respect to such Account is subject to or contingent upon the satisfaction of any condition whatsoever (other than the preparation and delivery of an invoice);

(c) the Account Debtor with respect to such Account (i) has or has asserted a right of set-off, offset, deduction, defense, dispute, or counterclaim against any of Borrowers (unless such Account Debtor has entered into a written agreement reasonably satisfactory to Administrative Agent to waive such set-off, offset, deduction, defense, dispute, or counterclaim rights), (ii) has disputed its liability (whether by chargeback or otherwise) or made any claim with respect to the Account or any other Account of any of Borrowers which has not been resolved, in each case of sub-clauses (i) and (ii), without duplication, only to the extent of the amount of such actual or asserted right of set-off, or the amount of such dispute or claim, as the case may be or (iii) is also a creditor or supplier of any of Borrowers or any of its respective Subsidiaries (but only to the extent of such Borrower’s or such Subsidiary’s obligations to such Account Debtor from time to time), in each case, unless such Account Debtor has executed any non-offset agreement in form and substance reasonably satisfactory to Administrative Agent;

(d) such Account is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for the sale of goods to or services rendered for the applicable Account Debtor;

(e) except in the case of any Unbilled Accounts, an invoice, in form and substance consistent with such Borrower’s credit and collection policies, or otherwise reasonably acceptable to Administrative Agent, has not been sent to the applicable Account Debtor in respect of such Account within thirty (30) days of such sale of Coal or provision of services (including Accounts identified as inactive, warranty or otherwise not attributable to an Account Debtor);

(f) such Account (i) is not owned by a Borrower or (ii) is not subject to the first priority, valid and perfected security interest and Lien of Administrative Agent, for and on behalf of itself and the Lenders;

(g) such Account is the obligation of an Account Debtor that is (i) a Borrower or any of its Affiliates, or any of their respective directors, officers, employees or agents or (ii) a natural Person;

(h) such Account (i) is subject to a partial payment plan (other than a Permitted Partial Payment Plan) or was partially paid, (ii) was not paid in full, and any Borrower created a new receivable for the unpaid portion of such Account or (iii) constitutes or is subject to chargebacks, debit memos and other adjustments for unauthorized deductions, without duplication, only to the extent of the amount of such actual or asserted chargeback, debit memo and other adjustment for unauthorized deductions;

(i) such Account is created on "cash on delivery" terms, or on extended terms and is due and payable more than ninety (90) days from the invoice date thereof;

(j) such Account (i) is not paid within sixty (60) days following the original due date or ninety (90) days following the original invoice date or (ii) has been written off the books of any of Borrowers or has otherwise been designated on such books as uncollectible;

(k) that is (i) owing by any Account Debtor (collectively with all such Account Debtor's Affiliates), other than [REDACTED], whose aggregate Accounts owing to a Borrower or Borrowers (collectively) exceed 25% of the total of a Borrower's or Borrowers' (collectively) Eligible Accounts (but only, in such case, to the extent of such excess that is not subject to Acceptable Credit Support), or (ii) owing by [REDACTED] which do not exceed the limitations set forth in clause (t)(ii)(B) below;

(l) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due;

(m) any Account Debtor obligated upon such Account is a debtor or a debtor in possession under any bankruptcy law or any other federal, state or foreign (including any provincial or territorial) receivership, insolvency relief or any other Debtor Relief Law, unless the payment with respect to such Account is supported by Acceptable Credit Support;

(n) with respect to such Account (or any other Account due from the applicable Account Debtor), in whole or in part, a check, promissory note, draft, trade acceptance, or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason;

(o) such Account is the obligation of an Account Debtor from whom fifty percent (50%) or more of the face amount of all Accounts owing by such Account Debtor are ineligible under clause (j) of this definition;

(p) such Account is one as to which the Collateral Agent's Lien attached thereon, for the benefit of itself and the other Secured Parties, is not a valid first priority perfected Lien;

(q) Accounts as to which any of the representations or warranties in the Loan Documents with respect to such Accounts are untrue or inaccurate in any material respect (or, with respect to representations or warranties that are qualified by materiality, any of such representations and warranties are untrue or inaccurate);

(r) such Account is evidenced by a judgment, Instrument or Chattel Paper, other than Instruments or Chattel Paper that are held by any of Borrowers or that have been delivered to Administrative Agent;

(s) such Account is payable in any currency other than Dollars;

(t) the Account Debtor with respect to such Account (i) is not organized under laws of the United States, any state thereof, the District of Columbia, Canada or any state or province thereof or the United Kingdom or (ii) is not located, resident or domiciled in, or does not maintain its chief executive office in, the United States, Canada or the United Kingdom (subject, in the case of an Account Debtor organized or located in the United Kingdom, to the limitation set forth in clause (u) below), unless, in each case,

(i) with respect to Accounts owed by foreign Account Debtors other than [REDACTED]:

(A) (x) the jurisdiction of organization of such Account Debtor and its location, residence, domicile and jurisdiction of its chief executive office is an Acceptable Foreign Jurisdiction, (y) Administrative Agent has received an acknowledgment letter from the Account Debtor with respect to such Account in form and substance satisfactory to Administrative Agent and (z) Administrative Agent has received a copy of the underlying customer contract with respect to such Account if Borrowers using commercially reasonable efforts have obtained the consent of the applicable Account Debtor to share a copy of such underlying customer contract (Borrowers acknowledge that if Borrowers are unable to provide a copy of the underlying customer contract to Administrative Agent, such acknowledgment letter may provide for additional representations, warranties and covenants of Account Debtor as determined by Administrative Agent in its Reasonable Credit Judgment); or

(B) payment with respect to such Account is supported by Acceptable Credit Support; or

(C) (x) the jurisdiction of organization of such Account Debtor and its location, residence, domicile and jurisdiction of its chief executive office is an Acceptable Foreign Jurisdiction and (y) the Account Debtor has an Investment Grade Rating; provided, that the aggregate amount of all Accounts which may be Eligible Accounts pursuant to sub-clause (B) of this clause (t)(i) shall not exceed \$7,500,000 in the aggregate; and

(ii) with respect to Accounts owed by [REDACTED],

(A) the Account Debtor is [REDACTED], and the Accounts of such Account Debtor are subject to a credit insurance policy consistent with credit insurance coverage in place as of the Closing Date (for the avoidance of doubt, the eligibility of an Account pursuant to this clause

(ii)(A) shall not be limited by the amount of credit insurance coverage applicable to such Account); and

(B) the Accounts of [REDACTED] owed to a Borrower or Borrowers (collectively) do not exceed in aggregate 25% of the total of a Borrower's or Borrowers' (collectively) Eligible Accounts (but only, in such case, to the extent of such excess); provided that, if at any time [REDACTED] ceases to have an Investment Grade Rating, such concentration limit shall be reduced to 20%; provided, that any Accounts of [REDACTED] subject to the Permitted [REDACTED] Receivables Transaction shall cease to be Eligible Accounts on the earlier to occur of (I) the date that is sixty (60) days after the original invoice date and (II) the date the right to receive payment from such Account Debtor has been transferred to [REDACTED] pursuant to the Permitted [REDACTED] Receivables Transaction.

(u) such Account is owing by an Account Debtor organized under the laws of the United Kingdom, or located, residing, domiciled or maintaining its chief executive office in the United Kingdom, unless the aggregate amount of all Accounts owing by all Account Debtors organized under the laws of the United Kingdom, or located, residing, domiciled or maintaining its chief executive office in the United Kingdom, does not exceed \$12,500,000;

(v) such Account is the obligation of an Account Debtor that is the United States government or a political subdivision thereof, or department, agency or instrumentality thereof, unless the applicable Borrower has duly assigned its rights to payments of such Account to Administrative Agent pursuant to, and has otherwise complied with, the Federal Assignment of Claims Act of 1940, as amended, and any other applicable state, county or municipal law restricting assignment thereof, which assignments and any related documents and filings, shall be satisfactory to Administrative Agent in its Reasonable Credit Judgment;

(w) such Account has been redated, extended, compromised, settled, adjusted or otherwise modified or discounted, except discounts or modifications that are granted by a Borrower in the Ordinary Course of Business and that are reflected in the calculation of the Borrowing Base;

(x) the Account Debtor with respect to such Account is located in a state of the United States of America requiring the filing of a notice of business activities report or similar report in order to permit a Borrower to seek judicial enforcement in such state of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a notice of business activities report or equivalent report for the then-current year or if such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(y) such Account was acquired or originated by a Person acquired in a Permitted Acquisition or other Investment (until such time as Administrative Agent has completed a customary due diligence investigation as to such Accounts and such Person, which investigation may, in the Reasonable Credit Judgment of Administrative Agent, include an appraisal and field examination, and Administrative Agent is satisfied with the results thereof in its Reasonable Credit Judgment);

(z) such Account (i) represents a sale on a bill-and-hold, guaranteed sale, sale and return, ship-and-return, sale on approval, consignment or other similar basis or (ii) was made pursuant to any

other agreement providing for repurchases or return of any merchandise which has been claimed to be defective or otherwise unsatisfactory;

(aa) any such Account that is the obligation of an Account Debtor that is a Sanctioned Person;

(bb) any such Account that is subject to a restriction on assignment that is enforceable against third parties and that impairs the Collateral Agent's Lien on such Account or Administrative Agent's ability to enforce the Account;

(cc) such Account is subject to any security deposit (to the extent received from the applicable Account Debtor), progress payment (other than pursuant to a Permitted Partial Payment Plan), retainage or other similar advance made by or for the benefit of the applicable Account Debtor, in each case to the extent thereof;

(dd) (i) any portion of an Account that was invoiced in advance of goods or services provided, (ii) such Account was invoiced twice or more, or (iii) the associated revenue has not been earned;

(ee) except in the case of any Unbilled Accounts, the goods giving rise to such Account have not been shipped or title has not been transferred to the Account Debtor, or the Account represents a progress-billing or otherwise does not represent a complete sale; for purposes hereof, "progress-billing" means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon the completion by a Borrower of any further performance under the contract or agreement;

(ff) such Account relates to or arises out of the sale of Goods or rendition of services by or on behalf of a surety under a performance, surety or similar reclamation bond or any such surety has subrogation rights in respect of such Account that are senior in right or priority to Administrative Agent's rights therein;

(gg) such Account is comprised of Sold Receivables or is subject to purchase (or has been purchased) pursuant to any factoring arrangement, supply chain finance arrangement or forfaiting arrangement, including a Permitted Receivables Transaction, other than with respect to Accounts owing by (i) [REDACTED] pursuant to the Permitted [REDACTED] Transaction which are subject to clause (t)(ii) above and (ii) (A) [REDACTED] pursuant to the Permitted BNP Receivables Transaction and (B) [REDACTED] pursuant to the Permitted Other Pre-Closing Receivables Transaction (and in the case of Accounts owing by the Account Debtors set forth in this clause (ii), solely to the extent and up to the amount any such Accounts are covered by Acceptable Credit Support), in each case of clause (i) and (ii), prior to such Accounts becoming Sold Receivables; or

(hh) such Account is otherwise unacceptable to Administrative Agent in its Reasonable Credit Judgment.

"Eligible Assignee" means any Person that meets the requirements to be an assignee of a Lender under **Section 13.1**, subject to any consents and representations, if any, as may be required therein.

"Eligible Billed Account" means, at any time of determination, each Eligible Account of Borrowers for which an invoice has been sent to the applicable Account Debtor with respect thereto.

“Eligible Delivery at Possession Inventory” means Delivery at Possession Inventory that (a) would constitute Eligible Inventory were it not in transit, located outside the continental United States or subject to a negotiable document, (b) is subject to a Document satisfactory to Administrative Agent in its Reasonable Credit Judgment (which may include, without limitation, that such Document is in negotiable form and shows Administrative Agent (or, with the consent of Administrative Agent, the applicable Borrower), as consignee), and subject to such handling procedures which are satisfactory to Administrative Agent in its Reasonable Credit Judgment, which may include that such Document is in the possession in the United States of (i) Administrative Agent or (ii) a Person party to an effective Third Party Claimant Agreement, (c) the applicable Borrower maintains an insurable interest and such Inventory is insured in a manner satisfactory to Administrative Agent (and Administrative Agent shall be the lender’s loss payee with respect to any claims made with respect to such insurance), and (d) is otherwise acceptable to Administrative Agent in all respects (including whether Borrowers shall have taken such other measures as Administrative Agent may request from time to time in its Reasonable Credit Judgment to ensure the perfection and priority of the security interest of Administrative Agent in such Inventory); provided, that, at no time shall the amount of Eligible Delivery at Possession Inventory included in the Borrowing Base exceed the lesser of (i) \$50,000,000 and (ii) the amount covered by insurance.

“Eligible Inventory” means, at any time of determination, without duplication, the Inventory Value of all Coal Inventory of Borrowers at such time; provided, that unless otherwise from time to time approved in writing by Administrative Agent in its Reasonable Credit Judgment, no Inventory shall constitute Eligible Inventory if, without duplication:

- (a) such Inventory is either not finished goods (other than Raw Coal or unprocessed Coal) or constitutes work-in-process, or consists of assets other than Coal;
- (b) the applicable Borrower does not have good and valid title to such Inventory, free and clear of any Lien other than Permitted Liens, or such Inventory is not subject to a valid, duly perfected, first priority Lien in favor of Administrative Agent;
- (c) any of the covenants, representations, and warranties in this Agreement or the other Loan Documents respecting Inventory shall be untrue, misleading, or in default in any material respect (or, with respect to covenants, representations or warranties that are qualified by materiality, any of such covenants, representations and warranties are untrue or inaccurate);
- (d) such Inventory is on Consignment from (i.e., where such Borrower is the Consignee) any seller, vendor, or supplier or subject to any agreement whereby the seller, vendor, or supplier has retained any title to such Inventory or the right to repurchase such Inventory;
- (e) such Inventory is on Consignment to (i.e., where such Borrower is the Consignor) any other Person (including any goods consigned at the location of a customer, supplier or contractor, but that are accounted for in the Inventory balance of Borrowers);
- (f) such Inventory has been acquired from a Sanctioned Person or Sanctioned Country;
- (g) such Inventory is subject to any negotiable Document;
- (h) such Inventory is not located in the United States at a Permitted Location, unless it is in-transit Inventory that constitutes Eligible Inventory in accordance with clause (j) below or is Eligible Delivery at Possession Inventory;

(i) except for Inventory located at any of the locations listed in clauses (i) through (ix) of clause (j) below, such Inventory is located at a Permitted Location not owned and Controlled by such Borrower or another Credit Party (including any Coal Inventory being processed or manufactured at a location other than a Permitted Location), unless, if required by Administrative Agent in its Reasonable Credit Judgment, (i) Administrative Agent has received from the Person owning or in Control of such Permitted Location a Third Party Claimant Agreement or (ii) if Administrative Agent agrees to do so in lieu of a Third Party Claimant Agreement, Administrative Agent has instituted a Rent and Charges Reserve in an amount determined by Administrative Agent in its Reasonable Credit Judgment (measured as of the most recent practicable date);

(j) other than Eligible Delivery at Possession Inventory, such Inventory is in-transit to or from a location not leased or owned by a Borrower (it being understood that Borrowers shall provide their best estimate of the Inventory Value of all such Inventory, which estimate is to be reflected in the Borrowing Base Certificate), other than any Coal Inventory that is physically within the United States and in-transit between the applicable coal Mine and (i) the DTA Coal Export Terminal, (ii) the Lamberts Point Terminal, (iii) Chesapeake Bay Piers, (iv) CSX Toledo Docks, (v) Colona Dock, (vi) Kentucky Coal Terminal, (vii) Sandusky Coal Dock, or (viii) Kinder Morgan Terminal;

(k) such Inventory was acquired or originated by a Person acquired in a Permitted Acquisition or other Investment (until such time as Administrative Agent has completed a customary due diligence investigation as to such Inventory and such person, which investigation may, in the Reasonable Credit Judgment of Administrative Agent, include an inventory appraisal and/or field examination, and Administrative Agent is satisfied with the results thereof in its Reasonable Credit Judgment);

(l) the Inventory Value of such Inventory is attributable to intercompany profit among Borrowers or any of their respective Affiliates (to the extent of such intercompany profit) (it being understood and agreed that the applicable Borrower shall provide its best estimate of such Inventory Value to Administrative Agent, which Inventory Value shall be approved by Administrative Agent and reflected in the most recent Borrowing Base Certificate);

(m) the Inventory Value of such Inventory is attributable to any unrecorded book to physical inventory reduction taken by any Borrower based on the average of the most recent twelve (12) months of physical inventory adjustments; or

(n) Administrative Agent otherwise determines such Inventory not to be Eligible Inventory, in its Reasonable Credit Judgment.

“Eligible Unbilled Account” means, at any time of determination, each Unbilled Account of Borrowers for which the sale represented by such Account was made not more than thirty (30) days prior to such time and that otherwise constitutes an Eligible Account at such time, provided, that unless otherwise approved from time to time in writing by Administrative Agent in its Reasonable Credit Judgment, no Unbilled Account shall constitute an Eligible Unbilled Account unless the entire amount of the relevant Coal Inventory pertaining to such Unbilled Account has been loaded into the Account Debtor’s mode of transportation or has departed, in the case of vessels and barges, as applicable, or when delivered to the Account Debtor and when title and risk of loss of such Coal Inventory has transferred to the Account Debtor.

“Enforcement Action” means any action to collect any Obligations or enforce any Loan Document or to realize upon any Collateral (whether by judicial action, self-help, notification of Account Debtors, exercise of setoff or recoupment, or otherwise).

“Entity” means any Person that is not a natural Person.

“Environmental Claim” means any administrative, regulatory or judicial action, suit, claim, written notice of non-compliance or violation, written notice of investigation, written notice of liability or potential liability, or proceeding relating in any way to any Environmental Laws, Environmental Permit, any Hazardous Materials, any Contamination, or the performance of any Remedial Action.

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

“Environmental Notice” means a notice (whether written or oral) from any Governmental Authority or other Person (including any Credit Party) of any possible non-compliance with, investigation of a possible violation of, Adverse Proceeding relating to, or potential fine or liability under any Environmental Law or with respect to any Environmental Release or Hazardous Materials, including any complaint, summons, citation, order, claim, demand, or request for investigation or remediation.

“Environmental Orders” means all decrees, orders, directives, judgments, opinions, rulings writs, injunctions, settlement agreements or consent orders or decrees issued by or entered into with a Governmental Authority relating or pertaining to Contamination, Environmental Laws, Environmental Permit, Hazardous Materials or Remedial Actions.

“Environmental Permit” means a Permit issued or required under any Environmental Law.

“Environmental Release” means anything defined as a “release” under CERCLA or RCRA (in each case as defined in the definition of Environmental Laws).

“Environmentally Sensitive Area” means (a) any wetland as defined by applicable Environmental Laws; (b) any area designated as a coastal zone pursuant to applicable Environmental Laws; (c) any area of historic or archeological significance or scenic area as defined or designated by applicable Environmental Laws; (d) habitats of endangered species or threatened species as designated by applicable Environmental Laws; (e) a floodplain or other flood hazard area as defined pursuant to any

applicable Environmental Laws; (f) streams, rivers or other water bodies or springs classified, or designated or as otherwise protected by applicable Environmental Laws as a fishery, as having exceptional or high quality or value or as having recreational use; (g) any area classified, designated or protected by applicable Environmental Laws as unsuitable for mining; and (h) any man-made or naturally occurring surface feature classified, designated or protected by applicable Environmental Laws from disturbance, the effects of blasting, subsidence and mining operations.

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

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

“ERISA Affiliate” means, as applied to any Person, (a) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which that Person is a member; (b) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

“ERISA Event” means (a) 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 notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code), the failure to make by its due date any minimum required contribution or any required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan; (c) 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; (d) the withdrawal from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan, in either case resulting in material liability pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability pursuant to Section 4062(a) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, each case reasonably likely to result in material liability; (g) the withdrawal of any Credit Party, 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 such withdrawal is reasonably likely to result in material liability, or the receipt by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4241 or 4245 of ERISA, or that it is in “critical” or “endangered” status within the meaning of Section 305 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, if such reorganization, insolvency or termination is reasonably likely to result in material liability; (h) the imposition of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section

409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan if such fines, penalties, taxes or related charges are reasonably likely to result in material liability; (i) the assertion of a material claim (other than routine claims for benefits and funding obligations in the Ordinary Course of Business) against any Pension Plan other than a Multiemployer Plan or the assets thereof, or against any Person in connection with any Pension Plan such Person sponsors or maintains reasonably likely to result in material liability; (j) receipt from the Internal Revenue Service of a final written determination of the failure of any Pension Plan intended to be qualified under Section 401(a) of the Code to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Code; or (k) the imposition of a lien pursuant to Section 430(k) of the Code or pursuant to Section 303(k) or 4068 of ERISA.

“Erroneous Payment Subrogation Rights” has the meaning given to such term in **Section 12.10(d)**.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” has the meaning given such term in **Section 11.1**.

“Excess Availability” means, at any time of determination, the amount, if any, by which (a) the Loan Limit exceeds (b) the Aggregate Revolving Obligations.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Accounts” means a collective reference to (a) any Deposit Account, Securities Account, Commodity Account, cash collateral account or other similar account (other than any Funding Account, any Collections Account, and the LC Cash Collateral Account) of any Credit Party (and all cash, Cash Equivalents and other securities or investments held therein) exclusively used for all or any of the following purposes: (i) payroll, (ii) employee benefits, (iii) worker’s compensation, (iv) securing liabilities in respect of letters of credit (other than Letters of Credit issued hereunder), bank guarantees, credit card or purchase card facilities or similar merchant account arrangements incurred in the Ordinary Course of Business, (v) taxes, (vi) third party escrow, (vii) customs, (viii) other fiduciary purposes, (ix) compliance with legal requirements (including pledges required in favor of Governmental Authorities) or any court order or judgment, in each case to the extent such legal requirement, order or judgment prohibit the granting of a Lien thereon, (x) those “Excluded Accounts” existing on the Closing Date and identified on **Schedule 1.1(a)** hereto and exclusively used for the purposes shown thereon, and other Deposit Accounts established after the Closing Date and exclusively used for pledged deposits constituting Permitted Liens under **Section 9.2(p)**, (xi) lockboxes and deposit accounts relating to Sold Receivables under a Permitted Receivables Transaction; or (xii) State Settlement Accounts, and (b) other Deposit Accounts (other than any Funding Account, any Collections Account, and the LC Cash Collateral Account) of any Credit Party used exclusively for petty cash and local trade payables to the extent the aggregate balance in all such Deposit Accounts excluded by this clause (b) does not exceed \$100,000 at any time for all such accounts.

“Excluded Collateral” shall have the meaning set forth in the Security Agreement.

“Excluded Swap Obligation” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of any Guarantee of such Credit Party of, or the grant under a Loan Document by such Credit Party of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract

participant” as defined in the Commodity Exchange Act (determined after giving effect to **Section 5.7** and any and all guaranties of such Credit Party’s Swap Obligations by other Credit Parties) at the time the Guarantee of such Credit Party, or grant by such Credit Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such Guarantee or Lien becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its Principal Office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrowers under **Section 14.4**) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 14.3**, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with **Section 14.3(g)**, and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Extraordinary Expenses” means all costs, expenses, or advances that Administrative Agent may incur during an Event of Default or during the pendency of an Insolvency Proceeding of a Credit Party (including such costs, expenses or advances that are directly invoiced to Borrowers in lieu of payment by Administrative Agent), including those relating to (a) any audit, inspection, field examination, repossession, storage, repair, appraisal, insurance, manufacture, preparation, or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Credit Party, any representative of creditors of a Credit Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority, or avoidability of Administrative Agent’s or any Secured Party’s Liens with respect to any Collateral), Loan Documents, Letters of Credit, or Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges, or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any amendment, restatement, amendment and restatement, supplement, modification, waiver, consent, workout, restructuring, or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses, and advances include transfer fees, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers’ fees and commissions, auctioneers’ fees and commissions, accountants’ fees, turnaround and financial consultants and experts’ fees, environmental study fees and remedial response costs, wages and salaries paid to employees of any Credit Party or independent contractors in liquidating any Collateral, and travel expenses incurred in relation thereto.

“FATCA” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements in respect thereof

(and any legislation, regulations or other official guidance pursuant to, or in respect of, such intergovernmental agreements).

“FDPA” means the Flood Disaster Protection Act of 1973, as amended, including all requirements imposed relative thereto by the National Flood Insurance Program.

“Federal Funds Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Regions Bank or any other Lender selected by Administrative Agent on such day on such transactions as determined by Administrative Agent.

“Fee Letter” means any fee letter agreement (or series thereof) at any time existing made between or among Regions Bank, any Arranger and Borrowers (or Borrower Representative), concerning any fees or charges payable to Regions Bank and/or such Arranger in respect of the transactions contemplated under this Agreement, whether in its capacity as Lender, lead Arranger, Administrative Agent or otherwise.

“Financial Covenants” means, collectively, the financial covenants set forth in **Section 10**, together with such other covenants appearing in this Agreement or in any other Loan Document as Administrative Agent may designate as “Financial Covenants” from time to time.

“Financing Lease” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee; provided, that, any operating lease that is required to be treated as a capital lease in accordance with GAAP as a result of any accounting change shall not be deemed a Financing Lease for purposes of this Agreement except as otherwise as provided in **Section 1.2**.

“Financing Statement” has the meaning given to such term in the UCC and includes, in addition thereto, as applicable, any other similar filing or public record or notice relating to the perfection of Liens.

“First Amendment Date” means May 6, 2025.

“Fiscal Year,” “Fiscal Quarter,” and “Fiscal Month” mean each of Credit Parties’ fiscal years, fiscal quarters, and fiscal months, as applicable.

“FLSA” means the Fair Labor Standards Act of 1938.

“Foreign Lender” means any Lender that is not a “United States person” as defined in Section 7701(a)(30) of the Code.

“Foreign Plan” means any employee benefit plan or arrangement (a) maintained or contributed to by any Credit Party or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Credit Party or Subsidiary.

“Foreign Subsidiary” means a Subsidiary that is, as to any Credit Party, a “controlled foreign corporation” under Section 957 of the Code.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to LC Issuer, such Defaulting Lender’s Pro Rata Share of outstanding LC Obligations with respect to Letters of Credit issued by LC Issuer other than LC Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to Swing Line Lender, such Defaulting Lender’s Pro Rata Share of outstanding Swing Line Loans made by Swing Line Lender other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“Funded Debt” means, with respect to any Person and without duplication, (a) Debt that arises in respect to borrowed money; (b) Debt evidenced by notes, drafts, bonds, debentures, credit documents, or similar instruments (other than obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, reclamation bonds, wage bonds, bonds issued in favor of any Governmental Authority and completion guarantees, bank guarantees and similar contingent obligations or with respect to worker’s compensation benefits); (c) Debt that accrues interest or is of a type upon which interest or finance charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business); (d) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of Guarantee (solely to the extent such letters of credit or letters of Guarantee have been drawn and remain unreimbursed); (e) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances; (f) the Swap Termination Value of all Swap Agreements; (g) all mandatory obligations of such Person to purchase, redeem, retire, defease, or otherwise make any payment in respect of any Equity Interest of such Person; (h) Debt that was issued or assumed as full or partial payment for Property or services; (i) the principal and interest portions of all rental obligations of such Person under either (i) any Financing Lease, or (ii) any synthetic lease, tax retention operating lease, off-balance sheet loan, or similar off-balance sheet financing where such transaction is considered borrowed money Debt for tax purposes but is classified as an operating lease in accordance with GAAP; (j) Earn-Outs, to the extent earned; and (k) guaranties by such Person of any Debt of the foregoing types described in clauses (a) through (i) above owing by another Person. For the avoidance of doubt, Funded Debt shall include, without limitation, all Subordinated Debt.

“Funding Account” means, individually and collectively as the context may require, any Deposit Account that is an operating account of the Borrower Representative maintained at Regions Bank for the purpose of receiving the proceeds of Loans hereunder.

“GAAP” means, subject to the limitations on the application thereof set forth in **Section 1.2**, generally accepted accounting principles in effect in the United States from time to time.

“Governing Body” means (a) in the case of a corporation, its board of directors or shareholders, as applicable, (b) in the case of a limited liability company, its managers or members, as applicable, (c) in the case of a limited partnership, its general partner(s), and (d) in any other case, the Person(s) that Control(s) such Person.

“Governmental Approvals” means all authorizations, consents, approvals, licenses, and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

“Governmental Authority” means any federal, state, municipal, foreign, or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other Entity or officer exercising executive, legislative, judicial, regulatory, taxing or administrative

powers or functions for or pertaining to any government or court, in each case whether associated with the United States, a state, district or territory thereof, or a foreign Entity or government.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt of the payment or performance of such Debt, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt of any other Person, whether or not such Debt is assumed by such Person. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related Debt, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the Guaranteeing Person in Good Faith. The term “Guarantee” when used as a verb shall have a corresponding meaning.

“Guarantor Payment” has the meaning given such term in **Section 5.7(c)(ii)**.

“Guarantors” means (a) each Borrower, as to each other Borrower, pursuant to the operation and effect of **Section 5.7(a)**, (b) each Subsidiary that executes a Guaranty pursuant to **Section 8.14**, and (c) each other Person (including any Credit Party) that at any time Guarantees payment or performance of any Obligations pursuant to a Guaranty; provided, that such term shall not include (i) any Domestic Subsidiary formed or acquired on or after the Closing Date substantially all of the assets of which consist of the Equity Interests of one or more Foreign Subsidiaries, (ii) any Domestic Subsidiary that is a Subsidiary of any Foreign Subsidiary, (iii) any Domestic Subsidiary that is a captive insurance company, or (iv) any Foreign Subsidiary. To the extent the Company desires to include assets of a Guarantor in the Borrowing Base, such Guarantor shall become a Borrower by executing a joinder and assumption agreement in form and substance satisfactory to Administrative Agent. The Guarantors as of the Closing Date are the Subsidiaries of the Company listed on **Schedule 1.1(b)**.

“Guaranty” means each Guaranty (including the Guaranty set forth in **Section 5.7(a)**) executed by a Guarantor in favor of Administrative Agent in respect of the payment or performance of any Obligations.

“Hazardous Materials” means those substances, chemicals, wastes and/or other materials that are listed, defined or otherwise identified as “hazardous”, “pollutant”, “contaminant”, “toxic”, or words of similar import under any Environmental Law or otherwise governed or regulated under any Environmental Law, or that are otherwise hazardous or toxic to human health or the environment, including any “hazardous waste,” as defined under 40 C.F.R. Parts 260-270, petroleum and petroleum products (including crude oil and any fractions thereof), asbestos, urea formaldehyde, polychlorinated biphenyls, mercury and radioactive substances

“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 Applicable Law relating to any Lender that is currently in effect or, to the extent allowed under such Applicable Law, that may hereafter be in effect and that allows a higher maximum non-usurious interest rate than Applicable Law now allows.

“Historical Financial Statements” means (a) the audited financial statements of the Company and its Subsidiaries for the Fiscal Year ended December 31, 2022, and (b) the interim unaudited financial statements of the Company and its Subsidiaries for the Fiscal Quarter ended June 30, 2023, and the Fiscal Year to date, each in form and substance satisfactory to Administrative Agent and consistent with the requirements applicable to unaudited financial statements to be filed with the SEC.

“Immaterial Restricted Subsidiary” means any Subsidiary of the Company so long as (a) the revenues (excluding intercompany revenues) of such Subsidiary for any period of four consecutive Fiscal Quarters ended as of the end of any Fiscal Quarter do not exceed \$2,000,000 as set forth or reflected in the most recently available financial statements that have been delivered pursuant to **Section 8.6(b)** or **(c)**; ~~and~~ (b) the Consolidated total assets of such Subsidiary at the end of the most recently completed Fiscal Quarter do not exceed \$2,000,000 as set forth or reflected in the most recently available financial statements that have been delivered pursuant to **Section 8.6(b)** or **(c)**; and (c) if such Subsidiary is designated as an “Immaterial Restricted Subsidiary” under this Agreement, it is also designated as an “Immaterial Subsidiary” (or any term of similar import) under the Permitted Bond Documents or the documentation evidencing a Permitted Convertible Debt Transaction, as applicable, such that all “Immaterial Restricted Subsidiaries” under this Agreement and all “Immaterial Subsidiaries” under the Permitted Bond Documents or the documentation evidencing a Permitted Convertible Debt Transaction, as applicable, are the same Persons; provided that (i) the aggregate revenues (excluding intercompany revenues) of all Immaterial Restricted Subsidiaries shall not exceed five percent (5%) of the aggregate revenues (excluding intercompany revenues) of Borrowers and their Domestic Subsidiaries for any period of four consecutive Fiscal Quarters and (ii) the Consolidated total assets of all Immaterial Restricted Subsidiaries shall not exceed five percent (5%) of the Consolidated total assets of Borrowers and their Domestic Subsidiaries at the end of any Fiscal Quarter. In the event that (A) any Immaterial Restricted Subsidiary ceases to qualify as an Immaterial Restricted Subsidiary pursuant to the foregoing or (B) the Borrower Representative elects to remove any Immaterial Restricted Subsidiary from this definition, then the Borrower Representative shall deliver (or shall cause to be delivered) to Administrative Agent, to the extent not previously provided in respect of such Subsidiary, those deliverables from which Immaterial Restricted Subsidiaries were exempt under **Section 6.1** and **8.12** (including the results of customary lien searches in respect of such Subsidiary and such Article 9 Control Agreements required by **Section 8.12** for Credit Parties that are not Immaterial Restricted Subsidiaries) or otherwise under this Agreement and the other Loan Documents, and upon such delivery such Subsidiary shall no longer constitute an Immaterial Restricted Subsidiary hereunder. The initial Immaterial Restricted Subsidiaries as of the ~~Closing~~First Amendment Date are set forth on **Schedule 1.1(c)**.

“Increased Reporting Period” means any period commencing on any day that (a) any Event of Default shall have occurred and be continuing or (b) the failure of Borrowers to maintain Liquidity equal to or greater than \$90,000,000 at any time, which period shall terminate on the date on which no Event of Default shall be continuing and Liquidity has been equal to or greater than \$90,000,000 for a period of thirty (30) consecutive calendar days as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in the preceding clause (a), Other Taxes.

“Indemnatee Obligations” means all payment obligations (whether for any loss, damage, cost or expense, or otherwise) owing to Indemnitees in such capacity to the extent arising under this Agreement or any other Loan Document.

“Indemnitees” means, individually and collectively, any and all Administrative Agent Indemnitees, Lender Indemnitees, LC Issuer Indemnitees, and Regions Bank Indemnitees; and, for each of them, without limitation, all Related Parties.

“Insolvency Proceeding” means any case or proceeding commenced by or against a Person under any state, federal, or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, Debt adjustment or other Debtor Relief Law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator, or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

“Intellectual Property” means all intellectual property and similar property, or interests in property, of a Person including (a) all inventions, designs, patents, patent applications, copyrights, trademarks, trademark applications, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software, and databases and other similar intangible rights, whether statutory or common law, whether registered or unregistered, and whether established or registered in the United States or any other country or any political subdivision thereof; (b) all embodiments or fixations thereof and all related documentation, applications, registrations, and franchises; (c) all licenses or other rights to use any of the foregoing; and (d) all books and records relating to the foregoing, together with (but not exclusive of) all (i) registrations and applications for the foregoing, (ii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements or other violations thereof, (iii) rights to sue for past, present and future infringements and other violations thereof, and (iv) rights corresponding thereto throughout the world.

“Intercompany Debt” means Debt owing at any time or from time to time by any Credit Party to any other Credit Party.

~~“Intercreditor Agreement” means each intercreditor agreement made among Administrative Agent and one or more holders of any Debt owing by Borrowers, and acknowledged by Borrowers and the other Credit Parties (as applicable), or the Borrower Representative on their collective behalf, to be in form and substance satisfactory to Administrative Agent, setting forth the agreements of such parties in respect of their respective Liens and Debt claims on Borrowers and the other Credit Parties.~~

“Interest Payment Date” means with respect to (a) any Base Rate Loan and any Swing Line Loan, (i) the first day of each calendar month, commencing on the first such date to occur after the Closing Date and (ii) the Commitment Termination Date, and the final maturity date of any additional such Loan; and (b) any Term SOFR Loan, (i) the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three (3) months, “Interest Payment Date” shall also include each date that is three (3) months, or an integral multiple thereof, after the commencement of such Interest Period and (ii) the Commitment Termination Date, and the final maturity date of any additional such Loan.

“Interest Period” means, in connection with a Term SOFR Loan, an interest period of one (1) or three (3) months, as selected by Borrower Representative in the applicable Notice of Borrowing or Notice of Conversion/Continuation, (a) initially, commencing on the funding date or Conversion/Continuation date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an 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; (ii) any Interest Period that

begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; and (iii) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Commitment Termination Date.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

“Inventory” has the meaning given such term in the UCC and, in any event, includes (a) all Goods intended for sale, lease, display, or demonstration, (b) all As-Extracted Collateral, and all coal, coal products and other minerals that have been extracted from real property, whether or not constituting “inventory” or “as-extracted collateral” under the UCC, and (c) all work in process and all raw materials and other materials, parts and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease, or furnishing of such Goods, or Goods otherwise used or consumed in a Borrower’s business (but excluding Equipment), all regardless whether any of the foregoing at any time constitutes Eligible Inventory.

“Inventory Report” has the meaning set forth in **Section 8.6(a)(iv)**.

“Inventory Value” means, at any time of determination, with respect to any Coal Inventory of any of Borrowers, the value reflected in the general ledger of the Company, calculated in accordance with GAAP using a lower of cost or market valuation, and otherwise consistent with the accounting methodologies used by Borrowers as of the Closing Date.

“Investment” means, with respect to any Person, any loan, advance, or extension of credit by such Person to, or any contributions to the capital of, any other Person, or any ownership, purchase, or other acquisition by such Person of any Equity Interests of any other Person, other than any Acquisition. In determining the aggregate amount of Investments outstanding at any particular time, (a) there shall be deducted in respect of each such Investment any amount received as a return of principal or capital (including by repurchase, redemption, retirement, repayment, liquidating, or other dividend or distribution); (b) there shall not be deducted in respect of any Investment any amounts received as earnings on such Investment, whether as dividends, interest, or otherwise; (c) there shall not be deducted from or added to the aggregate amount of Investments any decrease or increases, as the case may be, in the market value thereof; and (d) the amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, forgiveness or conversion to equity of Debt, or write-ups, write-downs, or write-offs with respect to such Investment.

“Investment Grade Rating” means a Debt Rating of at least BBB- by S&P or at least Baa3 from Moody’s.

“Investment Property” has the meaning given such term in the UCC and, in any event, includes the following (regardless whether classified as “investment property” under the UCC): (a) all of each Credit Party’s right, title and interest in and to all of the Equity Interests now owned or hereafter acquired by such Credit Party, regardless of class or designation, in any Person, including in each of the other Credit Parties, and all substitutions therefor and replacements thereof, all Proceeds thereof and all rights relating thereto, also including any certificates representing the Equity Interests, the right to receive any certificates representing any of the Equity Interests, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and the right to receive all dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and all cash, instruments, and other property from time to time received,

receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing; (b) all of each Credit Party's rights, powers and remedies under any limited liability company in which such Credit Party is a member; and (c) all of each Credit Party's rights, powers and remedies under any partnership agreement in which such Credit Party is a general (or limited) partner.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc., or such later version thereof as may be in effect at the time of issuance of such Letter of Credit, if and to the extent such later version has been approved for use by the LC Issuer.

“Joinder Agreement” means a joinder agreement in the form of Exhibit G or such other form as or such other form as may be requested or approved by Administrative Agent from time to time, in which either: (a) a Subsidiary shall become a Borrower or a Credit Party or (b) a Credit Party that is not a Subsidiary shall become a Credit Party, in each case pursuant to **Section 8.14**.

“Joint Venture” means any Person (a) other than a Subsidiary in which any Borrower or its Subsidiaries hold an ownership interest or (b) which is an unincorporated joint venture of any Borrower or any Subsidiary.

“Jurisdiction State” means the State of New York.

“Kentucky Coal Terminal” means 15992 U.S. 23, Catlettsburg, KY 41129.

“Kinder Morgan Terminal” means the location of Pier IX and X Terminals at 1900 Harbor Road, Newport News, Virginia 23607.

“Lamberts Point Terminal” means Norfolk Southern Lamberts Point Pier 6 Coal Terminal, 2200 Redgate Avenue, Norfolk, Virginia 23507.

“LC Application” means an application by Borrower Representative to LC Issuer for issuance of a Letter of Credit, in form and substance satisfactory to LC Issuer and Administrative Agent.

“LC Cash Collateral Account” means any Deposit Account established by, and under the sole dominion and control of, Administrative Agent or any applicable LC Issuer and maintained with Administrative Agent or such LC Issuer for the purpose of Cash Collateralizing Letters of Credit issued hereunder.

“LC Conditions” means each of the following conditions precedent with respect to the issuance of a Letter of Credit, unless and except to the extent otherwise approved by LC Issuer and, as applicable, Administrative Agent: (a) each of the conditions precedent to the issuance of such Letter of Credit set forth in **Section 6** shall have been satisfied; (b) LC Issuer shall have received an LC Request, an LC Application, and such other instruments, documents, or agreements as LC Issuer customarily requires for the issuance of letters of credit of similar purpose and amount, in each case, at least eight (8) Business Days before the requested date of issuance of such Letter of Credit (or such shorter period as LC Issuer may permit in writing in its discretion); (c) after giving effect to the issuance of such Letter of Credit, the LC Obligations shall not exceed the LC Sublimit and no Over Advance shall exist; (d) the expiration date of such Letter of Credit shall be (i) in the case of a standby Letter of Credit, no more than three hundred sixty-five (365) days from issuance (or such longer period as may be agreed by the applicable LC Issuer

and the applicable Borrower and provided, for avoidance of doubt, that any standby Letter of Credit may provide for automatic renewal thereof for additional periods of up to twelve (12) months, subject to clause (iii) of this definition below); (ii) in the case of a documentary Letter of Credit, no more than one hundred twenty (120) days from issuance; and (iii) for all Letters of Credit, at least thirty (30) days before the Stated Revolving Commitment Termination Date; (e) the date on which such Letter of Credit is to be issued shall be at least thirty (30) days before the Stated Revolving Commitment Termination Date; (f) such Letter of Credit and payments thereunder shall be denominated in Dollars; (g) the form and substance of such Letter of Credit shall be acceptable to each of Administrative Agent and LC Issuer in their respective discretion; and (h) in the event that any Lender is at such time a Defaulting Lender, LC Issuer shall have entered into arrangements satisfactory to LC Issuer (in its discretion) with Borrowers or such Defaulting Lender to eliminate LC Issuer's Fronting Exposure with respect to such Lender (after giving effect to **Section 4.2(a)(iv)** and any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of LC Obligations in a form, manner and substance satisfactory to Administrative Agent in its discretion.

"LC Documents" means all documents, instruments, certificates and agreements (including LC Requests and LC Applications) delivered by any Borrower, Borrower Representative or any other Person to LC Issuer or Administrative Agent in connection with the issuance, amendment, extension or renewal of, or payment under, any Letter of Credit.

"LC Issuer" means any of Regions Bank or an Affiliate of Regions Bank and up to two (2) other Lenders designated by Borrower Representative who have agreed in writing to act as an LC Issuer hereunder, together with each of their successors and permitted assigns acting in such capacity.

"LC Issuer Indemnitees" means LC Issuer and its Related Parties.

"LC Obligations" means, at any time, the sum of (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all drawings under Letters of Credit that have occurred but have not been reimbursed by Borrowers or otherwise in accordance herewith and with the LC Documents. For all purposes of this Agreement, (i) amounts available to be drawn under Letters of Credit will be calculated as provided in **Section 2.4(a)(v)**, and (ii) if a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"LC Request" means each request for issuance of a Letter of Credit provided by Borrower Representative to Administrative Agent and LC Issuer, in form and substance satisfactory to Administrative Agent and LC Issuer.

"LC Sublimit" means, as of any date of determination, the lesser of (a) ~~One~~Two Hundred ~~Fifty-Five~~Twenty-Five Million Dollars (~~\$155,000,000~~225,000,000) and (b) the aggregate unused amount of the Revolving Commitments then in effect. The LC Sublimit may be subject to increase pursuant to the terms and conditions hereof.

"Legal Entity Rationalization" means the internal restructuring conducted by the Company in the past five years which resulted in the dissolutions or mergers of certain inactive Subsidiaries of the Company.

"Lender Indemnitees" means the Lenders and each of their respective Related Parties.

“Lenders” has the meaning given such term in the preamble to this Agreement and, in any event, further includes (a) Swing Line Lender in its capacity as a provider of Swing Line Loans, (b) Administrative Agent in its capacity as a maker of Protective Advances, and (c) and any other Person who hereafter becomes a “Lender” pursuant to an Assignment Agreement. The initial Lenders are identified on the signature pages hereto and are set forth on **Appendix A** hereto.

“Lending Office” means, with respect to any Lender, the office designated by such Lender as its “Lending Office” as set forth on **Appendix B** hereto at the time it becomes party to this Agreement or thereafter by notice to Administrative Agent and Borrower Representative.

“Letter of Credit” means any standby or documentary letter of credit issued by any LC Issuer for the account of a Borrower.

“Letter of Credit Fee” has the meaning set forth in **Section 3.2(c)**.

“License” means any license or agreement under which a Credit Party is authorized to use Intellectual Property in connection with (a) any manufacture, marketing, distribution, or disposition of Collateral, (b) the provision of any service or (c) any other use of Property or conduct of its business.

“Lien” means any lien (whether statutory, by contract, under common law or otherwise), mortgage, deed of trust, deed to secure debt, pledge, hypothecation, security interest, trust arrangement, security deed, financing lease, collateral assignment, encumbrance, Consignment, conditional sale or title retention agreement, or any other interest in Property designed to secure the repayment or performance of any obligation, whether arising by agreement or under any statute or law or otherwise, and any Financing Lease having substantially the same economic effect as any of the foregoing. Without limitation of the foregoing, in the case of Real Estate, or interests therein, the term “Lien” also extends to and includes exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting such Real Estate.

“Liquidity” means the sum of (a) Excess Availability and (b) Qualified Cash (excluding any Borrowing Base Qualified Cash).

“Loan” means a Revolving Loan, and Term SOFR Loans and Base Rate Loans comprising such Loans.

“Loan Documents” means this Agreement, the Fee Letter, each Note, the Security Agreement, each Financing Statement, each other Security Document, each Guaranty, LC Document, Third Party Claimant Agreement, Collateral Disclosure Certificate, any Auto Borrow Agreement, any Subordination Agreement in respect of any Subordinated Debt, ~~each~~ the Approved Intercreditor Agreement, (if executed by Administrative Agent in connection with a Permitted Bond Transaction), any Borrowing Base Certificate, Compliance Certificate, Assignment Agreement, financial statement, Projection, report, and any and all other documents, instruments, agreements, certificates, and Schedules executed or delivered pursuant to or in connection herewith or with any other Loan Document, or the transactions contemplated herein or therein, whether now existing or hereafter arising (but, in any event, specifically excluding any Bank Product Agreement unless, by its express terms (or equivalent language), it is deemed to be a “Loan Document” hereunder), together with all exhibits, schedules, annexes, addenda, and other attachments thereto, in each case, as the same may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time.

“Loan Limit” means, as at any date of determination, the lesser of (a) the Borrowing Base (based on the then most recent Borrowing Base Certificate delivered to Administrative Agent by Borrowers

(adjusted for any declines or increases in Reserves established by Administrative Agent)), and (b) the Revolving Commitments in effect on such date.

“Loan Year” means each twelve-month period commencing on the Closing Date and ending on each anniversary of the Closing Date.

“Loss” means, with respect to any Property, (a) the loss, theft, damage, or destruction thereof or other casualty with respect thereto or (b) the condemnation or taking by eminent domain thereof by any Governmental Authority.

“Margin Stock” has the meaning given such term in Regulation U of the Board of Governors.

“Material Adverse Effect” means a material adverse effect upon (a) the business, assets, operations, property or financial condition of the Credit Parties taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to perform their obligations under the Loan Documents or (c) the validity or enforceability of the Loan Documents or the material rights or remedies of Administrative Agent, Collateral Agent, the Arrangers, the LC Issuers or the Lenders thereunder.

“Material Asset Sale” means any Asset Disposition or series of related Asset Dispositions of Property (other than Accounts and Inventory) by any Borrower or any of its Subsidiaries to any Person with a fair market value equal to or greater than \$50,000,000.

“Material Contract” means, collectively, (a) all contracts, agreements or other instruments described in Regulation S-K, Item 601(b)(10) promulgated pursuant to the Exchange Act, which the Company is required to file as an exhibit to any annual, quarterly or other report required to be filed by the Company under the Exchange Act and (b) each other material agreement to which any Credit Party or any Subsidiary is a party (other than the Loan Documents) that either (i) relates to DTA and the breach, termination, cancellation or nonperformance of such agreement, or the failure to renew such agreement, would cause the Inventory located at the DTA Coal Export Terminal to no longer constitute Eligible Inventory or would be reasonably likely to result in Liquidity of less than \$90,000,000, (ii) relates to indemnity agreements supporting surety bonds in excess of the Threshold Amount; or (iii) in addition to those agreements specified above, is an agreement the breach, termination, cancellation or nonperformance of which, or the failure to renew which, would reasonably be expected to have, a Material Adverse Effect.

“Material Leased Real Estate” shall have the meaning set forth in the Security Agreement.

“Material Owned Real EstateProperty” shall have the meaning set forth in the Security Agreement.

“Mine” means any currently operating mining complex and its associated Reserve Area in respect of any of the Real Estate in the United States in which any Credit Party holds an ownership, leasehold or other interest permitting the occupancy and use of such Real Estate, including any excavation or opening into the earth now or hereafter made from which coal or other minerals are or can be extracted.

“Mining Laws” means any and all applicable federal, state, local and foreign statutes, laws, regulations, guidance, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions or common law causes of action relating to mining operations and activities. “Mining Laws” shall include but not be limited to, the Mineral Lands Leasing Act of 1920, the Federal Coal Leasing Amendments Act, the Surface Mining

Control and Reclamation Act of 1977, all other land reclamation and use statutes and regulations relating to Coal mining, mining reclamation or reclamation liabilities, the Federal Coal Mine Health and Safety Act, the Black Lung Act and the Coal Act, the MSHA, and the OSHA, each as amended, and their state and local counterparts or equivalents.

“Mining Title” means fee simple title to surface and/or coal or an undivided interest in fee simple title thereto or a leasehold interest in all or an undivided interest in surface and/or coal together with no less than those real property, easements, licenses, privileges, rights and appurtenances as are necessary to mine, remove, process and transport coal in the manner currently conducted by the Company or one of its Subsidiaries.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage” shall have the meaning set forth in the Security Agreement.

“Mortgage Documents” shall have the meaning set forth in the Security Agreement.

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

“Multiemployer Plan” means any “multiemployer plan” as defined in Section 3(37) of ERISA that is sponsored, maintained or contributed to by, or required to be contributed to by, any Credit Party or any of its ERISA Affiliates or with respect to which any Credit Party or any of its ERISA Affiliates previously sponsored, maintained or contributed to or was required to contribute to, at any time during the preceding six calendar years, and still has liability.

“Net Proceeds (Asset Dispositions)” means, in connection with any Permitted Asset Disposition (other than the sale of Inventory in the Ordinary Course of Business), the difference between (a) the aggregate amount of cash or Cash Equivalents received by a Credit Party or Subsidiary in connection with such Permitted Asset Disposition, and (b) the sum of (i) all reasonable and customary costs and expenses incurred in connection with such Permitted Asset Disposition up to an amount not to exceed the Threshold Amount; (ii) amounts applied to repayment of Debt secured by a Permitted Lien senior to Administrative Agent’s Liens on assets sold; (iii) taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided, that any such estimated amount reserved for taxes shall be held in an escrow account; provided, further, if the amount of any estimated taxes pursuant to this subclause (iii) exceeds the amount of taxes actually required to be paid in cash in respect of such Permitted Asset Disposition, the aggregate amount of such excess shall constitute Net Proceeds (Asset Dispositions); (iv) amounts held in escrow to be applied as part of the purchase price for such assets; and (v) a reasonable reserve for any adjustment in respect of the purchase price of such asset(s) required pursuant to GAAP and/or the after-tax costs of any indemnification payments (fixed or contingent) attributable to indemnities to the purchaser undertaken by such Credit Party or Subsidiary in connection with such Permitted Asset Disposition; provided that the amounts and reserves described in clauses (iii), (iv) and (v) above, respectively, shall constitute Net Proceeds (Asset Dispositions) at such time as such cash is released and delivered to such Credit Party or Subsidiary or any such reserve is no longer required, as applicable.

“Net Proceeds (Loss)” means, in connection with the receipt by a Credit Party or any Subsidiary, or by Administrative Agent as “lender’s loss payee” by endorsement as provided in **Section 8.3**, of any cash proceeds from a Loss (including proceeds of insurance paid with respect to or awards or compensation arising from any Loss, but excluding any proceeds from business interruption insurance) the difference between (a) the aggregate amount of cash or Cash Equivalents received by such Credit

Party or Subsidiary or Administrative Agent in connection with such Loss and (b) the sum of (i) all reasonable and customary costs and expenses incurred in connection with collection thereof (including transfer and similar Taxes in connection with the sale or taking of such Property), and (ii) any amounts applied to repayment of Debt secured by a Permitted Lien senior to Administrative Agent's Liens with respect to the Property suffering such Loss.

"NOLV" or "Net Orderly Liquidation Value" means, as to any Inventory, the expected Dollar amount to be realized at an orderly, negotiated sale of such Inventory, net of all operating expenses, commissions, liquidation expenses, costs of sale, operating expenses, and retrieval and related costs as determined by Administrative Agent from time to time based on the most recent Qualified Appraisal of such Inventory.

"NOLV Percentage" means, at any time of determination and with respect to any Inventory, the amount of the value of such Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale of such Inventory, net of all operating expenses, commissions and other liquidation expenses, as determined by Administrative Agent from time to time based on the most recent Qualified Appraisal stating the NOLV of such Inventory (it being recognized and agreed by Borrowers that individual types or kinds of Inventory may have different NOLV Percentages).

"Non-Consenting Lender" means, with respect to any consent, amendment, or waiver under **Section 15.2(a)** (including any forbearance of Administrative Agent's or any Lender's rights and remedies), any Lender whose consent to such consent, waiver, or amendment (or forbearance) was required but which, for any reason, failed to provide such consent before the later to occur of (a) the end of the period of time established by Administrative Agent for the obtaining of such consent from the Lenders and (b) five (5) Business Days after the Required Lenders shall have provided such consent; provided, however, that any such Lender shall cease to be a Non-Consenting Lender on the 120th day following the later to occur of (i) expiration of the time allotted for obtaining such consent from the Lenders and (ii) the date on which the Required Lenders consented thereto.

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

"Non-Extension Notice Date" has the meaning set forth in **Section 2.4(a)(vi)**.

"Notes" means each Revolving Note, the Swing Line Note and any other promissory note executed by Borrowers, or any of them, to evidence any Obligations, as amended, restated, amended and restated, supplemented, waived, renewed or otherwise modified from time to time.

"Notice of Borrowing" means a notice substantially in the form of Exhibit C or such other form requested by or acceptable to Administrative Agent in its discretion from time to time.

"Notice of Conversion/Continuation" means a notice substantially in the form of Exhibit D or such other form requested by or acceptable to Administrative Agent in its discretion from time to time.

"Obligations" means all Debts, obligations and other liabilities of every kind and nature of each Credit Party (and all Credit Parties, jointly and severally) at any time or from time to time owed or owing to Administrative Agent (including any former Administrative Agent in its capacity as such), any LC Issuer, any Lender (including any former Lender in its capacity as such), and any Bank Product Provider under this Agreement, any Note or any other Loan Document or Bank Product Agreement (including Swap Obligations, subject to the proviso set forth below), together with all renewals, extensions, modifications or re-financings (other than re-financing by any third party) of any of the foregoing,

whether arising from an extension of credit, issuance of a Letter of Credit, acceptance, Loan, Guaranty, indemnification, or otherwise, and whether direct or indirect (including any acquired by assumption), absolute or contingent, due or to become due, primary or secondary, joint or several, and specifically including, but without limitation, (a) all principal of and premium, if any, on the Loans; (b) all LC Obligations and other obligations of the Credit Parties with respect to Letters of Credit; (c) all interest, expenses, fees, Claims and other sums payable by the Credit Parties, or any of them, under this Agreement or the other Loan Documents (including any interest on pre-petition Obligations accruing after the commencement of any Insolvency Proceeding by or against any Credit Party, whether or not allowable in such Insolvency Proceeding); (d) all Indemnatee Obligations; (e) all Bank Product Obligations; (f) all obligations of Credit Parties to make reimbursements hereunder, including in regard to Extraordinary Expenses, (g) all Erroneous Payment Subrogation Rights; and (h) all obligations of Credit Parties under or in respect of any Claims; provided, however, that the term “Obligations” shall expressly exclude any Excluded Swap Obligations.

“OFAC” means The Office of Foreign Assets Control of the United States Department of the Treasury or any successor thereto.

“Ordinary Course of Business” means the ordinary course of business of any Credit Party or Subsidiary, undertaken in Good Faith.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, (d) with respect to any limited liability company, its articles of organization, certificate of formation or comparable documents, as amended, and its operating agreement, as amended, and (e) with respect to any Joint Venture, trust or other form of business entity, its Joint Venture, trust or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity. In the event any term or condition of this Agreement or any other Loan 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.

“OSHA” means the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 14.4**).

“Over Advance” means, at any time of determination, the amount, if any, by which the Aggregate Revolving Obligations at such time exceed the Borrowing Base at such time.

“Over Advance Loan” means a Base Rate Revolving Loan made when an Over Advance exists or is caused by the funding thereof.

“Owner Trustee” means Bank of Utah, not in any individual capacity but solely in its capacity as owner trustee under the Trust Agreement (N731BP) dated July 26, 2016, between Bank of Utah, as owner trustee, and the Company, as operator.

“Paid in Full,” “Pay in Full,” “Payment in Full” (and words of similar import) means: (i) with respect to the Obligations, or any portion thereof, and except as provided in clause (ii) below, the full and indefeasible payment thereof, including any interest, fees, and other charges and charges thereon (including any thereof accruing during an Insolvency Proceeding, whether or not allowed in such proceeding), in immediately available collected funds; plus (ii) if such Obligations are LC Obligations or otherwise are inchoate or contingent in nature, the Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Administrative Agent in its discretion, in an amount at least equal to the otherwise required Cash Collateral); plus (iii) in connection with the payment of all, or substantially all, Obligations (excepting therefrom any Obligations described in and governed by clause (ii) above), the termination of all Commitments relative to such Obligations and the release of all Claims of all Credit Parties against Administrative Agent, LC Issuer and the Lenders arising on or before the full payment date in respect of such Obligations.

“parent,” in relation to any Subsidiary, is a Person that owns or Controls more than fifty percent (50%) of issued and outstanding capital stock or other Equity Interests of such Subsidiary, either directly or indirectly.

“Participant” has the meaning given such term in **Section 13.1(d)**.

“Participant Register” has the meaning given such term in **Section 13.1(d)**.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

“Payment Conditions” means, at any time of determination, in respect of any Acquisition, Asset Disposition, Investment, Restricted Payment or other specified transaction,

(a) no Default or Event of Default shall have occurred and be continuing or would immediately result from such specified transaction; and

(b) Borrowers shall have Qualified Cash at Regions Bank, but excluding any Borrowing Base Qualified Cash, both immediately after giving effect to the specified transaction and on each of the thirty (30) consecutive days immediately preceding the date of the specified transaction (but giving pro forma effect to the specified transaction as though it had been consummated on the first day of such 30-day period), of not less than \$100,000,000.

“Payment Item” means each check, draft, or other item of payment payable to a Credit Party, including those constituting Proceeds of any Collateral.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Credit Party or ERISA Affiliate or to which the Credit Party or ERISA Affiliate contributes or has an obligation to contribute at any time during the preceding six calendar years, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five (5) plan years.

“Permits” means any and all permits, approvals, licenses, registrations, consents, notifications, identification numbers, bonds, waivers or exemptions and any other regulatory authorization and other authorizations, in each case, from a Governmental Authority having jurisdiction over the applicable activity.

“Permitted Acquisition” means an Acquisition by a Credit Party or any Subsidiary of all or substantially all of the assets, a business unit or a division of a Person, or all or substantially all of the Equity Interests of a Person, in each instance if and to the extent that such Person is organized under the laws of the United States of America or any State thereof, so long as each of the following conditions is satisfied prior to, or upon, such Acquisition being consummated, as determined by Administrative Agent in its reasonable discretion (unless and except to the extent that one or more of such conditions is otherwise waived or modified in one or more instances by Administrative Agent, in its reasonable discretion):

(a) with respect to any Acquisition with a purchase price in excess of \$50,000,000, Administrative Agent shall have received from Borrower Representative at least thirty (30) days’ written notice of such Acquisition prior to the consummation of the Acquisition;

(b) such acquired Person or assets, as applicable, are located in the continental United States of America and satisfy the provisions of **Section 9.7(j)**;

(c) with respect to any Person that is or becomes a Subsidiary organized in the United States, such Person shall deliver all of the documents that are required by **Section 8.14** and **Section 8.15** within the time periods set forth therein (including amendments or supplements to this Agreement, the Security Documents or such other documents as Administrative Agent may deem reasonably necessary or advisable) and, subject to the Approved Intercreditor Agreement, if applicable, the certificates representing the Equity Interests of such Person, together with undated powers executed and delivered in blank by a Responsible Officer of the applicable Credit Party or such Subsidiary, as the case may be, and take all actions deemed necessary or advisable by Administrative Agent to cause the Lien created by this Agreement to be duly perfected against the Equity Interests in and Property of such Person, including the filing of Financing Statements (including as-extracted financing statements if applicable) in such jurisdictions as may be requested by Administrative Agent and a collateral assignment of rights with respect to the applicable Acquisition documents executed by the applicable Credit Parties and (unless otherwise agreed by Administrative Agent) acknowledged and accepted by the seller and target of such Acquisition; provided, that, in respect of acquired entities that will not become Credit Parties or acquired assets that will not be acquired by Credit Parties, the aggregate amount of such Investments, when taken together with Investments in Immaterial Restricted Subsidiaries and non-Credit Parties made pursuant to **Section 9.4(u)** and Intercompany Debt of Immaterial Restricted Subsidiaries incurred pursuant to **Section 9.1(k)** (subject to the proviso at the end of **Section 9.1**), shall not in the aggregate exceed the greater of \$70,000,000 and 8% of Consolidated Net Tangible Assets;

(d) no Default or Event of Default shall exist or result therefrom, and, without limitation of the foregoing, no Debt will be incurred, assumed, or would exist with respect to any Credit Party or any Subsidiaries as a result of such Acquisition, other than Debt permitted to exist under **Section 9.1**, no

Liens will be incurred, assumed, or would exist with respect to the assets of any Credit Party or any Subsidiary as a result of such Acquisition other than Permitted Liens;

(e) at the time of and immediately after giving effect to such Acquisition on a Pro Forma Basis (after giving effect to any Revolving Loans or other extensions of credit and other Debt incurred to finance such Acquisition), each of the Payment Conditions are satisfied in regard thereto;

(f) such Acquisition is not consummated in connection with a “hostile takeover” or proxy fight or similar transaction; and

(g) such Acquisition and all transactions related thereto are consummated in all material respects in accordance with Applicable Laws.

In connection with any Permitted Acquisition whether by purchase of stock, merger, or purchase of assets and whether in a single transaction or series of related transactions, by a Borrower, Administrative Agent shall have the right to determine in its discretion which assets so acquired shall be included in the Borrowing Base (subject to the provisions of the definitions “Borrowing Base,” “Eligible Accounts,” “Eligible Billed Accounts,” “Eligible Unbilled Accounts,” and “Eligible Inventory” and any other provisions of this Agreement and the other Loan Documents applicable to the computation and reporting of the Borrowing Base). In connection with such determination, Administrative Agent may obtain, at Borrowers’ expense, such appraisals, field exams and other diligence and assessments of such assets (including a copy of the purchase agreement and lien search results that reflect that, after giving effect to the Acquisition and any contemplated releases, there are no Liens other than Permitted Liens with respect to the Acquisition target or assets) as it may deem desirable and all such appraisals, exams and other assessments shall be paid for by Borrowers; provided, that in no event shall the purchased assets be included in the Borrowing Base until Administrative Agent has completed applicable appraisals, exams and other assessments in form and substance satisfactory to Administrative Agent in its Reasonable Credit Judgment with respect to such assets.

“Permitted Asset Disposition” means, as long as all Net Proceeds (Asset Dispositions) with respect thereto are remitted to Administrative Agent to the extent required hereby, an Asset Disposition that constitutes or is:

(a) a sale of Inventory or Equipment in the Ordinary Course of Business;

(b) an Asset Disposition of Equipment that is surplus, obsolete, un-merchantable, worn out or otherwise unsalable or that, in the reasonable judgment of any Borrower, is no longer useful in its business, in each case in the Ordinary Course of Business;

(c) an Asset Disposition of Intellectual Property that is, in the reasonable judgment of Borrowers, no longer economically practicable to maintain or useful in the conduct of the Credit Parties and their Subsidiaries’ business;

(d) (i) a write-off, discount, sale, or other disposition of defaulted or past due Accounts and similar obligations in the Ordinary Course of Business and (for avoidance of any doubt) not part of any financing of Accounts and (ii) dispositions of Accounts (other than Eligible Accounts) in connection with the compromise, settlement or collection thereof in the Ordinary Course of Business or in bankruptcy or similar proceeding with respect to the Account Debtor;

(e) a sale, transfer or other disposition, of any Property (i) by a Borrower to another Borrower; (ii) by any Guarantor to a Borrower or other Guarantor; (iii) by any Foreign Subsidiary to any

other Foreign Subsidiary; (iv) by any Domestic Subsidiary that is not a Credit Party to any other Domestic Subsidiary that is not a Credit Party; or (v) by any Subsidiary that is not a Credit Party to any Credit Party for fair market value or for a value more favorable to such Credit Party (in each case as determined by Borrowers in Good Faith) at the time of such sale, transfer, or disposition; provided that any such disposition of Property constituting Collateral shall be made subject to the Lien of Administrative Agent thereon;

(f) a Division, to the extent expressly permitted by **Section 9.7**;

(g) termination of a lease of Property that is not necessary for the Ordinary Course of Business, would not reasonably be expected to have a Material Adverse Effect, and does not result from any Credit Party's or Subsidiary's default thereunder;

(h) a license, sublicense or cross-license of Intellectual Property rights in the Ordinary Course of Business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Credit Parties and their Subsidiaries;

(i) (i) the grant in the Ordinary Course of Business of any non-exclusive easements, permits, licenses, rights of way, surface leases or other surface rights or interests and (ii) any lease, sublease, license, or sublicense of Real Estate granted by any Credit Party or Subsidiary to other Persons, in each case in the Ordinary Course of Business not interfering in any material respect with any Credit Party or Subsidiary's business or Administrative Agent's access to any Collateral;

(j) an Asset Disposition of Excluded Collateral and other Asset Dispositions that do not constitute Material Asset Sales;

(k) (i) transfers of condemned property as a result of the exercise of "eminent domain" or other similar policies or (ii) transfers of properties to the extent that such property has been subject to a casualty event for which the Credit Parties or a creditor with a Lien on such property that is permitted hereunder have received (or have not been denied) insurance proceeds or condemnation awards;

(l) the voluntary termination of any Swap Agreement to which a Credit Party is party;

(m) other Asset Dispositions (other than sales or dispositions of Inventory and Accounts, except to the extent such Asset Disposition is in connection with a disposition of a mining operation or all or substantially all of the assets of the relevant Subsidiary or Subsidiaries), if immediately after giving effect to such Asset Disposition, (i) no Event of Default has occurred and is continuing, (ii) no Cash Dominion Period exists at the time of such Asset Disposition (or would commence if Borrowers were required to deliver a Borrowing Base Certificate immediately after consummation of such Asset Disposition), (iii) the consideration received for such Asset Disposition shall be in an amount at least equal to the fair market value thereof as reasonably determined by the applicable Borrower in good faith, and (iv) at least 75% of the consideration for such Asset Disposition undertaken pursuant to this clause (m) shall be paid in cash or Cash Equivalents, provided, that, solely for purposes of this clause (iv), each of the following shall be deemed to be cash: (A) any securities, notes, other obligations or assets received by any Borrower or any Subsidiary from such transferee that are converted by such Borrower or such Subsidiary into cash or Cash Equivalents within one hundred eighty (180) days of the receipt thereof, to the extent of the cash or Cash Equivalents received in that conversion; (B) any reclamation, employment related or any other liabilities of any Borrower or any Subsidiary (other than contingent liabilities) that are assumed by the transferee of any such assets and as a result of which such Borrower or such Subsidiary is released from further liability; and (C) any Designated Non-Cash Consideration received by any Borrower or any of their Subsidiaries in such Asset Disposition; provided, that the

aggregate fair market value of such Designated Non-Cash Consideration, as reasonably determined by the applicable Borrower in good faith, taken together with the fair market value at the time of receipt of all other Designated Non-Cash Consideration received pursuant to this clause (m) during the term of this Agreement shall not exceed \$10,000,000;

(n) any Investment permitted pursuant to **Sections 9.4(q) or 9.4(x)** which constitutes an Asset Disposition;

(o) to the extent allowable under Section 1031 of the Code, or any comparable or successor provision, any like kind exchange of property for use in a line of business that is not violative of **Section 9.7(j)**;

(p) (i) any surrender or waiver of contractual rights or the settlement, release, or surrender of contractual rights or other litigation claims in the Ordinary Course of Business or (ii) any settlement, discount, write off, forgiveness, or cancellation of any Debt owing by any present or former directors, officers, or employees of any Borrower or any Subsidiary or any of their successors or assigns;

(q) other than ~~Material~~ Real Estate which does not constitute Excluded Collateral, the sale of Real Estate by Borrowers and their Subsidiaries solely to the extent that such Real Estate is not necessary for the normal conduct of operations of Borrowers and their Subsidiaries and so long as no Inventory is located at such Real Estate;

(r) so long as no Cash Dominion Period exists at the time of such Asset Disposition (or would commence if Borrowers were required to deliver a Borrowing Base Certificate immediately after consummation of such Asset Disposition), the sale of ~~Material~~ Real Estate which does not constitute Excluded Collateral;

(s) Permitted Asset Swaps;

(t) Asset Dispositions of Sold Receivables pursuant to any Permitted Receivables Transaction; and

(u) the assignment of a lease, in whole or in part, of Property that is subject to a Contract Mining and Reclamation Agreement by and between any Credit Party or Subsidiary and Lexington Coal Company, LLC, as part of which such Credit Party or Subsidiary may pay to the assignee cash or non-cash consideration that, in the reasonable judgment of such Credit Party or Subsidiary, is fair and reasonable in the circumstances and provided that each of the Payment Conditions shall have been satisfied at the time of and immediately after giving effect to payment thereof.

“Permitted Asset Swap” means the substantially concurrent purchase and sale, trade-in or exchange of Equipment or Real Estate or a combination of such Equipment or Real Estate and cash or Cash Equivalents between any Borrower or any Guarantor and another Person; provided, that the fair market value of the Equipment or Real Estate received is at least as great as the fair market value of the Equipment or Real Estate being traded-in or exchanged as determined by the Borrower Representative reasonably and in good faith; provided, that any shortfall may be treated as an Investment and shall constitute an Investment for purposes of calculation compliance with **Section 9.4**.

“Permitted [REDACTED] Receivables Transaction” means that certain receivables transaction between one or more Borrowers and [REDACTED], and pursuant to which certain Accounts

owing by [REDACTED] are purchased by or
forfeited to [REDACTED].

“Permitted Bond Agreement” means an indenture by and among Senior Notes Agent, the Credit Parties party thereto, and the other parties party thereto, with respect to a Permitted Bond Transaction, provided such indenture is in form and substance reasonably satisfactory to Administrative Agent.

“Permitted Bond Documents” means, collectively, the Permitted Bond Agreement, the Permitted Bond Security Documents, and each other “Loan Document” (or term of similar import) as defined in the Permitted Bond Agreement executed or delivered in connection with a Permitted Bond Transaction.

“Permitted Bond Security Documents” means each security agreement, financing statement, any mortgage and other mortgage documents, notices of security interests in Intellectual Property filed or to be filed with any applicable filing office or registry, each control agreement, each pledge agreement, and all other documents, instruments, and agreements executed or delivered by Credit Parties for purposes of securing (or intending to secure), or perfecting (or intending to perfect) Liens securing, any Senior Notes Debt, in each case, in form and substance reasonably satisfactory to Administrative Agent.

“Permitted Bond Transaction” means an issuance of senior secured notes by Credit Parties pursuant to the Permitted Bond Agreement after the First Amendment Date so long as each of the following conditions is satisfied prior to, or upon such transaction being consummated, as determined by Administrative Agent in its reasonable discretion:

(a) Administrative Agent shall have received at least thirty (30) days’ written notice of such transaction prior to consummation thereof by the Credit Parties party thereto;

(b) the principal amount of the Debt incurred in connection with such transaction shall be an amount not to exceed \$500,000,000 in the aggregate;

(c) [reserved];

(d) no Default or Event of Default shall exist or result therefrom;

(e) not less than thirty (30) days prior to consummation thereof, the Borrowers shall have delivered to Administrative Agent projections prepared in good faith and demonstrating that, at the time of and immediately after giving effect to such transaction on a Pro Forma Basis, Credit Parties will have a Senior Leverage Ratio not to exceed 4.00 to 1.00;

(f) the stated maturity date of the Senior Notes Debt shall be no less than five (5) years after the Permitted Bond Transaction Effective Date;

(g) (i) the Credit Parties shall provide to Administrative Agent drafts of the offering memorandum, description of notes (which shall describe the Permitted Bond Agreement), and the Permitted Bond Security Documents and such other material documents that Administrative Agent may reasonably request, including, without limitation, the intercreditor and/or collateral agency agreement among Credit Parties, the Senior Notes Agent and any additional term agent or additional term representative, and Administrative Agent shall have found such drafts to be in form and substance reasonably satisfactory, and (ii) substantially concurrently with the consummation of such transaction, Credit Parties shall provide to Administrative Agent final, executed copies of the foregoing documents;

(h) Administrative Agent and the Senior Notes Agent shall have entered into the Approved Intercreditor Agreement, and Credit Parties shall acknowledge such Approved Intercreditor Agreement, as of the Permitted Bond Transaction Effective Date;

(i) the Senior Notes Debt shall be secured by first priority Liens on the Term Priority Collateral and second priority Liens on ABL Priority Collateral;

(j) Credit Parties shall not have consummated a Permitted Convertible Debt Transaction on or before the proposed effective date of the Permitted Bond Transaction; and

(k) the Senior Notes Debt shall have no amortization and no scheduled principal payments prior to its stated maturity date.

“Permitted Bond Transaction Effective Date” means, subject to satisfaction of the conditions set forth in the definition of Permitted Bond Transaction, the date on which the Permitted Bond Transaction is consummated.

“Permitted Convertible Debt Hedge” means one or more call or capped call options, bond hedge overlays, call spreads, or other substantively equivalent derivative transaction relating to the Company’s common stock (or other securities or property following a merger event or other change of the Equity Interests of the Company) entered into by the Company in connection with a Permitted Convertible Debt Transaction on customary terms for hedging and derivative transactions of such type so long as the form documentation related to such transaction is in form and substance reasonably satisfactory to Administrative Agent.

“Permitted Convertible Debt Transaction” means the issuance of senior unsecured convertible notes pursuant to an indenture entered into by Credit Parties after the First Amendment Date, which notes are convertible into a fixed number of shares of common stock of the Company (or other securities or property following a merger event or other change of the Equity Interests of the Company, or other number of shares of common stock of the Company resulting from customary anti-dilution, value-transfer protection, make-whole fundamental change, price protection or similar conversion rate adjustments) other than Disqualified Equity Interests, and cash in lieu of fractional shares of common stock of the Company, so long as each of the following conditions is satisfied prior to, or upon such transaction being consummated, as determined by Administrative Agent in its reasonable discretion:

(a) Administrative Agent shall have received at least thirty (30) days’ written notice of such transaction prior to consummation thereof by the Credit Parties party thereto;

(b) the principal amount of the Debt incurred in connection with such transaction shall not exceed \$500,000,000 in the aggregate;

(c) [reserved];

(d) no Default or Event of Default shall exist or result therefrom;

(e) [reserved];

(f) the stated maturity date of the Debt incurred in connection with such transaction shall be no less than five (5) years after the consummation thereof;

(g) the Credit Parties shall provide to Administrative Agent drafts of the documentation (including a draft of any offering memorandum, indenture, and form of note) with respect to such

transaction and Administrative Agent shall have found such documentation to be in form and substance reasonably satisfactory;

(h) [reserved];

(i) [reserved];

(j) the Credit Parties shall not have consummated a Permitted Bond Transaction on or before the proposed effective date of the Permitted Convertible Debt Transaction; and

(k) the Debt incurred in connection with such transaction (i) shall be unsecured at all times, (ii) shall have no amortization and no scheduled or mandatory principal payments, prepayments, cash settlements, repurchases, redemptions, sinking fund or like payments, whether on one or more fixed dates, in each case, required at any time prior to its stated maturity date, except (A) upon the occurrence of a "change of control" or "fundamental change" or the equivalent, (B) following the election by the Company to redeem such notes to the extent permitted by this Agreement, or (C) upon the conversion of the notes into common stock of the Company that is not Disqualified Equity Interests by the holders thereof, and (iii) no Subsidiary of the Company that is not a Credit Party shall Guarantee or otherwise be obligated with respect to such Convertible Notes Debt.

"Permitted Lien" has the meaning given such term in **Section 9.2**.

"Permitted Location" shall have the meaning set forth in the Security Agreement.

"Permitted Other Pre-Closing Forfeiting Arrangements" means arrangements existing on the Closing Date pursuant to which Accounts owing by

are purchased or forfeited from time to time.

"Permitted Partial Payment Plan" means a partial payment plan whereby (a) an Account Debtor is required to pre-pay a portion of the total sale amount prior to shipment, with the remaining sale amount billed following shipment; (b) an Account Debtor that is using a letter of credit as Acceptable Credit Support for a shipment makes an initial partial payment, followed by a subsequent payment for the remaining balance due on the shipment; or (c) an Account Debtor is billed for a shipment at a provisional selling price, and a subsequent billing is made after the final selling price has been determined.

"Permitted Purchase Money Debt" means Purchase Money Debt (a) that is either unsecured or secured by only a Purchase Money Lien and (b) is incurred while no Default or Event of Default is in existence and no Default or Event of Default would result from such incurrence.

"Permitted Real Estate Encumbrances" means the following encumbrances which do not, in any case, individually or in the aggregate, materially detract from the value of any Mine subject thereto or interfere with the Ordinary Course of Business or operations of any Credit Party as presently conducted on, at or with respect to such Mine and as to be conducted following the Closing Date:

(a) encumbrances customarily found upon Real Estate used for mining purposes in the applicable jurisdiction in which the applicable Real Estate is located to the extent such encumbrances

would be permitted or granted by a prudent operator of mining Property similar in use and configuration to such Real Estate (e.g., surface rights agreements, wheelage agreements and reconveyance agreements);

(b) rights and easements of (i) owners of undivided interests in any of the Real Estate where the applicable Credit Party or Subsidiary owns less than 100% of the fee interest, (ii) owners of interests in the surface of any Real Estate where the applicable Credit Party or Subsidiary does not own or lease such surface interest, (iii) lessees, if any, of coal or other minerals or naturally occurring materials (including oil, gas, coal bed methane, sod, granite, crops and trees) where the applicable Credit Party or Subsidiary does not own such coal or other minerals, and (iv) lessees of other coal seams and other minerals (including oil, gas and coal bed methane) not owned or leased by such Credit Party or Subsidiary;

(c) with respect to any Real Estate in which any Credit Party or Subsidiary holds a leasehold interest, terms, agreements, provisions, conditions, and limitations (other than royalty and other payment obligations which are otherwise permitted hereunder) contained in the leases granting such leasehold interest and the rights of lessors thereunder (and their heirs, executors, administrators, successors, and assigns);

(d) farm, grazing, hunting, recreational and residential leases with respect to which any Credit Party or any Subsidiary is the lessor encumbering portions of the Real Estate to the extent such leases would be granted or permitted by, and contain terms and provisions that would be acceptable to, a prudent operator of mining Properties similar in use and configuration to such Real Estate;

(e) Royalties and other payment obligations to sellers or transferors of fee coal or leased Properties (including Mining Title) to the extent such obligations constitute a Lien not yet delinquent;

(f) rights of others to subjacent or lateral support and absence of subsidence rights or to the maintenance of barrier pillars or restrictions on mining within certain areas as provided by any mining lease, unless in each case waived by such other Person;

(g) rights of repurchase or reversion when mining and reclamation are completed;

(h) zoning, building, land use and other similar laws and all Liens (other than monetary Liens) that do not materially interfere with the ordinary conduct of the business or operations of any Credit Party or any Subsidiary as presently conducted;

(i) Liens of landlords incurred in the Ordinary Course of Business securing obligations to pay lease or royalty payments that are not yet due and payable or in default beyond all applicable notice and cure periods; and

(j) leases, subleases, licenses and rights-of-use granted to others incurred in the Ordinary Course of Business and that do not materially and adversely affect the use of the Property encumbered thereby for its intended purpose.

“Permitted Receivables Purchaser” means any Person engaged in the business of purchasing, forfeiting or factoring Accounts and any bank or other financial institution, in each case, acceptable to Administrative Agent in its Reasonable Credit Judgment. As of the Closing Date, [REDACTED] is acceptable to Administrative Agent.

“Permitted Receivables Transaction” means (a) any receivables purchase facility entered into in connection with any supply chain finance arrangement pursuant to which a Credit Party may sell or

assign to a Permitted Receivables Purchaser, or may grant a security interest in, any Sold Receivables with respect to a particular Account Debtor, in each case in the Ordinary Course of Business or (b) any refinancing or replacement of the foregoing providing for a supply chain finance arrangement pursuant to which Credit Parties may sell, convey or otherwise transfer to a Permitted Receivables Purchaser, or may grant a security interest in any Sold Receivables; provided, that, the following conditions are satisfied with respect to any Permitted Receivables Transaction consummated after the Closing Date as determined by Administrative Agent in its reasonable discretion: (i) such Credit Party shall provide written notice to Administrative Agent of any such Permitted Receivables Transaction, identifying the Account Debtor subject thereto and providing to Administrative Agent a copy of the applicable receivables purchase agreement (with economic terms redacted to the extent required by the Permitted Receivables Purchaser); (ii) such Credit Party does not grant (and such Permitted Receivables Purchaser does not otherwise obtain) any Liens (whether in the form of a security interest or in the form of a true sale of or indorsement over of the same) on any Collateral, other than the Accounts which are purchased pursuant to the Permitted Receivables Transaction; (iii) if required by Administrative Agent, Administrative Agent shall have received an intercreditor agreement duly executed by the Permitted Receivables Purchaser providing for Lien priorities not violative of the Loan Documents and containing such other terms to which Administrative Agent may consent; (iv) the applicable agreements and other documentation entered into with respect to such Permitted Receivables Transaction establish procedures to ensure that payments and other proceeds of the purchased Accounts are not commingled with other Property of the Credit Parties, and such agreements and documentation are otherwise in form and substance satisfactory to Administrative Agent in its Reasonable Credit Judgment; (v) any Borrowing Base Certificate delivered to Administrative Agent shall reflect all Accounts owing by an Account Debtor subject to such Permitted Receivables Transaction as ineligible Accounts; and (vi) no Event of Default has occurred and is continuing at the time of such Credit Party's entry into such Permitted Receivables Transaction. For the avoidance of doubt, notwithstanding the foregoing, each of the [REDACTED] Permitted Receivables Transaction and the Permitted Other Pre-Closing Forfeiting Arrangements shall constitute a Permitted Receivables Transaction.

"Permitted Refinancing Debt" means Debt that is incurred to extend, renew, replace, or refinance another Debt (the "Existing Debt"), to the extent that (a) the aggregate principal amount of such Debt does not exceed the principal amount of the Existing Debt at the time such Debt is incurred (other than by the amount of premiums paid thereon, accrued and unpaid interest paid on account thereof, the fees and expenses incurred in connection therewith, and any existing unutilized commitments thereunder); (b) such Debt does not mature earlier than the Existing Debt; (c) the weighted average life to maturity of such Debt (measured as of the date of the extension, renewal, replacement or refinancing) is no less than that of the Existing Debt; (d) the interest rate of such Debt, on an all-in basis, is not greater than the Existing Debt; (e) in relation to the Obligations, such Debt has the same or lower Lien and payment priority as the Existing Debt and if requested by Administrative Agent, the holders of such Debt and Borrowers shall have executed an acceptable ~~Intercreditor Agreement~~intercreditor agreement with Administrative Agent and, in the case of refinancing of any Debt under a Permitted Bond Agreement, the respective Lien priorities in the collateral in favor of Administrative Agent and in favor of the holders of such refinanced Senior Notes Debt shall be the same as provided in the Approved Intercreditor Agreement as in effect on the Permitted Bond Transaction Effective Date; (f) if the Debt that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then, the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable, taken as a whole, to the Lenders and other Secured Parties as those that were applicable to the refinanced, renewed, or extended Debt; (g) the representations, covenants, and defaults applicable to such Debt are no less favorable to any Borrower or other Credit Party than those applicable to the Existing Debt; (h) no Liens secure such Debt, other than Liens of the same scope, nature, and priority, and covering the same assets, as those which secured the Existing Debt; (i) no Person is obligated with respect to such Debt (as borrower, guarantor, or otherwise) to any greater extent

than such Person is obligated with respect to the Existing Debt; (j) the material terms (other than pricing and yield and optional prepayment or redemption provisions) of such Debt or of any agreement entered into or of any instrument issued in connection therewith are not, in the aggregate, less favorable in any material respect to Borrowers or any other Credit Parties or to the Lenders or any other Secured Parties than the terms of any agreement or instrument governing the Debt so extended, refinanced, renewed, replaced, defeased or refunded (except for covenants and other provisions applicable only to periods after the Commitment Termination Date); and (k) at the time such Debt is incurred, and after giving effect thereto, no Default or Event of Default exists.

“Permitted Third Party Bank” shall mean (a) any Lender or Affiliate of a Lender or any Person that was a Lender or an Affiliate of a Lender at the time an Article 9 Control Agreement was entered into with such Person and (b) any other bank or other financial institution acceptable to Administrative Agent in its reasonable discretion, in the case of each of clauses (a) and (b) above, with whom any Credit Party maintains a Deposit Account subject to the Article 9 Control of Administrative Agent and with whom an Article 9 Control Agreement has been executed.

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

“Plan” means, as applicable to any one or more Credit Parties or ERISA Affiliates, a Benefit Plan, a Pension Plan, a Multiemployer Plan or a Foreign Plan.

“Plan of Reorganization” means Alpha Natural Resources, Inc.’s Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession as confirmed by the United States Bankruptcy Court for the Eastern District of Virginia in the Confirmation Order (together with all exhibits and schedules thereto) as in effect on the date hereof.

“Platform” has the meaning given to such term in **Section 15.1(d)**.

“Prime Rate” means the per annum rate that Administrative Agent, acting in its individual capacity as a bank, publicly announces from time to time to be its prime lending rate, as in effect from time to time. Administrative Agent’s prime lending rate is a reference rate and does not necessarily represent the lowest or best rate charged to its customers.

“Principal Office” means, for Administrative Agent, the Swing Line Lender, LC Issuer and each Lender, such Person’s “Principal Office” as set forth on **Appendix B**, or such other office as it may from time to time designate in writing to Borrower Representative and each Lender.

“Pro Forma Basis” means, with respect to any determination related to any Acquisition, Asset Disposition, Investment, Restricted Payment or other specified transaction, that such determination shall be made giving effect to such transaction as if such transaction and any related transactions had been consummated on the first day of the most recently ended ~~twelve~~four (~~12~~4) Fiscal ~~Months~~Quarters of the Tested Companies for which internal financial statements have been made available to Administrative Agent and Lenders pursuant to **Section 8.6(b)** immediately preceding the date on which such transaction occurs. In connection with the foregoing, (a)(i) with respect to any Asset Disposition, income statement and cash flow statement items (whether positive or negative) attributable to the Property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such transaction and (ii) with respect to any Acquisition, income statement items attributable to the Person or Property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for the Tested Companies in accordance with GAAP or in accordance with any defined terms set forth in **Section 1.1** and (B) such

items are supported by financial statements or other information satisfactory to Administrative Agent and (b) any Debt incurred or assumed by any of the Tested Companies (including the Person or Property acquired) in connection with such transaction (i) shall be deemed to have been incurred as of the first day of the applicable period and (ii) if such Debt has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Debt as of the relevant date of determination.

“Pro Rata” means, with respect to any Lender, a percentage (carried out to the ninth decimal place) determined (a) while Revolving Commitments are outstanding, by dividing the amount of such Lender’s Revolving Commitment by the aggregate Revolving Commitments and (b) at any other time, by dividing the aggregate outstanding principal amount of such Lender’s Loans and LC Obligations by the aggregate outstanding principal amount of all Loans and LC Obligations; provided, that, if all of the Revolving Loans have been Paid in Full and all Revolving Commitments have been terminated, but Letters of Credit remain outstanding, “Pro Rata” under this clause shall be determined as if the Revolving Commitments had not been terminated and based upon the Revolving Commitments as they existed immediately prior to their termination; and, provided, further, that, if all Loans have been Paid in Full and all Commitments have been terminated, and all LC Obligations have been terminated, Paid in Full or Cash Collateralized, the term “Pro Rata” as used under this clause shall be determined as if the Revolving Commitments had not been terminated and based upon the Revolving Commitments as they existed immediately prior to their termination or in such other manner as Administrative Agent shall determine, its discretion, then to be fair and equitable.

“Pro Rata Share” means, with respect to any amount and in reference to any Lender, the portion of such amount allocable to such Lender on a Pro Rata basis. The initial Pro Rata Shares of the Lenders, based on their respective Revolving Commitments, is set forth on **Appendix A**.

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

“Projections” means, for any fiscal period, projections of the Tested Companies’ Consolidated balance sheets, results of operations, cash flow, Financial Covenant compliance and Excess Availability for such period, all of which shall be in form and substance satisfactory to Administrative Agent.

“Properly Contested” means, with respect to any Debt, liability or other obligation of any Person, (a) such Debt, liability or other obligation is subject to a bona fide dispute regarding amount or such Person’s liability to pay; (b) such Debt, liability or other obligation is being properly contested in Good Faith by appropriate proceedings timely instituted and diligently pursued; (c) appropriate reserves in regard thereto have been established in accordance with GAAP; (d) non-payment of such Debt, liability or other obligation would not reasonably be expected to have a Material Adverse Effect, nor result in forfeiture or sale of any assets of such Person; (e) no Lien is imposed on assets of such Person, unless bonded and stayed to the satisfaction of Administrative Agent and, in any event, junior to Administrative Agent’s Liens on any or all of such assets; and (f) if such Debt, liability or other obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Property,” for any Person, means any right, title or interest of such Person in any type or kind of property or asset, whether Real Estate or personal property, or tangible or intangible property. “Properties” refers, collectively, thereto.

“Proprietary Rights” has the meaning given to such term in **Section 7.10**.

“Protective Advances” has the meaning given such term in **Section 2.1(e)**.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning given such term in **Section 15.1(d)(iii)**.

“Purchase Money Debt” means Debt (other than the Obligations) (a) for payment of any of the purchase price of Real Estate or Equipment, which Debt does not exceed the cost of acquiring such Real Estate or Equipment, including any related transaction costs and (b) incurred at the time of, or within ten (10) days before or after, the acquisition of such Real Estate or Equipment, for the purpose of financing all or a portion of the purchase price therefor, which Debt does not exceed the cost of acquiring such Real Estate or Equipment, including any related transaction costs.

“Purchase Money Lien” means a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Financing Lease or a purchase money security interest under the UCC.

“Qualified Appraisal” means, with respect to any Property, an appraisal of such Property conducted in a manner and with such scope and using such methods as are reasonably acceptable to Administrative Agent by an appraiser selected by, or reasonably acceptable to, Administrative Agent, the results of which are reasonably acceptable to Administrative Agent.

“Qualified Cash” means unrestricted cash of Borrowers that is free and clear of all Liens other than (a) Collateral Agent’s valid, perfected and first-priority Lien and (b) if applicable, any Lien in favor of Senior Notes Agent subject to the Approved Intercreditor Agreement, and which cash is maintained in U.S. Deposit Accounts with (i) Administrative Agent and subject to an Article 9 Control Agreement in favor of the Collateral Agent, or (ii) other Lenders, subject to a “blocked” Article 9 Control Agreement in favor of Collateral Agent; provided, that, for purposes of determining the amount of Borrowing Base Qualified Cash at any time, such amount may be reduced, at Administrative Agent’s option, by any obligations owing to it as a depository bank.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Credit Party that, at the time its Guarantee (or grant of Lien, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding Ten Million Dollars (\$10,000,000) or such other Credit Party as constitutes an “eligible contract participant” under the Commodity Exchange Act and that may cause another Person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Raw Coal” means Coal having been extracted from a Mine but not yet put through the washing process.

“RCM” means Regions Capital Markets, a division of Regions Bank.

“Real Estate” means all right, title, and interest (whether as owner, lessor, or lessee) of a Person in any Property that constitutes real property (including Fixtures), or any interest therein (including a leasehold estate), and all buildings, structures and other improvements thereon or thereto, together with all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and other

appurtenances appertaining to the foregoing, and all right, title and interest, if any, in and to any streets, ways, alleys, strips or gores of land adjoining the same or any part thereof.

“Reasonable Credit Judgment” means Administrative Agent’s commercially reasonable credit judgment (from the perspective of a secured asset-based lender), in accordance with customary business practices exercised in good faith; provided, that as it relates to the establishment of Reserves or the adjustment or imposition of exclusionary criteria, Reasonable Credit Judgment will require that (a) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts, events, conditions or contingencies first occurring or first discovered by Administrative Agent after the Closing Date or that are materially different from facts, events, conditions or contingencies known to Administrative Agent on the Closing Date, (b) the imposition or increase of any Reserve shall not duplicate (x) the exclusionary criteria set forth in the definitions of “Eligible Account,” “Eligible Unbilled Account” and “Eligible Inventory,” as applicable (and vice versa), or (y) any Reserves deducted in computing book value or Net Orderly Liquidation Value, and (c) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria shall bear a reasonable relationship to the facts that form the basis therefor.

“Recipient” means (a) Administrative Agent, (b) any Lender and (c) LC Issuer, as applicable.

“Refunded Swing Line Loans” has the meaning given such term in **Section 2.3(b)(iii)**.

“Regions Bank” means Regions Bank, an Alabama bank, and its successors and assigns.

“Regions Bank Indemnities” means Regions Bank and its Related Parties.

“Register” has the meaning given such term in **Section 13.1(c)**.

“Reimbursement Date” has the meaning given such term in **Section 2.4(b)**.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, attorneys, accountants, consultants, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

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

“Rent and Charges Reserve” means, without duplication, an amount determined from time to time by Administrative Agent in its Reasonable Credit Judgment as a Reserve for (a) three months’ rent, fees, charges, and other amounts owing by a Borrower to any Third Party Claimant (except for Lamberts Point Terminal) where the value of any Inventory of Borrowers is located, stored, used or held by or at the property of such Third Party Claimant exceeds \$1,500,000, unless such Person has executed and

delivered a Third Party Claimant Agreement and (b) the amount of all accrued but unpaid or past due rent, fees, charges, or other amounts owing by a Borrower to Third Party Claimants.

“Report” has the meaning given such term in **Section 12.2(ed)**.

“Required Lenders” means, subject to **Section 4.2**, at least two (2) Lenders that are not Affiliates (unless there is only one (1) Lender, in which case, such Lender) having (a) Revolving Commitments collectively (or individually) in excess of fifty percent (50%) of the aggregate Revolving Commitments or (b) if the Revolving Commitments have terminated, having Aggregate Revolving Obligations collectively (or individually) in excess of fifty percent (50%) of all outstanding Aggregate Revolving Obligations; provided, however, that the Commitments and Revolving Credit Exposure held by a Defaulting Lender shall be disregarded for purposes of determining Required Lenders.

“Reserve Area” means (a) the Real Estate constituting coal reserves owned in fee by any Credit Party or in which a Credit Party has a leasehold interest that is part of the Reserve Areas listed on **Schedule 1.1(d)** and (b) any Real Estate constituting coal reserves owned in fee by any Credit Party or in which a Credit Party has a leasehold interest, acquired after the Closing Date, in each case, that is not an active Mine.

“Reserves” means the sum of (without duplication) (a) the Shipping Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the Dilution Reserve; (e) the Delivery at Possession Inventory Reserve; and (f) other reserves established or maintained by Administrative Agent in its Reasonable Credit Judgment, and which have, or could reasonably be expected to have, an adverse effect on the value of the Collateral or the Liens of Administrative Agent thereon.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Credit Party or Subsidiary, the chairman of the board, president, chief executive officer, chief financial officer, treasurer, chief operating officer, general counsel or other officer, partner, member or representative having the same or similar responsibilities (regardless of title) of such Person.

“Restricted Payment” means each of the following, individually, or, if more than one or all, then, collectively: (a) any payment of (or declaration to pay) a dividend or other distribution (whether in cash, securities, or other Property), whether direct or indirect, on account of any Equity Interests issued by any Credit Party or any of its Subsidiaries, as the case may be, whether now or hereafter outstanding (including any such payment, or declaration of payment, made in connection with any merger or consolidation or otherwise as part of any Acquisition); (b) any return of capital, redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests issued by any Credit Party or any of its Subsidiaries, whether now or hereafter outstanding (including any such payment, or declaration of payment, made in connection with any merger or consolidation or otherwise as part of any Acquisition), except for any redemption, retirement, sinking fund or similar payment made solely in such other shares or units of the same class of Equity Interests or any class of Equity Interests that are junior to that class of Equity Interests; or (c) any cash payment made to redeem, purchase, repurchase, or retire, or obtain the surrender of, any outstanding warrants, options, or other rights to acquire any Equity Interests issued by any Credit Party or any of its Subsidiaries, whether now or hereafter outstanding.

“Restrictive Agreement” means an agreement (other than this Agreement~~or~~, the other Loan Documents, or, as applicable, the Permitted Bond Documents or the documents evidencing a Permitted

Convertible Debt Transaction) that conditions or restricts the right of any Credit Party or Subsidiary to (a) incur or repay or Guarantee any Funded Debt; (b) relocate, sell, lease, transfer, dispose of, or grant Liens on, any assets or Property (including by way of a so-called “negative pledge” or similar agreement); (c) declare or make Restricted Payments; (d) modify, extend, or renew this Agreement, any other Loan Document or any other agreement evidencing or securing Funded Debt or any Material Contract; or (e) repay any Intercompany Debt or intercompany payables.

“Revolving Commitment” means, at any time of determination and with respect to each Lender, such Lender’s obligation to make Revolving Loans, participate in Swing Line Loans, and participate in LC Obligations. “Revolving Commitments” means, at any time of determination, the aggregate amount of such commitments of all Lenders. The amount of each Lender’s Revolving Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement or any other agreement pursuant to which such Lender becomes a party hereto, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the ~~Closing~~First Amendment Date is ~~One~~Two Hundred ~~Fifty-Five~~Twenty-Five Million Dollars (\$~~155,000,000~~225,000,000).

“Revolving Commitment Increase” has the meaning given such term in **Section 2.1(f)**.

“Revolving Credit Exposure,” on any date, means, for each Lender, the aggregate amount (without duplication) of such Lender’s outstanding Revolving Loans and its participation in (a) Swing Line Loans (or in the case of Swing Line Lender, its Swing Line Loans (net of any participations therein by other Lenders)) and (b) outstanding LC Obligations on such date.

“Revolving Loan” means a loan made pursuant to **Section 2.1**, and any Swing Line Loan, Over Advance Loan or Protective Advance.

“Revolving Note” means a promissory note executed by Borrowers in favor of a Lender in the form of Exhibit A-1, or such other form as may be requested or approved by Administrative Agent from time to time, which promissory note shall be in the amount of such Lender’s Revolving Commitment and shall evidence the Revolving Loans made by such Lender.

“Royalties” means all royalties, fees, expense reimbursement and other amounts payable by a Credit Party under a License or with respect to Mining Title to any property.

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

“Sanctioned Country” means (a) a country, territory or a government of a country or territory, (b) an agency of the government of a country or territory, or (c) an organization directly or indirectly owned or Controlled by a country, territory or its government, that is subject to Sanctions.

“Sanctioned Person” means (a) a Person named on the list of “Specially Designated Nationals” or any other Sanctions related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or Controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any

European Union member state, (e) His Majesty's Treasury of the United Kingdom or (f) any other relevant sanctions authority.

"Sandusky Coal Dock" means 2705 W. Monroe Street, Sandusky, Ohio 44870.

"SEC" means the United States Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

"Secured Party" means Administrative Agent, each LC Issuer, each Lender, each Bank Product Provider, each Indemnitee and any other Person at any time entitled to receive the benefit of a Lien on any Collateral under the Loan Documents; and "Secured Parties" means all of such Persons.

"Secured Party Designation Notice" means a notice in the form of Exhibit H or such other form as may be requested or approved by Administrative Agent from time to time, to the extent required to be given by **Section 12.13**, from a Bank Product Provider to Administrative Agent to the effect that such Bank Product Provider holds Bank Product Obligations entitled to be secured by the Collateral, (a) describing and setting forth therein its Good Faith determination of the estimated maximum amount thereof to be created or incurred (which such Bank Product Provider may increase or decrease in respect of such Bank Product by subsequent Secured Party Designation Notice), and (b) agreeing to be bound by **Section 12.13**.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, made between Credit Parties and Administrative Agent.

"Security Documents" means the Security Agreement, together with any Financing Statements, any Mortgages and other Mortgage Documents, all other security agreements and notices of security interests in Intellectual Property filed or to be filed with any applicable filing office or registry, Article 9 Control Agreements, any pledge agreement and all other documents, instruments, and agreements now or hereafter executed or delivered by a Credit Party to any Secured Party for purposes of securing (or intending to secure), or perfecting (or intending to perfect) Liens securing, any Obligations.

"Senior Leverage Ratio" means, as of any date of determination, the ratio of (i) Funded Debt (other than Subordinated Debt) on such date to (ii) EBITDA for the period of four (4) Fiscal Quarters ended on such date.

"Senior Notes Agent" means the person acting in its capacity as trustee and/or collateral agent for the holders of the Senior Notes Debt.

"Senior Notes Debt" means all of the Obligations (as defined in the Permitted Bond Agreement as in effect on the Permitted Bond Transaction Effective Date).

"Severance Taxes" means Taxes arising from the severance, extraction or production of natural resources, including coal, raw coal, oil and other minerals and natural resources.

"Shipping Reserves" means any reserve established by Administrative Agent in its Reasonable Credit Judgment for amounts payable to (a) Norfolk Southern Railway or its Affiliates (or any successor owner or operator of Lamberts Point Terminal), (b) CSX Transportation or its Affiliates (or any successor owner or operator of Chesapeake Bay Piers) or (c) any additional rail carrier or rail forwarder utilized by Borrowers from time to time.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR

Administrator's Website on the immediately succeeding U.S. Government Securities Business Day; provided if the published rate is subsequently corrected and provided by the SOFR Administrator or on the SOFR Administrator's Website within the longer of one hour of the time when such rate is first published and the republication cut-off time for SOFR, if any, as specified by the SOFR Administrator in the SOFR benchmark methodology then the secured overnight financing rate for such Business Day will be subject to those corrections.

"SOFR Adjustment" means 0.10% (10 basis points).

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Sold Receivables" means those Accounts originated by Borrowers or any Subsidiary of Borrowers sold or assigned to a Permitted Receivables Purchaser pursuant to a Permitted Receivables Transaction.

"Solvent" means, as to any Person, that such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its Debts (including contingent, subordinated, un-matured, and unliquidated liabilities); (b) owns Property whose present fair salable value is greater than the probable total liabilities (including contingent, subordinated, un-matured, and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its Debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. For purposes of this definition, "fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

"Specified Credit Party" means any Credit Party that is, at the time on which the Guarantee (or grant of Lien, as applicable) becomes effective with respect to a Swap Obligation, a corporation, partnership, proprietorship, organization, trust or other Entity that would not be an "eligible contract participant" under the Commodity Exchange Act at such time but for the effect of **Section 5.7(f)**.

"Specified Event of Default" means any of the following: (a) an Event of Default under **Section 11.1(a)**; (b) a Bankruptcy Event of Default, or (c) an Event of Default under **Section 10**.

"State Settlement Accounts" means Deposit Accounts and/or Securities Accounts required in connection with any settlements in effect on the date hereof that have been approved by Borrowers and any state or federal environmental regulatory agencies with respect to ongoing regulatory compliance obligations settled in connection with the Plan of Reorganization.

"Stated Revolving Commitment Termination Date" means ~~October 27~~ May 4, 2027 ~~2029~~.

“Subordinated Debt” means Debt (including Intercompany Debt) incurred by a Credit Party that is expressly subordinate and junior in right of payment to Payment in Full of all Obligations on terms (including maturity, interest, fees, repayment, covenants, and subordination) satisfactory to Administrative Agent pursuant to an acceptable Subordination Agreement or otherwise.

“Subordination Agreement” means (a) any agreement among Administrative Agent, a Credit Party and the holder of any third party Debt owing to such Person by a Credit Party pursuant to which such Debt is made Subordinated Debt and any Liens on Collateral securing the payment thereof otherwise permitted to exist pursuant to **Section 9.2** are made subordinate to the Lien of Administrative Agent thereon, in each case, on terms and conditions satisfactory to Administrative Agent in its discretion and (b) this Agreement and any other subordination agreement delivered from time to time with respect to Intercompany Debt or Affiliate Debt, which shall be on terms and conditions satisfactory to Administrative Agent.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture (including any Joint Venture) or other business Entity of which more than fifty percent (50%) of the Voting Equity Interests is at the time owned or Controlled, directly or indirectly, by that Person, or the accounts of which would be Consolidated with those of such Person in its Consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date, or one or more of the other Subsidiaries of that Person or a combination thereof; provided, 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. Any unqualified reference to a Subsidiary in this Agreement or in any other Loan Document means a Subsidiary of the applicable Credit Party or a Credit Party if not otherwise stated or implied by context. Notwithstanding the foregoing, (x) neither of DTA nor Marshall Land LLC will be a “Subsidiary” for purposes of this Agreement (other than solely for purposes of the financial statements that Borrowers are required to deliver pursuant to Section 8.6(b) and (c) of this Agreement) including with respect to any financial ratios and other financial calculations (including Liquidity, Qualified Cash or any calculation based on unrestricted cash of Borrowers), and (y) the Owner Trustee shall not be considered a Subsidiary of any Credit Party.

“Super-Majority Lenders” means at least two (2) Lenders (unless there is only one (1) Lender, in which case, such Lender) having (a) Revolving Commitments, collectively (or individually), in excess of sixty-six and two-thirds percent (66-2/3%) of the aggregate Revolving Commitments or (b) if the Revolving Commitments have terminated, Revolving Credit Exposure, collectively (or individually), in excess of sixty-six and two-thirds percent (66-2/3%) of the Aggregate Revolving Obligations; provided, however, that the Commitments and Revolving Credit Exposure held by a Defaulting Lender shall be disregarded for purposes of determining Super-Majority Lenders.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any “International Foreign Exchange Master

Agreement”, or any other master agreement (any such agreement or documentation, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any such Master Agreement. Notwithstanding the foregoing, “Swap Agreement” shall not include the Convertible Notes Debt or any Permitted Convertible Debt Hedge.

“Swap Obligation” means with respect to any Credit Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act. Notwithstanding the foregoing, “Swap Obligation” shall not include the Convertible Notes Debt or any Permitted Convertible Debt Hedge.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a) above, the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (that may include a Lender or any Affiliate of a Lender).

“Swing Line Lender” means Regions Bank, together with its successors and assigns.

“Swing Line Loan” means any Borrowing funded with Swing Line Lender’s own funds pursuant to **Section 2.3**.

“Swing Line Note” means a promissory note executed by Borrowers in favor of Swing Line Lender in the form of Exhibit A-2, or such other form as may be requested or approved by Administrative Agent from time to time, which note shall be in the maximum amount of Swing Line Loans that Swing Line Lender has agreed to make to Borrowers pursuant to **Section 2.3(a)** and shall evidence Swing Line Loans made by Swing Line Lender.

“Swing Line Rate” means the Base Rate plus the Applicable Margin applicable to Base Rate Revolving Loans (or with respect to any Swing Line Loan advanced pursuant to an Auto Borrow Agreement, such other rate as separately agreed in writing between Borrowers and Swing Line Lender).

“Swing Line Sublimit” means, at any time of determination, the lesser of (a) ~~Fifteen~~ Twenty-Two Million Five Hundred Thousand Dollars (~~\$15,000,000~~ 22,500,000) and (b) the aggregate unused amount of Revolving Commitments then in effect.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, or other charges imposed by any Governmental Authority, including any income, excise, ad valorem, payroll, and sales taxes, together, in each case, all interest, penalties, fees, charges, and additions applicable thereto.

“Term Priority Collateral” has the meaning assigned to the term “Term Priority Collateral” in the Approved Intercreditor Agreement.

“Term SOFR” means, for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR

Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator, subject to **Section 14.1**. Notwithstanding anything contained herein to the contrary, if Term SOFR, as so determined, is ever less than zero percent (0%) per annum, then, Term SOFR shall be deemed to be zero percent (0%) per annum for all purposes of this Agreement and the other Loan Documents. Each calculation by Administrative Agent of Term SOFR shall be conclusive and binding for all purposes, absent manifest error.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of Term SOFR Reference Rate selected by Administrative Agent in its reasonable discretion).

“Term SOFR Loan” means a Loan that bears interest at a rate based on Term SOFR (other than pursuant to clause (c) of the definition of “Base Rate”); provided, if any Benchmark Replacement incorporated is incorporated into this Agreement pursuant to **Section 14.1**, then, “Term SOFR Loan” means a Loan that bears interest at a rate based on the then-current Benchmark following the applicable Benchmark Replacement.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Tested Companies” means the Company and its Subsidiaries, on a Consolidated basis in accordance with GAAP.

“Third Party Claimant” means any (a) lessor, mortgagee, mechanic or repairman, warehouse operator or warehouseman, processor, packager, Consignee, shipper, customs broker, freight forwarder, surety, bailee, or other third party which may have possession of any Collateral (including any Inventory or As-Extracted Collateral) or lienholders’ enforcement rights against any Collateral (including any Inventory or As-Extracted Collateral); or (b) licensor whose rights in or with respect to any Collateral limit or restrict or may, in Administrative Agent’s determination, limit or restrict Credit Parties’ or Administrative Agent’s rights to sell or otherwise dispose of such Collateral.

“Third Party Claimant Agreement” means an agreement in form and substance satisfactory to Administrative Agent in each case containing terms requested by or acceptable to Administrative Agent and as the same may be amended, restated, supplemented, or otherwise modified from time to time, among other things, pursuant to which a Third Party Claimant, as applicable and as required by Administrative Agent, (a) waives or, if and to the extent approved by Administrative Agent, subordinates in favor of Administrative Agent any Liens such Third Party Claimant may have in and to any Collateral (including any Inventory or As-Extracted Collateral) and any setoff, recoupment, or similar rights that such Third Party Claimant may have against any Credit Party; or (b) grants Administrative Agent access to Collateral (including any Inventory or As-Extracted Collateral) which may be located on such Third Party Claimant’s premises or in the custody, care, or possession of such Third Party Claimant for purposes of allowing Administrative Agent to inspect, remove or repossess, sell, store, or otherwise exercise its rights under this Agreement or any Security Document with respect to such Collateral; or (c) authorizes Administrative Agent (with or without the payment of any royalty or licensing fee, as determined by or otherwise acceptable to Administrative Agent) to (i) complete the manufacture of work-in-process (if the manufacturing of such Goods (including any Inventory or As-Extracted Collateral) requires the use or exploitation of a Third Party Claimant’s Intellectual Property) and (ii) dispose of Collateral bearing, consisting of, or constituting a manifestation of, in whole or in part, such Third Party Claimant’s Intellectual Property; or (d) agrees to hold any Documents in its possession

relating to the Collateral (including any Inventory or As-Extracted Collateral) as agent or bailee of Administrative Agent for purposes of perfecting Administrative Agent's Lien in and to such Collateral under the UCC; or (e) with respect to Third Party Claimants other than landlords, agrees to deliver the Collateral (including any Inventory or As-Extracted Collateral) to Administrative Agent upon request or, upon payment of applicable fees and charges to deliver such Collateral in accordance with Administrative Agent's instructions; or (f) agrees to terms regarding Collateral (including any Inventory or As-Extracted Collateral) held on Consignment by such Third Party Claimant.

"Threshold Amount" means Twenty-Five Million Dollars (\$25,000,000).

"Transferee" means any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

"Treasury Services" has the meaning given to such term in the definition of "Bank Products."

"Type" means any type of a Loan that has the same interest option and, in the case of Term SOFR Loans, the same Interest Period.

"UCC" means the Uniform Commercial Code as in effect in the Jurisdiction State or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such other jurisdiction.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, that includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unbilled Account" means, on any date of determination, each Account of Borrowers for which (a) the sale represented by such Account was made prior to such date and (b) an invoice has not yet been sent to the applicable Account Debtor with respect to such Account.

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

"United States" or "U.S." means the United States of America.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Tax Compliance Certificate” has the meaning set forth in **Section 14.3(g)(ii)**.

“Voting Equity Interest” means, with respect to any Person, those classes of Equity Interests issued by such Person (however designated), the holders of which are at the time entitled, as such holders, to vote for the election of a majority of the directors, managers (or persons performing similar functions) of such Person, whether or not the right so to vote exists by reason of the happening of a contingency.

“Withholding Agent” means any Credit Party or Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 **Accounting Terms.** Under the Loan Documents (except as otherwise specified herein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Tested Companies delivered to Administrative Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if the Tested Companies’ certified public accountants concur in such change; provided, however, that, despite the adoption of any such change, Borrower Representative shall (a) in addition to delivery of financial statements pursuant to **Section 8.6(b)** or **(c)**, and on each date such financial statements are required to be delivered, furnish the adjustments and reconciliations necessary to enable Borrowers and Administrative Agent to determine compliance with each of the Financial Covenants, all of which shall be determined in accordance with GAAP but without giving effect to such change, and (b) the Borrowing Base shall continue to be calculated without giving effect to such change (if the effect of such change would be to increase the amount of Excess Availability); provided, further, that Borrower Representative shall not be required to deliver such adjustments and reconciliations and may apply such change in the calculation of the Borrowing Base and its related terms if (a) the change is disclosed to Administrative Agent and (b) **Section 10**, the definition of “Borrowing Base” and any terms used therein or bearing on the amount of Excess Availability derived therefrom, as applicable, and any other Section of this Agreement or any other Loan Document that is affected thereby is amended in a manner satisfactory to Administrative Agent and Required Lenders to take into account the effects of the change. Notwithstanding the foregoing or any other provision contained herein or in any other Loan Document to the contrary, (i) all financial statements delivered hereunder shall be prepared, and all Financial Covenants and any financial ratios, tests, or measurements set forth in the definitions of “Payment Conditions,” “Cash Dominion Event,” or “Cash Dominion Period” (if any) or other definitions at any time, shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof, and (ii) any obligations related to a lease (whether now or hereafter existing) that would be accounted for by such Person as an operating lease in accordance with GAAP as of the Closing Date (whether or not such lease exists as of the Closing Date or is thereafter entered into) shall be accounted for as an operating lease and not a capital lease for all purposes under this Agreement and the other Loan Documents. The term “unqualified opinion,” as used

herein or in any Loan Document, in reference to any opinion given by accountants in a financial statement or report, means an opinion that (i) is unqualified, and (ii) does not include any explanation, supplemental comment or other comment calling into question the ability of the applicable Person to continue as a going concern or concerning the scope of the audit or report.

1.3 **Uniform Commercial Code.** Any term used in this Agreement or in any other Loan Document (including any Financing Statement filed in connection herewith) that is defined in the UCC and not otherwise defined in this Agreement or in any other Loan Document shall have the meaning given such term in the UCC, including, without limitation, the following (portions of which terms may be further defined, or supplemented, elsewhere in this Agreement): “Accessions,” “Account,” “Account Debtor,” “As-extracted Collateral,” “Chattel Paper,” “Commercial Tort Claim,” “Commodity Account,” “Consignee,” “Consignment,” “Consignor,” “Document,” “Electronic Chattel Paper,” “Equipment,” “Farm Products,” “Financial Asset,” “Financing Statement,” “Fixture Filing,” “Fixtures,” “General Intangibles,” “Good Faith,” “Goods,” “Instrument,” “Investment Property,” “Letter-of-Credit Right,” “Payment Intangible,” “Proceeds,” “Securities Account” and “Supporting Obligation;” provided, however, that, to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern; provided, further, that, any such terms used herein or in any other Loan Document that are defined in the UCC as in effect in the Jurisdiction State as of the Closing Date shall continue to have the same meanings notwithstanding any replacement or amendment of such statute that changes any such meanings except as Administrative Agent may otherwise determine.

1.4 **Rules of Construction.** The terms “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.” The section titles, table of contents, and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of this Agreement or any Loan Document. All Schedules, Exhibits, Annexes, and attachments referred to herein are hereby incorporated herein by this reference. All references in any Loan Document to: (i) any statutes or regulations shall include all related rules and regulations (including implementing regulations in the case of statutes) and any amendments or other modifications of same made from time to time, and any successor statutes, rules and regulations even if words to such effect are included in some instances and not in others; (ii) any agreement, instrument or other documents (including any of the Loan Documents) shall include any and all amendments, restatements, amendments and restatements, supplements, modifications, extensions, waivers, or renewals thereof or thereto, even if words to such effect are included in some instances and not in others (but this clause shall not be construed as any consent to any such amendments, restatements, amendments and restatements, supplements, modifications, extensions, waivers and renewals unless otherwise expressly so provided); (iii) any Person (including a Credit Party, Administrative Agent or Lender) shall mean and include the successors and assigns of such Person (but this clause shall not be construed as any consent to any transaction or circumstance giving rise to any successor or assign); (iv) “including” and “include” shall mean “including, without limitation,” regardless of whether “without limitation” is included in some instances and not in others (and, for purposes of each Loan Document, the parties agree that the rule of ejusdem generis shall not be applicable to limit a general statement, that is followed by or referable to an enumeration of specific matters to matters similar to the matters specifically mentioned); (v) subject to the last sentence hereof, dates and times shall mean the date and time at Administrative Agent’s notice address determined under **Section 14.1**, unless otherwise specifically stated therein (including in the last sentence of this Section). In determining whether any action taken, or to be taken, under this Agreement or any other Loan Document is “commercially reasonable,” Article 9 of the UCC, to the extent applicable thereto, shall govern and control; unless otherwise expressly provided herein or therein. Unless otherwise expressly

provided herein or in any other Loan Document with respect to Reasonable Credit Judgment, the “discretion” or “judgment” of Administrative Agent or, if applicable, any Lender or group of Lenders shall mean the sole and absolute discretion or judgment of Administrative Agent or such Lender or group of Lenders. All calculations of value of any Property, disbursements of Loans, issuances of Letters of Credit and payments of Obligations shall be in Dollars and all determinations (including calculations of the Borrowing Base and Financial Covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Administrative Agent (and not necessarily calculated in accordance with GAAP). No provision of any Loan Documents shall be construed or interpreted to the disadvantage of any party hereto by reason of such party’s having, or being deemed to have, drafted, structured, or dictated such provision. Whenever the phrase “to the knowledge of” (or words of similar import) are used in any Loan Document in reference to any Borrower, Borrower Representative or another Credit Party, it means actual knowledge of a Responsible Officer of such Borrower, Borrower Representative or Credit Party, or knowledge that such Responsible Officer would have obtained if he or she had engaged in Good Faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a Good Faith attempt to ascertain the matter to which such phrase relates. Any Loan Document signed by a Responsible Officer acting in such capacity on behalf of a Borrower, Borrower Representative or another Credit Party shall be conclusively presumed to have been authorized by all necessary action on the part of such Borrower, Borrower Representative or other Credit Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such party. A Default or an Event of Default shall be deemed “to continue,” be “continuing,” “exist,” or be “in existence” at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing in accordance with this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement. All references herein and in any other Loan Document (i) to the word “will” shall be to have the same meaning as the word “shall” (and vice versa), (ii) to any Person shall include such Person’s successors and permitted assigns, (iii) to the words “asset” and “Property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and Properties, including cash, securities, accounts and contract rights, (iv) to the words “financial statements” shall include all notes and schedules thereto, and (v) to the words “the continental United States of America” shall include each of the States of the United States of America, other than Hawaii and Alaska, unless otherwise approved by Administrative Agent, but expressly shall not include Puerto Rico or any other United States territory. All documents, instruments, certificates and agreements that are now or hereafter executed and delivered by any Credit Party in connection herewith or pursuant hereto shall constitute “Loan Documents” unless and except to the extent otherwise expressly provided herein or therein. All references herein and in any other Loan Document to date and time of day shall mean and refer to the date and time of day in New York, New York.

SECTION 2.

THE CREDIT FACILITIES

2.1 Revolving Commitment.

(a) Revolving Loans. Subject to the terms and conditions of this Agreement, each Lender agrees, severally (and not jointly) on a Pro Rata basis, up to the amount of its Revolving Commitment, to make Revolving Loans to Borrowers from time to time on any Business Day from and after the Closing Date to but excluding the Commitment Termination Date. Subject to the terms and conditions of this Agreement, Revolving Loans may be obtained, repaid and re-borrowed; provided, however, that no Lender shall have any obligation to honor any request

for a Revolving Loan if doing so would cause (i) such Lender's Pro Rata Share of the Aggregate Revolving Obligations to exceed such Lender's Revolving Commitment or (ii) the Aggregate Revolving Obligations to exceed the Loan Limit.

(b) Revolving Notes. Borrowers shall execute and deliver to (i) each Lender on the Closing Date, (ii) each Person who is a permitted assignee of such Lender pursuant to **Section 12.1**, upon its becoming such assignee, and (iii) each Person who becomes a Lender in accordance with **Section 2.1(f)**, at such time; in each case, to the extent requested by such Person, a Revolving Note to evidence such Person's portion of the Revolving Loans.

(c) Termination and Voluntary Reductions of Revolving Commitments. The Revolving Commitments shall terminate on the Commitment Termination Date. Borrowers may terminate or from time to time reduce the Revolving Commitments by giving not less than three (3) Business Days' prior written notice to Administrative Agent. Any request from Borrowers for the reduction of the Revolving Commitments must specify the amount of the requested reduction. Each reduction shall be in a minimum amount of Five Million Dollars (\$5,000,000) or any greater integral increment of One Million Dollars (\$1,000,000). Borrowers may not reduce the Revolving Commitments to an amount less than One Hundred Million Dollars (\$100,000,000), except in connection with the termination of the Revolving Commitments. If the Revolving Commitments are ever terminated by Borrowers, Borrowers must Pay in Full upon such termination becoming effective the Revolving Loans and all other Obligations then outstanding. All reductions of the Revolving Commitments shall be applied on a Pro Rata basis. Except to the extent otherwise agreed in writing by Administrative Agent and the Required Lenders or to the extent any such notice is marked as contingent upon the consummation of a refinancing, any request from Borrowers for the termination or reduction of the Revolving Commitments shall be irrevocable, once made and received.

(d) Over Line; Over Advances.

(i) Any amount by which at any time the Aggregate Revolving Obligations exceed the Revolving Commitments shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swing Line Loans; second, to the payment of all other Revolving Loans that are Base Rate Loans; third, to the payment of all other Revolving Loans that are Term SOFR Loans; and, fourth, to Cash Collateralize any LC Obligations then outstanding; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents. In no event shall Administrative Agent be required to honor any request for a Revolving Loan when the Aggregate Revolving Obligations exceed the Revolving Commitments or if, after giving effect to the making of such Revolving Loan, the Aggregate Revolving Obligations would exceed the Revolving Commitments.

(ii) Subject to clause (iii) below, any Over Advance shall (A) be immediately due and payable **ON DEMAND** and, once paid to Administrative Agent, shall be applied, first, to the payment of any Swing Line Loans; second, to the payment of all other Revolving Loans that are Base Rate Loans; third to the payment of any Revolving Loans that are Term SOFR Loans; and, fourth, to Cash Collateralize any LC Obligations then outstanding; (B) constitute Obligations secured by the Collateral; and (C) be entitled to all benefits of the Loan Documents.

(iii) Unless otherwise directed in writing by the Required Lenders, Administrative Agent may require Lenders to honor requests by Borrowers for Over Advance Loans (in which event, and notwithstanding anything to the contrary set forth in this Agreement, Lenders shall continue to make Revolving Loans up to their Pro Rata Share of the Revolving Commitments) and to forbear from requiring Borrowers to cure an Over Advance immediately, if (A) the Over Advance does not continue for a period of more than thirty (30) consecutive days, following which no new Over Advance exists for at least thirty (30) consecutive days before another Over Advance exists, (B) the amount of the Aggregate Revolving Obligations outstanding at any time does not exceed the aggregate of the Revolving Commitments at such time, (C) the Revolving Credit Exposure of any individual Lender at any time does not exceed such individual Lender's Revolving Commitment, and (D) the Over Advance, when aggregated with all other Over Advances then outstanding, does not exceed five percent (5%) of the aggregate Revolving Commitments.

(iv) Neither the funding of any Over Advance Loan nor the continued existence of an Over Advance shall constitute any waiver by Administrative Agent or any Lender of any Default or Event of Default that may exist at the time any Over Advance Loan is made or that is caused thereby. Each Lender's obligations under this **Section 2.1(d)** are absolute, unconditional, and irrevocable and are not subject to any claim, counterclaim, right of setoff, charge back, discount, defense, qualification, or exception, and each Lender shall perform such obligations, as applicable, regardless of whether the Commitments have terminated, an Over Advance exists or any condition precedent to the making of Loans has not been satisfied.

(v) All Over Advance Loans shall be made as Base Rate Revolving Loans.

(vi) The provisions of this **Section 2.1(d)** are solely for the benefit of Administrative Agent and Lenders, and in no event shall any Borrower or any other Credit Party be deemed to be a third party beneficiary of this **Section 2.1(d)** or be authorized or permitted to, or have any standing to, rely on or enforce any of the provisions of this **Section 2.1(d)**.

(e) Protective Advances. Following a Default or Event of Default, Administrative Agent may, in its discretion, make one or more Revolving Loans to preserve, protect, or defend any Collateral or to increase or improve the likelihood of collecting or obtaining repayment of any Obligations, in each case, if Administrative Agent determines in its discretion that doing so is necessary or desirable (a "Protective Advance"). Administrative Agent may make a Protective Advance without regard to Excess Availability or the satisfaction of any condition precedent to the making of Loans, unless (A) the Required Lenders have, by written notice to Administrative Agent, revoked Administrative Agent's authority to do so or (B) Administrative Agent has actual knowledge that, after giving effect thereto, the aggregate outstanding principal amount of all Loans made as Protective Advances (i) would exceed five percent (5%) of the aggregate Revolving Commitments or (ii) would cause either the amount of the Aggregate Revolving Obligations outstanding to exceed the aggregate amount of the Revolving Commitments at such time or any individual Lender's Revolving Credit Exposure to exceed such individual Lender's Revolving Commitment at such time. If the terms of the foregoing clauses (A) and (B) above are not applicable, Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. Each Lender shall participate on a Pro Rata basis in each Protective Advance so long as by doing so such Lender's Revolving Credit Exposure would not exceed such Lender's Revolving Commitment at such time. The provisions of this **Section 2.1(e)**

are solely for the benefit of Administrative Agent and Lenders, and in no event shall any Borrower or any other Credit Party be deemed to be a third party beneficiary of this **Section 2.1(e)** or be authorized or permitted to, or have any standing to, rely on or enforce any of the provisions of this **Section 2.1(e)**. All Protective Advances shall be made as Base Rate Revolving Loans.

(f) Increases to Revolving Commitments. The Revolving Commitments may be increased by Borrowers up to an aggregate amount of Seventy-Five Million Dollars (\$75,000,000) in such increase (the “Revolving Commitment Increase”); provided, that Twenty-Five Million Dollars (\$25,000,000) of such Revolving Commitment Increase shall be solely for the purpose of increasing the LC Sublimit to provide availability for the issuance of Cash Collateralized Letters of Credit hereunder; provided, further, that: (a) Borrower Representative shall have given to Administrative Agent at least seven (7) Business Days’ notice of Borrowers’ intention to effect a Revolving Commitment Increase and the desired amount of such Revolving Commitment Increase and LC Sublimit increase, as applicable; (b) such increase does not increase the amount of the Revolving Commitment of any Lender without the written consent of such Lender, in such Lender’s discretion; (c) to the extent requested by any Lender, Borrowers shall execute a new Revolving Note with respect to such Lender reflecting the amount of, or increase in, such Lender’s Revolving Commitment, (d) to the extent requested by Administrative Agent, Credit Parties shall execute any additional documents (including all LC Documents required by any applicable LC Issuer), instruments or agreements that Administrative Agent or the applicable LC Issuer deems necessary or desirable in connection therewith (including, without limitation, any Article 9 Control Agreement required with respect to a LC Cash Collateral Account, secretary’s certificates and authorizing resolutions); (e) as of the date of such Revolving Commitment Increase, both before and immediately after giving effect thereto, (i) no Default or Event of Default shall exist, (ii) on a Pro Forma Basis, Credit Parties shall remain in compliance with all Financial Covenants to the extent tested at such time, and (iii) each of the conditions set forth in **Section 6.2** shall be satisfied; and (f) any such Revolving Commitment Increase shall be in a minimum amount of at least Ten Million Dollars (\$10,000,000) (or such lesser amount that shall be approved by Administrative Agent) and in integral multiples of Five Million Dollars (\$5,000,000) in excess thereof, and no more than three (3) Revolving Commitment Increases shall be permitted in total. A Revolving Commitment Increase may be effected by one or more of the current Lenders by increasing their Revolving Commitment or one or more new Lenders capable of issuing Letters of Credit that are satisfactory to Administrative Agent and constitute an Eligible Assignee joining this Agreement and providing a Revolving Commitment. After any Revolving Commitment Increase, all of the terms and conditions of the Loan Documents shall apply to the increased amount of the Revolving Commitments (including (i) being on a *pari passu* basis in terms of the Collateral, right of payment and Guarantees with the other Revolving Loans and Letters of Credit, (ii) having the same maturity date as the other Revolving Commitments, and (iii) having the same Applicable Margin as the other Revolving Loans and the same terms as the other Letters of Credit under **Section 2.4**); provided that Borrowers agree to pay to Administrative Agent, Lenders increasing their respective Revolving Commitments and new Lenders such arrangement, commitment and other fees and expenses to be agreed between Borrowers and Administrative Agent in connection with such Revolving Commitment Increase. Each Lender hereby acknowledges and agrees that the aggregate Revolving Commitments may be increased pursuant to this **Section 2.1(f)** regardless whether such Lender approves such increase or increases its Revolving Commitment hereunder, and Administrative Agent, Borrowers and any Lender or LC Issuer increasing or providing a new Revolving Commitment may enter into an amendment to this Agreement to give effect to such Revolving Commitment Increase and matters incidental thereto without further consent of any other Lender. Administrative Agent shall have no liability

to any Borrower or any other Credit Party or to Lenders or LC Issuers in connection with any syndication of any Revolving Commitment Increase. Borrowers shall prepay any Revolving Loans on the date of any such increase in the Revolving Commitments to the extent necessary to keep the outstanding Revolving Loans ratable with any revised Revolving Commitments arising from any non-ratable increase in the Revolving Commitments under this **Section 2.1(f)**.

2.2 **[Reserved].**

2.3 **Swing Line Loans; Settlement.**

(a) **Swing Line Loans.** Before the Revolving Commitment Termination Date, subject to the terms and conditions hereof, the Swing Line Lender may, in its discretion, make Swing Line Loans to Borrowers in an aggregate amount outstanding at any time up to but not exceeding the Swing Line Sublimit; provided, that after giving effect to the making of any Swing Line Loan and any participation that may result therefrom pursuant to the operation and effect of **subsection (b), clause (iv)** of this **Section 2.3**, in no event shall (i) the Aggregate Revolving Obligations exceed the aggregate Revolving Commitments and (ii) the Revolving Credit Exposure of any Lender exceed such Lender's Revolving Commitment. Amounts borrowed pursuant to this **Section 2.3** may be repaid and re-borrowed before the Revolving Commitment Termination Date. The Swing Line Lender's Revolving Commitment shall expire on the Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans then outstanding and the Revolving Commitments shall have been Paid in Full no later than such date. Each Swing Line Loan shall constitute a Revolving Loan for all purposes, except that payments thereon shall be made solely to Swing Line Lender for its own account. The obligation of Borrowers to repay Swing Line Loans shall be evidenced by the records of Swing Line Lender, provided that, promptly upon Swing Line Lender's request (but, in any event, within five (5) Business Days after receipt of such request), Borrowers shall execute and deliver to Swing Line Lender a Swing Line Note to evidence the Debts arising under the Swing Line Loans.

(b) **Borrowing Mechanics for Swing Line Loans.**

(i) Subject to **clause (vi)** below, whenever Borrowers desire that the Swing Line Lender make a Swing Line Loan, Borrower Representative shall deliver to Administrative Agent a Notice of Borrowing no later than 11:00 a.m. on the proposed Borrowing date.

(ii) The Swing Line Lender, if it elects to do so, as provided in **Section 2.3(a)**, and subject to the limitations set forth in **clause (v)** below, shall make the amount of the requested Swing Line Loan (or so much thereof as it elects to make, or is permitted to make, pursuant hereto) available to Administrative Agent not later than 3:00 p.m. on the applicable funding date by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein relative thereto, Administrative Agent shall make the proceeds of such Swing Line Loans available to Borrowers on the applicable funding date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by Administrative Agent from the Swing Line Lender to be credited to the account of Borrowers at Administrative Agent's Principal Office, or to such other account as may be designated in writing to Administrative Agent by Borrower Representative.

(iii) With respect to any Swing Line Loans that have not been voluntarily prepaid by Borrowers pursuant to **Section 5.2**, the Swing Line Lender may at any time in its discretion, but in any event not less frequently than weekly, on such weekly settlement date as Swing Line Lender may elect from time to time, deliver to Administrative Agent (with a copy to Borrower Representative), no later than 11:00 a.m. on the day of the proposed funding date, a notice (that shall be deemed to be a Notice of Borrowing given by Borrower Representative) requesting that each Lender holding a Revolving Commitment make a Revolving Loan to Borrowers on such date in an amount equal to its Pro Rata Share of the amount of such Swing Line Loans outstanding on the date that such notice is given that Swing Line Lender requests Lenders to prepay (the “Refunded Swing Line Loans”). Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than the Swing Line Lender shall be immediately delivered by Administrative Agent to the Swing Line Lender (and not to Borrowers) and when received shall be applied by the Swing Line Lender to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, the Swing Line Lender’s Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by the Swing Line Lender to Borrowers, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans but shall instead constitute part of Swing Line Lender’s outstanding Revolving Loans to Borrowers. Borrowers hereby authorize Administrative Agent and Swing Line Lender to charge Borrowers’ Deposit Accounts and Securities Accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such Deposit Account and Securities Account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by the Lenders, including the Revolving Loans deemed to be made by the Swing Line Lender, are insufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to the Swing Line Lender should be recovered by or on behalf of Borrowers from the Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be shared among all Lenders based on their respective Pro Rata Shares thereof in the manner contemplated by **Section 5.6**.

(iv) If for any reason Revolving Loans are not made pursuant to **Section 2.4(b)(iii)** in an amount sufficient to repay any amounts owed to the Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by the Swing Line Lender, then, each Lender then holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans in an amount equal to its Pro Rata Share of the applicable unpaid amount of the Swing Line Loans then outstanding together with accrued interest thereon; provided that any such participation purchased by such Lender shall be limited to an amount that would not cause the Revolving Credit Exposure of such Lender (after giving effect to such participation) to exceed such Lender’s Revolving Commitment. On the Business Day that notice is provided by the Swing Line Lender (or by 11:00 a.m. on the following Business Day if such notice is provided after 2:00 p.m.), each Lender holding a Revolving Commitment shall deliver to the Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of the Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of the Swing Line Lender in form and substance satisfactory to the Swing Line Lender. In the event any Lender

holding a Revolving Commitment fails to make available to the Swing Line Lender the amount of such Lender's participation as provided in this clause (iv), the Swing Line Lender shall be entitled to recover such amount **ON DEMAND** from such Lender together with interest thereon for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

(v) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to clause (iii) above and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to clause (iv) above shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set off, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, Properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Loan Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that the Swing Line Lender had not received prior notice from Borrower Representative or the Required Lenders that any of the conditions under **Section 6.2** to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans were not satisfied at the time such Refunded Swing Line Loans or other unpaid Swing Line Loans were made; and (2) without limitation of the Swing Line Lender's discretion in regard thereto, as described in **Section 2.3(a)**, the Swing Line Lender shall not be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (B) it does not in Good Faith believe that all conditions under **Section 6.2** to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (C) at a time when a Defaulting Lender exists, unless the Swing Line Lender has entered into arrangements satisfactory to it and Borrower Representative to eliminate the Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans in a manner satisfactory to the Swing Line Lender and Administrative Agent.

(vi) In order to facilitate the borrowing of Swing Line Loans, Borrower Representative and the Swing Line Lender may mutually agree to, and are hereby authorized to, enter into an auto borrow agreement in form and substance satisfactory to the Swing Line Lender and Administrative Agent (the "Auto Borrow Agreement") providing for the automatic advance by the Swing Line Lender of Swing Line Loans under the conditions set forth in the Auto Borrow Agreement, subject to the conditions set forth herein. At any time an Auto Borrow Agreement is in effect, advances under the Auto Borrow Agreement shall be deemed Swing Line Loans for all purposes hereof, except that Borrowings of Swing Line Loans under the Auto Borrow Agreement shall be made in accordance with the Auto Borrow Agreement. For purposes of determining the Aggregate Revolving Obligations at any time during which an Auto Borrow Agreement is in effect, the outstanding amount of all Swing Line Loans shall be deemed to be the

sum of the outstanding amount of Swing Line Loans at such time plus the maximum amount available to be borrowed under such Auto Borrow Agreement at such time.

2.4 **Letter of Credit Facility.**

(a) Issuance of Letters of Credit. LC Issuer agrees to issue Letters of Credit from time to time for Borrowers' account on the terms set forth in this Agreement, including the following:

(i) LC Issuer shall have no obligation to issue any Letter of Credit unless each of the LC Conditions has been satisfied (as determined by LC Issuer and Administrative Agent).

(ii) If the LC Issuer receives written notice from Administrative Agent or a Lender at least five (5) Business Days before issuance of a Letter of Credit that any LC Condition has not been satisfied, LC Issuer shall have no obligation to issue the requested Letter of Credit (or any other Letter of Credit) until such notice is withdrawn in writing by Administrative Agent or such Lender or until the Required Lenders have waived the applicable LC Condition in accordance with this Agreement. Before receipt of any such notice, LC Issuer shall not be deemed to have knowledge of any failure to satisfy any LC Condition.

(iii) Borrowers may request and employ Letters of Credit only (A) to support obligations of any Borrower or Subsidiary incurred in the Ordinary Course of Business or (B) for such other purposes, if and to the extent not in contravention of any terms hereof or of any Loan Document, as Administrative Agent and LC Issuer may approve from time to time in writing; provided, however, that LC Issuer shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds from which would be made available to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or Sanctioned Country, or in any manner that would result in a violation of any Sanctions by any party to this Agreement or such Letter of Credit, (ii) if any order, judgment or decree of any Governmental Authority shall by its terms purport to restrain or enjoin the LC Issuer from issuing letters of credit generally or any such Letter of Credit particularly, or any Applicable Law relating to LC Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over LC Issuer shall prohibit, or request that LC Issuer refrain from the issuance of letters of credit generally or any such Letter of Credit particularly or shall impose on LC Issuer with respect to any such Letter of Credit any restriction, reserve or capital requirement (for which LC Issuer is not otherwise compensated hereunder) not in effect on the Closing Date or shall impose on LC Issuer any unreimbursed loss, cost or expense that was not applicable on the Closing Date that LC Issuer deems material to it, including, in each case, but without limitation, from any Change in Law, or (iii) if the issuance of any such Letter of Credit would violate one or more policies of LC Issuer applicable to letters of credit generally or any such Letter of Credit particularly. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that the applicable Borrower or Borrowers need not deliver a new LC Application unless requested to do so by LC Issuer. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of a Borrower, Borrowers shall be obligated to reimburse LC Issuer hereunder for any and all drawings under such Letter of Credit. Borrowers hereby acknowledge that the issuance of Letters

of Credit for the account of any Subsidiaries of Borrowers shall inure to the benefit of Borrowers, and that Borrowers' business will derive substantial benefits from the businesses of such Subsidiaries.

(iv) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, LC Issuer shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation, or communication in whatever form believed by LC Issuer, in Good Faith, to be genuine and correct and to have been signed, sent, or made by a proper Person. LC Issuer may consult with and employ legal counsel, accountants, and other experts including Administrative Agent Professionals (at Borrowers' expense) to advise it concerning its obligations, rights, and remedies with respect to the issuance and administration of Letters of Credit and LC Documents and shall be entitled to act (or refuse to act) upon, and shall be fully protected in any action taken (or refused to be taken) in Good Faith reliance upon, any advice given by such Persons. LC Issuer may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected by it.

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

(vi) If a Borrower so requests in any applicable LC Application, LC Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided, that any such Auto-Extension Letter of Credit must permit LC Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving written prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by LC Issuer, Borrowers shall not be required to make a specific request to LC Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) LC Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the expiration date set forth in clause (d) of the definition of LC Conditions; provided, however, that LC Issuer shall not permit any such extension if (A) LC Issuer has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of **Section 2.4(a)(iii)**) or (B) it has received from Administrative Agent notice (which may be by telephone or in writing), or it has received written notice from Borrowers, in each case, on or before the day that is five (5) Business Days before the Non-Extension Notice Date, informing the LC Issuer that one or more of the LC

Conditions is not then satisfied, and in each such case directing LC Issuer not to permit such extension.

(vii) Unless otherwise expressly set forth in any LC Document or otherwise expressly agreed in writing by the LC Issuer and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each Letter of Credit and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(viii) In the event of any conflict between the terms of this Agreement and the terms of any LC Document, the terms of this Agreement shall control, unless otherwise agreed by Borrower Representative, Administrative Agent and LC Issuer.

(ix) Without limitation of the foregoing provisions, in the event that any Lender is at such time a Defaulting Lender, the LC Issuer shall have no obligation to issue any Letter of Credit unless LC Issuer has entered into arrangements satisfactory to LC Issuer (in its discretion) with Borrowers or such Defaulting Lender to eliminate such LC Issuer's Fronting Exposure with respect to such Defaulting Lender (after giving effect to any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding amount of the LC Obligations in a manner satisfactory to LC Issuer and Administrative Agent.

(b) Reimbursement; Participations.

(i) On the date that LC Issuer honors any draw under a Letter of Credit (each such date, a "Reimbursement Date"), Borrowers shall reimburse LC Issuer on such date the amount paid by LC Issuer on account of such draw, together with interest from the Reimbursement Date until paid by Borrowers (at the interest rate prescribed therefor in clause (v) below). The obligation of Borrowers to reimburse LC Issuer for any draw made under a Letter of Credit is absolute, unconditional, and irrevocable, and Borrowers shall make such reimbursement without regard to any lack of validity or enforceability of such Letter of Credit or the existence of any claim, counterclaim, right of setoff, charge back, discount, defense, qualification, exception or other right Borrowers may have at any time against the beneficiary of such Letter of Credit. On each Reimbursement Date, to facilitate their foregoing reimbursement obligations, Borrowers shall be deemed to have requested a Borrowing of Base Rate Revolving Loans in an amount necessary to pay the amounts due to LC Issuer on such date (regardless of whether Borrower Representative submits a Notice of Borrowing therefor), and each Lender shall fund its Pro Rata Share of such Borrowing, without claim, counterclaim, right of setoff, charge back, discount, defense, qualification, or exception, and regardless of whether the Commitments have terminated, an Over Advance exists or any condition precedent to the making of Loans has not been satisfied.

(ii) Upon the issuance of a Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from LC Issuer, without recourse or warranty, an undivided interest and participation in all LC Obligations relating to such Letter of Credit in an amount equal to such Lender's Pro Rata Share thereof. If LC Issuer honors any draw under a Letter of Credit and Borrowers do not reimburse the amount thereof on the Reimbursement Date, Administrative Agent (at LC Issuer's request) shall promptly notify Lenders, and each Lender shall promptly (within one (1) Business Day)

unconditionally pay to Administrative Agent, for the benefit of LC Issuer, such Lender's Pro Rata Share of such draw at the Principal Office of Administrative Agent. Upon the failure of any Lender to make such payment when due pursuant hereto, LC Issuer shall be entitled to recover such amount **ON DEMAND** from such Lender together with interest thereon, computed on the basis of a year of three hundred sixty (360), for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full. Upon request by a Lender that has made or is making any such payment, LC Issuer shall furnish such Lender with copies of any Letters of Credit and LC Documents in its possession at such time.

(iii) The obligations of each Lender to make payments to Administrative Agent for the account of LC Issuer in connection with LC Issuer's honoring any draw under a Letter of Credit are absolute, unconditional, and irrevocable and are not subject to any claim, counterclaim, right of setoff, defense, discount, charge back, qualification, or exception, and such Lender shall perform such obligations, as applicable, (A) irrespective of any lack of validity or unenforceability of any Loan Documents; (B) regardless of whether the Commitments have been terminated, an Over Advance exists, any condition precedent to the making of any Loan has not been satisfied; (C) regardless of whether any draft, certificate, or other document presented under a Letter of Credit is determined to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; and (D) regardless of the existence of any setoff or defense that any Credit Party may have with respect to any Obligations. LC Issuer assumes no responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. LC Issuer makes no representation, warranty, or Guarantee, express or implied, with respect to the Collateral, LC Documents, or any Credit Party. LC Issuer is not responsible for (A) any recitals, statements, information, representations, or warranties contained in, or for the execution, validity, genuineness, effectiveness, or enforceability of, any LC Documents; (B) the validity, genuineness, enforceability, collectibility, value, or sufficiency of any Collateral or the perfection of any Lien therein; or (C) the assets, liabilities, financial condition, results of operations, business, creditworthiness, or legal status of any Credit Party.

(iv) No LC Issuer Indemnitee shall be liable to Administrative Agent, any Lender, or any other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence, bad faith or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment binding on such LC Issuer Indemnitee. LC Issuer shall have no liability to any Lender if LC Issuer refrains from taking any action, or refuses to take any action, under any Letter of Credit or LC Documents until it receives written instructions from the Required Lenders; provided, that the foregoing shall not be construed to excuse an LC Issuer from liability to Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrowers to the extent permitted by Applicable Law) suffered by Borrowers that are caused by such LC Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(v) Borrowers agree to pay to the LC Issuer, with respect to drawings honored under any Letter of Credit issued by such LC Issuer, interest on the amount paid

by the LC Issuer in respect of each such honored drawing from the date such drawing is honored to, but excluding, the date such amount is reimbursed by or on behalf of Borrowers in accordance herewith at a rate that is the lesser of (i) two percent (2%) per annum in excess of the rate of interest otherwise payable hereunder with respect to Base Rate Revolving Loans and (ii) the Highest Lawful Rate.

(vi) Interest payable pursuant to clause (v) above shall be computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, and shall be payable **ON DEMAND** or, if no demand is made, on the date on which the related drawing under a Letter of Credit is made by the LC Issuer. Promptly upon receipt by the LC Issuer of any payment of interest pursuant hereto, the LC Issuer shall distribute to each Lender, from the interest received by the LC Issuer in respect of the period from the date such drawing is honored to but excluding the date on which the LC Issuer is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the Letter of Credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event the LC Issuer shall have been reimbursed by the Lenders for all or any portion of such honored drawing, the LC Issuer shall distribute to each Lender that has paid all amounts payable by it with respect to such honored drawing such Lender's Pro Rata Share of any interest received by the LC Issuer in respect of that portion of such honored drawing so reimbursed by the Lenders for the period from the date on which LC Issuer was so reimbursed by the Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrowers.

(c) Cash Collateral. If any LC Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (i) that an Event of Default exists; (ii) after the Commitment Termination Date; or (iii) within ten (10) Business Days before the Stated Revolving Commitment Termination Date (unless Administrative Agent, in its discretion, agrees to any shorter period), then, Borrowers shall, at LC Issuer's or Administrative Agent's request, Cash Collateralize the stated amount of all outstanding Letters of Credit and pay to LC Issuer the amount of all other LC Obligations that are then outstanding. If Borrowers fail to provide Cash Collateral as required herein, Lenders may (and, upon written request of Administrative Agent, shall) advance, as Revolving Loans, the amount of the Cash Collateral required (regardless of whether the Commitments have terminated, an Over Advance exists, or any condition precedent to the making of any Loan has not been satisfied). Without limitation of the foregoing, at any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent) Borrowers shall Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure after first giving effect to any Cash Collateral provided by the Defaulting Lender. If Borrowers are required to provide an amount of cash collateral hereunder as a result of an Event of Default, such amount shall be returned to Borrowers within three (3) Business Days after all Events of Default have been waived in writing by Administrative Agent and Required Lenders in their sole discretion.

SECTION 3.

INTEREST, FEES, AND CHARGES

3.1 Interest.

(a) Interest Rates. The Obligations shall bear interest (i) with respect to Base Rate Loans, at the Base Rate plus the Applicable Margin; (ii) with respect to Term SOFR Loans, at Term SOFR for the applicable Interest Period plus the SOFR Adjustment plus the Applicable Margin; (iii) with respect to Swing Line Loans, at the Swing Line Rate (unless and until converted to a Revolving Loan pursuant to the terms of **Section 2.3**), and (iv) with respect to any other Obligations that are then due and payable (including, to the extent permitted by law, interest not paid when due), at the Base Rate plus the Applicable Margin for Base Rate Revolving Loans, unless and except to the extent that another interest rate is prescribed therefor in the Loan Documents evidencing such Obligations; provided, however, that the Obligations shall bear interest at the Default Rate (whether before or after any judgment) (A) at all times during the existence of any Credit Party's Insolvency Proceeding and (B) if so elected by Administrative Agent or the Required Lenders, from and after the occurrence of, and during the continuation of, any Specified Event of Default. In such latter regard, each Borrower acknowledges that the cost and expense to Administrative Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is a fair and reasonable estimate to compensate Administrative Agent and Lenders because of such Specified Event of Default and does not constitute a penalty.

(b) Accrual of Interest. 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, with respect to a Base Rate Loan being converted from a Term SOFR Loan, the date of conversion of such Term SOFR Loan to such Base Rate 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 or, with respect to a Base Rate Loan being converted to a Term SOFR Loan, the date of conversion of such Base Rate Loan to such Term SOFR Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan.

(c) Payment Dates. Interest accrued on the Loans shall be due and payable (i) in arrears, on each Interest Payment Date, (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid, and (iii) at maturity. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable **ON DEMAND**. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents or, if no payment due date is provided therein, then, **ON DEMAND**.

(d) Interest Rate Determination and Disclosure. As soon as practicable after 10:00 a.m. 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 interest rate that shall apply to each Term SOFR Loan for which an interest rate is then being determined for the applicable Interest Period, and shall promptly give notice thereof in writing to Borrower Representative and each Lender, in each case, to the extent that each requests same.

(e) Certain Provisions Regarding Term SOFR Loans.

(i) Borrowers may, on any Business Day, subject to delivery of a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in **Section 15.1(d)**) and the terms of **Section 3.1(h)**, elect to (A) convert all or any portion of any Base Rate Loans to Term SOFR Loans; (B) convert all or any portion of any Term SOFR Loans to Base Rate Loans; or (C) at the end of its Interest Period continue any Term SOFR Loan as a Term SOFR Loan or convert any

Term SOFR Loan to a Base Rate Loan; provided, however, that Administrative Agent may impose further limits on the amounts of any partial conversions or continuations from time to time, and, provided, further, that, during any Default or Event of Default, Administrative Agent may (and, at the direction of the Required Lenders, shall) declare that no Loan may be made as, converted into, or continued as, a Term SOFR Loan.

(ii) Whenever Borrowers desire to convert any Loan to a Term SOFR Loan or continue any Loan as a Term SOFR Loan, Borrower Representative shall give Administrative Agent a Notice of Conversion/Continuation (which notice may be transmitted by electronic mail subject to the limitations set forth in **Section 15.1(d)**) no later than 11:00 a.m. at least three (3) U.S. Government Securities Business Days before the requested date of such conversion or continuation. Promptly after receiving any such notice, Administrative Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the date of such conversion or continuation (which date shall be a Business Day), and the duration of the Interest Period (which, if not specified, shall be deemed to be one (1) month). If, upon the expiration of any Interest Period of any Term SOFR Loan, Borrowers shall have failed to deliver a Notice of Conversion/Continuation or a request with respect to such Term SOFR Loan, Borrowers shall be deemed to have elected to convert such Term SOFR Loan into a Base Rate Loan.

(f) Interest Periods. In connection with the making, conversion, or continuation of any Term SOFR Loan, Borrowers shall select the Interest Period therefor; provided, however, that:

(i) each Interest Period shall commence on the date the Loan is made or continued as, or converted into, a Term SOFR Loan, and shall expire on the numerically corresponding day in the final calendar month;

(ii) if any Interest Period commences on a day for which there is no corresponding day in the final calendar month or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month and, if any Interest Period would expire on a day that is not a Business Day, the Interest Period shall expire on the next Business Day; and

(iii) no Interest Period shall extend beyond the Stated Revolving Commitment Termination Date.

(g) Number and Amount of Term SOFR Loans; Determination of Rate. Each Borrowing of Term SOFR Loans when made shall be in a minimum amount of One Million Dollars (\$1,000,000) or any greater integral multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof. No more than four (4) Borrowings of Term SOFR Loans may be outstanding at any time, and all Term SOFR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose.

(h) Closing Date Loans. All Loans made on the Closing Date shall be made as Base Rate Loans, unless otherwise approved by Administrative Agent.

3.2 Fees.

(a) Upfront Fees. On the Closing Date, Borrowers shall pay to Administrative Agent, for the account of the Lenders, the Upfront Fees as set forth in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(b) Commitment Fee. On the first day of each calendar quarter following the Closing Date and continuing on a quarterly basis thereafter until and including the Commitment Termination Date, Borrowers shall pay to Administrative Agent, in arrears and for the account of the Lenders, a commitment fee in an amount equal to three hundred seventy-five thousandths of one percent (0.375%) per annum times the average amount by which the Revolving Commitments exceeded the Aggregate Revolving Obligations (other than Swing Line Loans) on each day during the immediately preceding calendar quarter; provided that (1) no commitment fee shall accrue on the Revolving Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any commitment fee accrued with respect to the Revolving Commitment of a Defaulting Lender during the period prior to the time that such Lender became a Defaulting Lender and unpaid at such time shall not be payable by Borrowers so long as such Lender shall be a Defaulting Lender. For purposes hereof, Swing Line Loans shall not be counted toward or considered as usage of the aggregate Revolving Commitments.

(c) Letter of Credit Fees. On the first day of each calendar quarter following the date that any Letter of Credit is issued (or renewed or extended), and continuing on a quarterly basis thereafter until its expiration date and thereafter **ON DEMAND**, so long as any Letter of Credit shall remain issued and outstanding or any LC Obligations exist thereunder, Borrowers shall pay, (i) to Administrative Agent, in arrears and for the account of the Lenders, in accordance with their respective Pro Rata Shares thereof, a Letter of Credit fee (the "Letter of Credit Fee"), in an amount equal to (A) a rate per annum equal to the Applicable Margin in effect for Revolving Loans made as Term SOFR Loans plus, at all times when the Default Rate with respect to such Loans is in effect, two percent (2%) per annum, times (B) the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases or decreases periodically pursuant to the terms of such Letter of Credit), provided that no Letter of Credit Fee shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and except as otherwise provided in **Section 4.2(a)(iii)**, any Letter of Credit Fee accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by Borrowers so long as such Lender shall be a Defaulting Lender, and (ii) directly to each LC Issuer for its own account a fronting fee at the rate per annum specified in the Fee Letter or, as applicable, in any LC Document (but if no such rate is so specified, then, at the rate of twenty-five hundredths of one percent (0.25%) per annum) on the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases or decreases periodically pursuant to the terms of such Letter of Credit), provided that LC Issuer may elect instead that such fronting fee be payable to it upon issuance of any such Letter of Credit. In addition, Borrowers shall pay directly to the LC Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the LC Issuer relating to letters of credit as from time to time in effect. Except as otherwise may be provided in any LC Document such customary fees and standard costs and charges shall be due and payable **ON DEMAND**. All of the foregoing fees and charges shall be fully earned upon issuance of the Letter of Credit, or any amendment, restatement, amendment and restatement, supplement, waiver, consent or other modification from time to time thereto as

applicable, and none of such fees or charges shall be refundable, in whole or in part, regardless of any cancellation, termination, or drawing upon the Letter of Credit.

(d) Administrative Agent Fees. Borrowers shall pay to Administrative Agent, for its own account, the fees payable to Administrative Agent that are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(e) Other Fees. Borrowers shall pay to each applicable Person the fees payable to such Person that are described in the Fee Letter, all of which shall be due and payable in the amounts and at the times set forth therein.

(f) Calculation and Distribution of Interest Fees, Charges, and Other Amounts. Unless otherwise specifically provided herein or in any other Loan Document, interest, fees, charges and other amounts that are calculated on a per annum basis shall be calculated as follows: (i) for interest determined by reference to the Base Rate, a year of three hundred sixty (360) days, and (ii) for all other such computations of interest, fees, charges and other amounts, likewise, a year of three hundred sixty (360) days, in each case, for the actual number of days elapsed in the period during which it accrues. Each determination by Administrative Agent of any interest, fees, charges or interest rate hereunder or under any other Loan Document shall be final, conclusive, and binding for all purposes, absent manifest error. All fees payable under this **Section 3.2** are compensation for services and, to the extent of Applicable Law, are not, and shall not be deemed to be, interest or any other charge for the use, forbearance, or detention of money. A certificate as to amounts payable by Borrowers under **Section 14** and **15.4**, timely submitted to Borrower Representative by Administrative Agent or the Affected Lender, as applicable, shall be final, conclusive, and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the applicable Person within ten (10) days following receipt of such certificate. All fees shall be fully earned when due and shall not be subject to rebate, refund, or proration, in whole or in part. All fees paid to Administrative Agent for the account of the Lenders, LC Issuer, or any other Person shall be paid by Administrative Agent to such Persons promptly upon its receipt thereof and, with respect to fees payable for the account of the Lenders, in accordance with each such Lender's Pro Rata Share thereof.

(g) Maximum Interest. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid 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 aggregate 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 that 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 Paid in Full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest that 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, Borrowers shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest that would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and each of the Credit Parties to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration that 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 aggregate outstanding amount of the Loans

made hereunder or be refunded to each of the applicable Credit Parties. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

SECTION 4.

LOAN ADMINISTRATION

4.1 **Manner of Borrowing and Funding Revolving Loans.**

(a) **Notice of Borrowing.** Borrowers may request new Revolving Loans (including Swing Line Loans), by delivering to Administrative Agent at its Lending Office a Notice of Borrowing (which notice may be transmitted by electronic mail subject to the limitations set forth in **Section 15.1(d)**). If the requested Revolving Loan is to be a Base Rate Loan, then, such Notice of Borrowing must be received by Administrative Agent at or before 11:00 a.m. on the Business Day on which Borrowers desire such Revolving Loan to be made. If the requested Revolving Loan is to be a Term SOFR Loan, then such Notice of Borrowing must be received by Administrative Agent at or before 11:00 a.m. on the third (3rd) U.S. Government Securities Business Day preceding the date on which Borrowers desire such Revolving Loan to be made. Any Notice of Borrowing received by Administrative Agent after 11:00 a.m. on a Business Day (or, as applicable, U.S. Government Securities Business Day) shall be deemed to have been received on the immediately following Business Day. Each Notice of Borrowing for a Revolving Loan shall specify (i) the amount of the Borrowing; (ii) the requested funding date (which must be a Business Day or, as applicable, a U.S. Government Securities Business Day); (iii) whether the Borrowing is requested to be made as a Swing Line Loan, (iv) whether the Borrowing is requested to be made as a Base Rate Loan, or Term SOFR Loan; and (v) in the case of a Term SOFR Loan, the duration of the applicable Interest Period. If Borrowers do not specify an Interest Period with respect to any Notice of Borrowing for a Term SOFR Loan, then, the Interest Period for such Loan shall be deemed to be one (1) month.

(b) **Deemed Requests for Funding.** Each Notice of Borrowing for a Revolving Loan received by Administrative Agent shall be irrevocable.

(i) The becoming due of any Obligations shall be deemed to be a request for Base Rate Revolving Loans on the due date therefor in the amount of such Obligations, and, upon the making of such Revolving Loan, Administrative Agent shall apply the proceeds thereof in direct payment of such Obligations. In addition, Administrative Agent may, at its option, debit any of Borrowers' or Subsidiaries' Deposit Accounts maintained at Administrative Agent (or any of its Affiliates) by the amount of any Obligations that are then due and apply the proceeds thereof to the payment of such Obligations.

(ii) If Borrowers have established a controlled disbursement Deposit Account with Administrative Agent (or any of its Affiliates), whether pursuant to an Auto Borrow Agreement or otherwise, then, the presentation for payment of any check or other item of payment drawn on such Deposit Account at a time when there are insufficient funds on deposit therein to pay the same shall be deemed to be a request for

a Base Rate Revolving Loan on the date of such presentation in the amount of the checks and such other Payment Items presented for payment. The proceeds of such Revolving Loans may be disbursed directly to the controlled disbursement Deposit Account or other appropriate Deposit Account.

(c) Fundings by Lenders. Except for Borrowings that Swing Line Lender elects to make as Swing Line Loans, Administrative Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon on the requested funding date for Base Rate Loans or by 3:00 p.m. at least Three (3) U.S. Government Securities Business Days before any requested funding of Term SOFR Loans. Each Lender shall fund to Administrative Agent such Lender's Pro Rata Share of each requested Borrowing at the Principal Office of Administrative Agent to the account specified by Administrative Agent in immediately available funds no later than 2:00 p.m. on the requested funding date, unless Administrative Agent's notice is received after the times provided above, in which case each Lender shall fund its Pro Rata Share by 11:00 a.m. on the next Business Day or, as applicable, U.S. Government Securities Business Day. Subject to its receipt of such amounts from Lenders, Administrative Agent shall disburse the proceeds of the Revolving Loans in the lawful manner directed by Borrower Representative. Unless Administrative Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its Pro Rata Share of a Borrowing, Administrative Agent may assume that such Lender has deposited or will deposit in accordance herewith its Pro Rata Share with Administrative Agent, and Administrative Agent may disburse a corresponding amount to Borrowers. If all or a portion of a Lender's Pro Rata Share of any Borrowing is not in fact received by Administrative Agent, then Borrowers agree to repay to Administrative Agent **ON DEMAND** the amount of any deficiency, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing.

4.2 Defaulting Lender.

(a) Limitation on Actions. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, restatement, amendment and restatement, supplement, waiver, consent or other modification with respect to this Agreement or any other Loan Document shall be restricted as set forth in **Section 15.2(a)**.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts (other than fees that any Defaulting Lender is not entitled to receive pursuant to **Section 4.2(a)(iii)**) received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, as a scheduled payment or by prepayment, at maturity, pursuant to **Section 11.2** or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to **Section 15.6**), shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to LC Issuer or the Swing Line Lender hereunder; third, to Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 4.6**; fourth, as Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its

portion thereof as required by this Agreement, as determined by Administrative Agent; fifth, if so determined by Administrative Agent and Borrower Representative to be held in a non-interest bearing Deposit Account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize LC Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 4.6**; sixth, to the payment of any amounts owing to the Lenders, LC Issuer or Swing Line Lender as a result of any final, non-appealable judgment of a court of competent jurisdiction obtained by any Lender, LC Issuer or the Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrowers, or any of them, as a result of any final, non-appealable judgment of a court of competent jurisdiction obtained by such Borrower or Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed in a final, non-appealable judgment by a court of competent jurisdiction binding on such Defaulting Lender; provided, that, if (x) such payment is a payment of the principal amount of any Loans or LC Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or LC Obligations were made at a time when the conditions set forth in **Section 6.2** were satisfied or waived, such payment shall be applied solely to the pay the Loans of, and LC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations and Swing Line Loans are held by the Lenders Pro Rata in accordance with their Revolving Commitments without giving effect to **Section 4.2(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 4.2(a)(ii)** shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Such Defaulting Lender shall not be entitled to receive any commitment fee, any fees with respect to Letters of Credit (except as provided in clause (B) below) or any other fees hereunder for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive fees with respect to Letters of Credit for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 4.6**.

(C) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC

Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to LC Issuer or Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to LC Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in **Section 6.2** are satisfied at the time of such reallocation (and, unless Borrowers shall have otherwise notified Administrative Agent at such time, Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause such Lender's Revolving Credit Exposure at such time to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to **Section 15.25**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure and (y) second, Cash Collateralize LC Issuer's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent).

(b) Defaulting Lender Cure. If Borrower Representative, Administrative Agent, Swing Line Lender and LC Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held Pro Rata by the Lenders in accordance with the Revolving Commitments (without giving effect to **Section 4.2(a)(iv)**), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swing Line Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan, and

(ii) LC Issuer shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

4.3 **Borrower Representative.** Each Credit Party hereby designates the Company (“Borrower Representative”) as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates and Interest Periods, delivery or receipt of communications (including any Notice of Borrowing, Notice of Conversion/Continuation, any electronic mail notice or request for a Borrowing or the conversion, or continuation of any Loan, or any request for the issuance of any Letter of Credit), preparation and delivery of Borrowing Base Certificates and all attachments thereto, financial reports and Compliance Certificates, receipt and payment of Obligations, requests for waivers, amendments, or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Administrative Agent, LC Issuer, or any Lender. Borrower Representative hereby accepts such appointment. Administrative Agent, LC Issuer, and the Lenders may give any notice to, or communication with, a Credit Party hereunder or under any other Loan Document to or with Borrower Representative on behalf of such Credit Party. Each Credit Party agrees that any notice, election, communication, representation, agreement, or undertaking made on its behalf by Borrower Representative shall be binding upon and enforceable against it. Administrative Agent, LC Issuer, and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, the terms of this **Section 4.3**, provided that nothing contained herein shall limit the effectiveness of, or the right of Administrative Agent, LC Issuer or any Lender to rely upon, any notice (including without limitation a borrowing or conversion notice), instrument, document, certificate, acknowledgment, consent, direction, certification or any other action delivered by any Credit Party pursuant to this Agreement or any other Loan Document.

4.4 **One Obligation.** The Loans, LC Obligations, and other Obligations shall constitute one general, joint and several obligation of Credit Parties and (unless otherwise expressly provided in any Loan Document) shall be secured by Administrative Agent’s Lien upon all Collateral; provided, however, that Administrative Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Credit Party to the extent of any Obligations jointly or severally owed by such Credit Party.

4.5 **Effect of Termination.** On the Commitment Termination Date, all Obligations shall be immediately due and payable, in full. All undertakings of all Credit Parties contained in the Loan Documents shall survive any termination, and Administrative Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents, until Payment in Full of all Obligations. **Section 2.4, Section 13.1, Section 14.1, Section 14.2, Section 14.3, Section 14.4, Section 15.3, Section 15.4, and Section 15.23**, this **Section 4.5**, the obligation of each Credit Party and each Lender with respect to each indemnity given by it in any Loan Document, including under **Section 8.9, Section 12.5 and Section 15.3**, and each other term, provision, or section of this Agreement or any other Loan Document that states as much, shall survive Payment in Full of the Obligations and any release or termination relating to this Agreement, the other Loan Documents, or any credit facility established hereunder or thereunder. In connection with the foregoing, each credit Party acknowledges and agrees that Administrative Agent may condition the delivery of any payoff letter on receipt of an unconditional release of all Claims of all Credit Parties against Administrative Agent, LC Issuer and Lenders arising on or before the payment date in respect of the Obligations.

4.6 **Cash Collateral.** At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of Administrative Agent or LC Issuer (with a copy to Administrative Agent) Borrowers shall Cash Collateralize LC Issuer’s Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure (after giving

effect to **Section 4.2(a)(iv)** and any Cash Collateral provided by the Defaulting Lender). Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of LC Issuer, and agrees to maintain, a perfected first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Obligations, to be applied in the manner set forth below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and LC Issuer as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, Borrowers will, within one (1) Business Day following the written request of Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender). Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this **Section 4.6** or **Section 4.2** in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such Property as may otherwise be provided for herein. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this **Section 4.6** following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by Administrative Agent and LC Issuer that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Credit Party shall not be released during the continuance of an Event of Default (and following application as provided in this **Section 4.6** may be otherwise applied in accordance with **Section 5.5**) but shall be released upon the waiver of such Event of Default in accordance with the terms of this Agreement, and (y) the Person providing Cash Collateral and LC Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other Obligations.

4.7 Borrowing Base and Reserves. Administrative Agent shall have the continuing, independent right to determine the Borrowing Base from time to time in its Reasonable Credit Judgment and otherwise in accordance with the terms of this Agreement, whether from data provided by Borrowers or otherwise. Each determination by Administrative Agent of the Borrowing Base shall be conclusive and binding for all purposes, absent manifest error. When any Reserve is to be established or a change in any amount, reserve, eligibility criteria or other item in the definitions of the terms "Borrowing Base," "Eligible Accounts," "Eligible Billed Accounts," "Eligible Unbilled Accounts," or "Eligible Inventory" is to be determined in each case in Administrative Agent's Reasonable Credit Judgment, such Reserve shall be implemented or such change shall become effective three (3) Business Days (or, if a Cash Dominion Period shall be in effect, one (1) Business Day) following delivery of a written notice thereof (including by email) to Borrowers (such notice to include a reasonably detailed description of the Reserve being established), or immediately, without prior written notice, if (x) such change is a result of a mathematical calculation or (y) any Default or Event of Default has occurred and is continuing or (z) an event having a Material Adverse Effect on the Collateral (or on the ability of the Lenders to realize upon the Collateral or the value of the Collateral) has occurred or would result if such Reserve is not immediately established or modified. During such three (3) Business Day period (or, if a Cash Dominion Period shall be in effect, one (1) Business Day period), if applicable, Administrative Agent will, if requested, discuss any such Reserve or change with Borrowers, and Borrowers may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change, in each case, in a manner and to the extent reasonably satisfactory to Administrative Agent. Notwithstanding the foregoing, the specified percentages set forth in the definition of "Borrowing Base" will not be reduced without the consent of Borrowers.

SECTION 5.

PAYMENTS

5.1 **General Payment Provisions.** All payments of Obligations shall be made in Dollars, without right of offset, recoupment, counterclaim, discount, charge back or other defense of any kind, free of (and without deduction for) any Taxes (except as otherwise may be required by Applicable Law and subject to **Section 14.3**) or other sums, and in immediately available funds, not later than 12:00 noon on the due date to the Principal Office of Administrative Agent, the LC Issuer, the Lenders or other obligee. Any payment after such time shall be deemed made on the next Business Day. Any payment of a Term SOFR Loan before the end of its Interest Period shall be accompanied by all amounts due under **Section 14.1(c)**. Any prepayment of Loans (whether mandatory or voluntary) shall be applied first to Base Rate Loans and, then, to Term SOFR Loans. Subject to the provisos set forth in **Section 3.1(f)** in respect of “Interest Period,” whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of any applicable fee hereunder, but such payment shall be deemed to have been made on the date therefor for all other purposes hereunder.

5.2 **Repayment of Revolving Loans.**

(a) **Payment on Commitment Termination Date.** Unless otherwise sooner becoming due and payable in accordance with the terms of this Agreement or any other Loan Document, Revolving Loans shall be due and payable in full on the Commitment Termination Date.

(b) **Voluntary Prepayments.** Revolving Loans may be voluntarily prepaid from time to time, without penalty or premium (subject to **Section 14.1(c)**), as follows: (i) with respect to Base Rate Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of Five Hundred Thousand Dollars (\$500,000) and integral multiples of One Hundred Thousand Dollars (\$100,000) in excess of that amount; (ii) with respect to Term SOFR Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part (together with any amounts due pursuant to **Section 14.1(c)**) in an aggregate minimum amount of Five Hundred Thousand Dollars (\$500,000) and integral multiples of One Hundred Thousand Dollars (\$100,000) in excess of that amount; and (iii) with respect to Swing Line Loans, Borrowers may prepay any such Loans on any Business Day in whole or in part in any amount. All such prepayments shall be made: (i) upon written notice on the date of prepayment in the case of Base Rate Loans or Swing Line Loans; and (ii) upon not less than three (3) Business Days’ prior written notice in the case of Term SOFR Loans, in each case given to Administrative Agent, or the Swing Line Lender, as the case may be, by 11:00 a.m. on the date required (and Administrative Agent will promptly transmit written 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 5.2(c)**.

(c) **Mandatory Prepayments.** At any time following the occurrence and during the continuation of a Cash Dominion Period, within one (1) Business Day following the receipt of any Net Proceeds (Asset Dispositions) in respect of any Asset Disposition of Equipment or other assets (other than Accounts or Inventory) with a fair market value in excess of \$5,000,000 or any Net Proceeds (Loss) with respect to such assets, Borrowers shall apply an amount equal to 100% of such Net Proceeds (Asset Dispositions) or Net Proceeds (Loss), as applicable, received with respect thereto to prepay the outstanding principal amount of the Loans and/or, if required after

an Event of Default, Cash Collateralize the outstanding LC Obligations, and Borrowers shall deliver an updated Borrowing Base Certificate to Administrative Agent on the date of any such Asset Disposition or receipt of Net Proceeds (Loss); provided that, if Borrowers enter into a Permitted Bond Transaction, no such prepayment (or Cash Collateralization) shall be required with respect to Proceeds of the Term Priority Collateral prior to payment in full of the Senior Notes Debt. Prepayments made pursuant to this **Section 5.2(c)** or the preceding **Section 5.2(b)** shall be applied, first, to the payment of any Swing Line Loans; second, to the payment of all other Revolving Loans that are Base Rate Loans; third, to the payment of all other Revolving Loans that are Term SOFR Loans; and, fourth, after an Event of Default, at Administrative Agent's discretion, to Cash Collateralize any LC Obligations then outstanding. Any amount remaining after the application in accordance with the foregoing may be retained by Borrowers for use in the Ordinary Course of Business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held in the LC Cash Collateral Account may be applied (without any further action by or notice to or from Borrowers or any other Credit Party) to reimburse the LC Issuer or the Lenders, as applicable.

(d) **Collection Account.** During a Cash Dominion Period, the collected balance in each Collection Account as of the end of each Business Day shall, at the beginning of the next Business Day, be applied, first, to the principal balance of the Revolving Loans (unless such funds are otherwise required to be applied to some other portion of the Obligations in accordance with this Agreement) and then, to other Obligations, as determined by Administrative Agent. If, as a result of such application, a credit balance exists, the balance shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Default or Event of Default exists. During the existence and continuance of a Cash Dominion Period and except to the extent otherwise expressly provided herein, each Borrower irrevocably waives the right to direct the application of any payments or Collateral Proceeds, and agrees that Administrative Agent shall have the continuing, exclusive right to apply, reverse and reapply the same against the Obligations, in such order or manner as Administrative Agent deems advisable. Any of the foregoing to the contrary notwithstanding, Administrative Agent may charge back to any Collection Account (or any other account of a Borrower maintained with Administrative Agent) a Payment Item that is returned for inability to collect, plus accrued interest during the period of Administrative Agent's provisional credit for such item before receiving notice of dishonor. Administrative Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement or Collection Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

5.3 **[Reserved].**

5.4 **Payment of Other Obligations.** Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, **ON DEMAND**.

5.5 **Post-Default Allocation of Payments.**

(a) **Allocation.** Notwithstanding anything herein or in any other Loan Document to the contrary, during an Event of Default, if so directed by the Required Lenders or at Administrative Agent's discretion, monies to be applied to the Obligations, whether arising from payments by Credit Parties, realization on Collateral, by exercise of setoff, or otherwise, shall be allocated as follows:

(i) first, to (A) all fees, including fees payable pursuant to this Agreement, the Fee Letter or any other Loan Document, then owing, (B) all costs and expenses, including Extraordinary Expenses, reimbursable by Credit Parties, then owing, (C) all Indemnatee Obligations, and (D) any Protective Advances (including principal and interest), in each case, to the extent owing to Administrative Agent in its capacity as Administrative Agent;

(ii) second, to (A) all costs and expenses reimbursable by Credit Parties, and (B) all Indemnatee Obligations, to the extent owing to LC Issuer Indemnitees and any Lender Indemnitees;

(iii) third, to all amounts owing to Swing Line Lender on Swing Line Loans (including principal and interest);

(iv) fourth, to all amounts owing to LC Issuer with respect to that portion of the LC Obligations that constitutes unreimbursed draws under Letters of Credit (including principal and interest);

(v) fifth, to all Obligations constituting fees owing to LC Issuer or any Lender, to the extent not already paid above (other than any then constituting Bank Product Obligations);

(vi) sixth, to all Obligations constituting interest owing to any Lender to the extent not already paid above (other than any then constituting Bank Product Obligations);

(vii) seventh, to (A) all Loans, (B) LC Obligations (including the Cash Collateralization of that portion of the LC Obligations constituting then undrawn amounts under outstanding Letters of Credit), and (C) Bank Product Obligations (including the Cash Collateralization of that portion of any Bank Product Obligations that are then contingent or otherwise not yet due and payable), if and to the extent that consistent with **Section 12.13**, the applicable Bank Product Provider thereof has delivered a Secured Party Designation Notice to Administrative Agent, up to the amount of Reserves then being imposed by Administrative Agent in regard thereto;

(viii) eighth, to all other Bank Product Obligations (including the Cash Collateralization of that portion of any Bank Product Obligations that are then contingent or otherwise not yet due and payable), described in sub-clause (C) of clause (vii) above, to the extent not already paid;

(ix) ninth, to all other Obligations, including any other Bank Product Obligations (including the Cash Collateralization of that portion of any Bank Product Obligations and other Obligations that are then contingent or otherwise not yet due and payable), if and to the extent not already paid, other than any then owing to the Defaulting Lenders;

(x) tenth, to all Obligations then owing to the Defaulting Lenders; and

(xi) lastly, the balance, if any, after all of the Obligations have been Paid in Full, to Borrowers or as otherwise then required under Applicable Law.

(b) Manner of Application. In respect of the waterfall of payment application set forth in subsection (a) above, amounts shall be applied to each of the foregoing categories of Obligations in the order presented above within each category before being applied to the following category. Where applicable, all amounts to be applied to a given category will be applied on a pro rata basis among those entitled to payment in such category.

(c) Bank Product Obligations. In determining the amount to be applied to Bank Product Obligations within clauses seventh, eighth and ninth above, the pro rata share of each Bank Product Provider (other than Regions Bank and its Affiliates) shall be based on the lesser of (x) the estimated maximum amount thereof to be created or incurred as so designated in the then most recent Secured Party Designation Notice from such Bank Product Provider to Administrative Agent and (y) the actual amount of such Bank Product Obligations then owing to such Bank Product Provider, which each Bank Product Provider (other than Regions Bank and its Affiliates) shall be obliged to designate to Administrative Agent at the time of, and as a condition to, its receipt of such amounts. Administrative Agent shall have no duty to investigate whether such Bank Product Obligations are actually owing to such Bank Product Provider in such designated amount, and, instead, shall be entitled to rely in all respects on such Bank Product Provider's designation thereof. The pro rata share of Regions Bank and its Affiliates shall not be subject to the foregoing limitations, but shall be determined and reported directly to Administrative Agent by Regions Bank.

(d) Secured Parties as Beneficiaries. The allocations set forth in this **Section 5.5** are solely to determine the rights and priorities of the Secured Parties among themselves and may be changed by agreement among them at any time and from time to time without notice to, or the consent of, any Credit Party. No Credit Party is entitled to any benefit under this **Section 5.5** or has any standing to enforce this **Section 5.5**.

(e) Excluded Swaps. Excluded Swap Obligations with respect to any Credit Party shall not be paid with amounts received from such Credit Party or such Credit Party's assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in subsection (a) of this **Section 5.5**.

(f) Erroneous Application. Administrative Agent shall not be liable for any application of amounts made by it pursuant to this **Section 5.5** if made in Good Faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount ought to have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by any Secured Party, then such Secured Party, by accepting the benefits of this Agreement, agrees to return it).

5.6 Sharing of Payments. If any Lender shall, by exercising any claim, counterclaim, right of setoff (including any permitted under **Section 15.6**), charge back, discount, defense, qualification, or exception or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligations greater than its Pro Rata Share thereof as provided herein, then, the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Loans and such other Obligations of the other Lenders, or make such other adjustments as shall be equitable (as determined by Administrative Agent), so that the benefit of all such payments shall be shared by the Lenders in accordance with the aggregate amount of principal of and accrued interest on their respective

Loans and other amounts owing them, based on their respective Pro Rata Shares thereof; provided, however, that: (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; (ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Commitments, Loans, or participations in Swing Line Loans or LC Obligations to any Transferee; and (iii) no Lender or Participant may exercise any right of setoff except as provided in **Section 15.6**.

5.7 Nature and Extent of each Borrower's Liability.

(a) Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally Guarantees to Administrative Agent, LC Issuer, each Lender and each other Secured Party the prompt payment and performance of, all Obligations and all agreements under the Loan Documents. Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of each of the other Borrowers to accept joint and several liability for the payment and performance of the Obligations, not merely as a surety but also as a co-debtor, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower and all Borrowers without preferences or distinctions between or among them. Each Borrower agrees that its Guarantee obligations hereunder with respect to the Obligations of each other Borrower constitute a continuing Guarantee of payment and not of collection, that such obligations shall not be discharged until Payment in Full of the Obligations, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination, or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument, or agreement to which any Credit Party is or may become a party or be bound; (ii) the absence of any action by Administrative Agent, LC Issuer, each Lender or any other Secured Party to enforce this Agreement (including this **Section 5.7**) or any other Loan Document, or any waiver, consent, or indulgence of any kind given by Administrative Agent, LC Issuer, any Lender or any Secured Party with respect thereto; (iii) the existence, value, or condition of, or failure to perfect a Lien, or to preserve rights against, any security or Guarantee for the Obligations or any action, or the absence of any action, by Administrative Agent, LC Issuer, or any Lender in respect thereof (including the release of any security or Guarantee); (iv) the insolvency of any Credit Party or Subsidiary; (v) any election by Administrative Agent, LC Issuer, any Lender or any other Secured Party in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing of Debt or grant of a Lien by any other Credit Party, whether as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent, LC Issuer, any Lender or any other Secured Party as against any Credit Party for the repayment of any Obligations whether under Section 502 of the Bankruptcy Code or otherwise; (viii) any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding in respect of any Credit Party; or (ix) any other action, event, circumstance or condition that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Payment in Full of all Obligations.

(b) Waivers.

(i) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Administrative Agent, any Lender or any other Secured Party to marshal assets or to proceed against any Credit Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor, or accommodation co-obligor other than Payment in Full of all Obligations. It is agreed among each Borrower, Administrative Agent, LC Issuer and the Lenders that the provisions of this **Section 5.7** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Administrative Agent, LC Issuer and the Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its Guarantee pursuant to this **Section 5.7** is necessary to the conduct and promotion of its business and can be expected to benefit such business.

(ii) Administrative Agent and LC Issuer may, in their discretion, and at the direction of Required Lenders shall (and the other Secured Parties shall, at the direction of Administrative Agent), pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this **Section 5.7**. If, in taking any action in connection with the exercise of any rights or remedies, Administrative Agent, LC Issuer or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Credit Party or other Person, whether because of any Applicable Law pertaining to “election of remedies” or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Credit Party might otherwise have had. Each of Borrowers waives, to the fullest extent permitted by Applicable Law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance that operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the other Borrowers. Any election of remedies that results in denial or impairment of the right of Administrative Agent, LC Issuer or any Lender to seek a deficiency judgment against any Credit Party shall not impair any Borrower’s obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower’s rights of subrogation against any other Borrower, any Credit Party or any other Person. Administrative Agent may bid all or a portion of the Obligations at any foreclosure or trustee’s sale or at any private sale, and the amount of such bid need not be paid by Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations Guaranteed under this **Section 5.7**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Administrative Agent, LC Issuer, any Lender or any other Secured Party might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 5.7** shall be limited to the greater of (A) all amounts for which such Borrower is primarily liable, as described below, and (B) such Borrower's Allocable Amount (as defined below).

(ii) If any Borrower makes a payment under this **Section 5.7** of any Obligations, other than amounts for which such Borrower is primarily liable (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then, such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately before such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.7** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any other applicable Debtor Relief Law.

(iii) Nothing contained in this **Section 5.7** shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then remade or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses, and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder. Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of Excess Availability for each Borrower and to restrict the disbursement and use of such Loans and Letters of Credit to such Borrower.

(d) Joint Enterprise. Each Borrower has requested that Administrative Agent, LC Issuer and the Lenders make this credit facility available to Borrowers on a combined basis, to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and Borrowers believe that consolidation of their credit facilities will enhance the borrowing power of each Borrower and ease the administration of their relationship with credit providers (including Administrative Agent, LC Issuer and the Lenders), all to the mutual advantage of Borrowers. Borrowers acknowledge and agree that Administrative Agent, LC Issuer and Lenders' willingness to extend credit to Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Borrowers and at Borrowers' request.

(e) Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity, to payment, subrogation, reimbursement, exoneration, contribution, indemnification, or set off, that it may have at any time against any other Credit Party, howsoever arising (including the right to payment of any Debt (including Intercompany Debt), loans or other advances), to Payment in Full of all Obligations.

(f) Keepwell. Borrowers hereby agree to cause each Qualified ECP Guarantor to jointly and severally absolutely, unconditionally and irrevocably undertake to provide such funds or other support as may be needed from time to time by each Specified Credit Party to honor all

of such Specified Credit Party's obligations under its Guarantee and the Security Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under its undertaking pursuant to this **Section 5.7** for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under its Guarantee, voidable under the Bankruptcy Code and other applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this **Section 5.7** shall remain in full force and effect until Payment in Full of the Obligations. Each Borrower, for itself and on behalf of each Qualified ECP Guarantor, intends that this **Section 5.7** (and any corresponding provision of any applicable Guarantee) constitute, and this **Section 5.7** (and any corresponding provision of any applicable Guarantee) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Credit Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(g) Inquiry. Each Borrower represents and warrants to Administrative Agent, LC Issuer and Lenders that such Borrower is currently informed of the financial condition of the other Borrowers and of all other circumstances that a diligent inquiry would reveal and that bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Administrative Agent, LC Issuer and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants to Administrative Agent, LC Issuer and Lenders that such Borrower will continue to keep informed of the other Borrowers' financial condition and of all other circumstances that bear upon the risk of nonpayment or non-performance of the Obligations.

(h) Subrogation Generally. Notwithstanding any term of this Agreement or of any Loan Document that may be to the contrary, each Borrower further hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this **Section 5.7**, including any rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Administrative Agent, LC Issuer or any Lender against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been Paid in Full. Any claim that any Borrower may have against any other Borrower or another Credit Party with respect to any payments to Administrative Agent, LC Issuer or any Lender hereunder or under any of the Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior Payment in Full of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its Debts or its Properties, whether voluntary or involuntary, all such Obligations shall be Paid in Full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower in regard thereto. If any such amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust by such Borrower for the benefit of Administrative Agent, LC Issuer and Lenders, and shall promptly be paid to Administrative Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any such rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may

not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (a “Foreclosed Borrower”), including after Payment in Full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower, whether pursuant to this Agreement or otherwise.

SECTION 6.

CONDITIONS PRECEDENT

6.1 **Conditions Precedent to Initial Loans.** In addition to any other conditions precedent set forth in this Agreement or any other Loan Document, none of Administrative Agent, LC Issuer, nor any Lender shall be required to fund any requested Loan, issue any Letter of Credit, or otherwise make any extension of credit or financial accommodation to or for the benefit or account of any Borrower hereunder as of the date of this Agreement until each of the following conditions precedent has been satisfied (as determined by Administrative Agent) or waived in accordance with the terms of this Agreement:

(a) **Loan Documents.** Notes shall have been executed by Borrowers and delivered to each Lender that, before the Closing Date, has requested the issuance of a Note. This Agreement, the Security Agreement, and each other Loan Document shall have been duly executed and delivered to Administrative Agent by each of the signatories thereto, and each Credit Party shall be in compliance with all terms hereof and thereof.

(b) **Evidence of Filings; Lien Searches.** Administrative Agent shall have received copies of all filings or recordations necessary to perfect its Liens in the Collateral and UCC, Lien, and Intellectual Property searches and all other searches with respect to Credit Parties (but excluding for avoidance of doubt Immaterial Restricted Subsidiaries) and other evidence satisfactory to Administrative Agent that such Liens are the only Liens upon the Collateral (other than Permitted Liens).

(c) **Collection Accounts.** Administrative Agent shall have received duly executed Article 9 Control Agreements and related agreements establishing each Collection Account and, as applicable, each related lockbox, in form and substance and with financial institutions, satisfactory to Administrative Agent.

(d) **Closing and Solvency Certificate.** Administrative Agent shall have received a certificate, in form and substance satisfactory to it, from a knowledgeable Responsible Officer of each Credit Party certifying that, after giving effect to the initial Loans, any initial Letters of Credit and the other transactions contemplated herein, among other things, (A) all consents, approvals, authorizations, registrations, or filings required to be made or obtained by Borrowers and the other Credit Parties, if any, in connection with this Agreement and the other Loan Documents and the transactions contemplated herein and therein have been obtained and are in full force and effect, (B) no investigation or inquiry by any Governmental Authority regarding this Agreement and the other Loan Documents and the transactions contemplated herein and therein is ongoing, (C) since the date of the most-recent annual audited financial statements for the Tested Companies, as reflected in the Historical Financial Statements, there has been no event or circumstance that could be reasonably expected to have a Material Adverse Effect, (D) the most-recent annual audited financial statements of the Tested Companies, as reflected in the Historical Financial Statements, were prepared in accordance with GAAP, except as noted therein, and fairly present in all material respects the financial condition and results from

operations of the Tested Companies, (E) the Credit Parties and their Subsidiaries, on a consolidated basis, are Solvent and, after consummation of the transactions contemplated to occur under this Agreement and the other Loan Documents, will be Solvent and (F) the conditions set forth in **Section 6.2** have been met as of the Closing Date.

(e) Officer's Certificates. Administrative Agent shall have received a certificate of the corporate (company) secretary (or another Responsible Officer) of each Credit Party (but excluding for avoidance of doubt any Immaterial Restricted Subsidiary), certifying (i) that attached copies of such Credit Party's Organizational Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted by the appropriate Governing Body, have not been amended, modified, or revoked, and constitute all resolutions adopted with respect to the credit facility contemplated in this Agreement and the other Loan Documents; and (iii) to the title, name, and signature of each Person authorized to sign the Loan Documents on behalf of such Credit Party. Administrative Agent may conclusively rely on each such certificate until it is otherwise notified by the applicable Credit Party in writing.

(f) Organizational Documents; Good Standing Certificates. Administrative Agent shall have received copies of the Organizational Documents of each Credit Party (but excluding for avoidance of doubt any Immaterial Restricted Subsidiary), certified currently (if requested by Administrative Agent) by the Secretary of State or other appropriate official of such Credit Party's jurisdiction of organization. Administrative Agent shall have received good standing certificates for each Credit Party issued by the Secretary of State or other appropriate official of such Credit Party's jurisdiction of organization and, if requested by Administrative Agent, each jurisdiction where such Credit Party's business activities or ownership of Property necessitates qualification.

(g) Opinions of Counsel. Administrative Agent shall have received a written opinion (which shall cover, among other things, authority, legality, validity, execution and delivery, binding effect, enforceability, no conflict, no violation of Organizational Documents or Applicable Law, and creation and perfection of Liens) of counsel to Credit Parties (but excluding for avoidance of doubt any Immaterial Restricted Subsidiary), as well as any local counsel to Credit Parties or Administrative Agent, in form and substance satisfactory to Administrative Agent.

(h) Insurance. Administrative Agent shall have received (i) copies of policies and certificates of insurance for the insurance policies (including credit insurance) carried by Credit Parties, all of which shall be in compliance with **Section 8.3** and any other provisions of the Loan Documents relevant thereto, together with such lender's loss payable and additional insured endorsements showing Administrative Agent as agent for the Secured Parties, each of which shall be in form and substance satisfactory to Administrative Agent, and (ii) in connection with any credit insurance policy that is to serve as Acceptable Credit Support hereunder, a copy of such of Borrowers' credit insurance policy, together with such beneficiary, loss payee or additional insured endorsements so as to insure that Administrative Agent has the right to receive payments thereunder.

(i) Due Diligence. Administrative Agent shall have completed its business, financial and legal due diligence of Credit Parties, including receipt and review of the completed Collateral Disclosure Certificate with respect to the Credit Parties and certain limited information regarding Immaterial Restricted Subsidiaries, agreements relating to surety bonds or

pursuant to which any Credit Party is required to procure surety bonds for the benefit of any third party; an update of any previous field examinations, the Historical Financial Statements, Projections for the succeeding twelve (12) months' period following the Closing Date, quarter-by-quarter, and for the three (3) years thereafter, year by year, all credit investigations and background checks, and any other material contracts as reasonably requested by Administrative Agent, and the results, form, and substance of each of the foregoing items shall be reasonably satisfactory to Administrative Agent.

(j) Material Adverse Effect. No event or circumstance that, taken alone or in conjunction with other events or circumstances has had, or could be expected to have, a Material Adverse Effect shall have occurred since the date of the audited financial statements of the Company and its Subsidiaries described in the Historical Financial Statements.

(k) Debt and Capital Structure. Administrative Agent shall be satisfied with the Credit Parties' Debt and capital structure.

(l) Payment of Fees. Borrowers shall have paid all fees and expenses (to the extent invoices related to such expenses have been received by the Company at least two (2) Business Days prior to the Closing Date (or such later date as reasonably agreed by the Company)) to be paid to Administrative Agent and Lenders on the Closing Date (including pursuant to the Fee Letter) or Administrative Agent shall be satisfied with all arrangements made to pay such fees and expenses on the Closing Date with the proceeds of Loans to be made on the Closing Date.

(m) Borrowing Base Certificate. Administrative Agent shall have received a Borrowing Base Certificate (and all supporting reports as Administrative Agent may require) prepared as of a recent date acceptable to Administrative Agent. Upon giving effect to the initial funding of Loans and issuance of Letters of Credit and the payment by Borrowers of all fees and expenses incurred in connection herewith, Excess Availability shall equal or exceed \$80,000,000.

(n) Governmental and Third Party Consents. Administrative Agent shall have received certified or executed (as applicable) copies of all required governmental, shareholder, and Third Party Claimant consents and approvals and in each case to the extent applicable, all waiting periods relating thereto shall have expired and no investigation or inquiry by any Governmental Authority regarding this Agreement or any other Loan Document or any transaction contemplated herein shall be ongoing.

(o) Payoff Letter. Administrative Agent shall have received a payoff letter, in form and substance satisfactory to Administrative Agent, regarding all Debt that will be paid on the Closing Date with proceeds of Loans.

(p) No Litigation. There shall be no Adverse Proceeding in which any Credit Party or any Subsidiary is a party defendant that would constitute an Event of Default under **Section 7.17** or that, taken as a whole, could reasonably be expected to have a Material Adverse Effect.

(q) Notice of Borrowing; Payment Authorization. Administrative Agent shall have received a Notice of Borrowing for Loans requested to be made on the Closing Date, together with complete payment authorizations (including the amount thereof) with respect to the disposition of the proceeds of such Loans on the Closing Date.

(r) PATRIOT Act. (i) The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act.

(s) Financial Assurance Requirements. The Company and its Subsidiaries shall have complied in all material respects with all state and federal regulations regarding financial assurance requirements (including but not limited to reclamation bonding requirements) and shall have provided Administrative Agent such evidence thereof as Administrative Agent may reasonably request.

6.2 **Conditions Precedent to All Extensions of Credit.** Administrative Agent, LC Issuer and the Lenders shall not be required to fund any Loans, issue any Letter of Credit or grant any other financial accommodation to or for the benefit of Borrowers, unless each of the following conditions precedent are satisfied or waived in accordance with the terms hereof:

(a) No Default. No Default or Event of Default shall exist at the time of, or result from, such funding, issuance, or grant;

(b) Accuracy of Representations and Warranties. The representations and warranties of each Credit Party in this Agreement and the other Loan Documents shall be true and correct in all material respects on the date of, and after giving effect to, such funding, issuance, or grant (provided that any representation or warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to such qualification) in all respects on such effective date), except for those representations and warranties that expressly relate to an earlier date, in which case, they shall have been true and correct in all material respects as of such date;

(c) No Material Adverse Effect. No event shall have occurred or circumstance shall have existed since the Closing Date that has had or could be expected to have a Material Adverse Effect;

(d) LC Conditions. With respect to issuance of any Letter of Credit, each of the LC Conditions shall be satisfied or waived in accordance with the terms of this Agreement; and

(e) Defaulting Lender. With respect to the issuance of any Letter of Credit, there is no Defaulting Lender at the time such Letter of Credit is to be issued, unless arrangements satisfactory to LC Issuer shall have been made with respect to the undivided interest and participation of such Defaulting Lender in and to such Letter of Credit and all other Letters of Credit then outstanding, which arrangements may include Borrowers’ posting of Cash Collateral in an amount equal to such Defaulting Lender’s interest and participation therein on terms satisfactory to Administrative Agent and LC Issuer.

Each request (or deemed request) by Borrowers for funding of a Loan, issuance of a Letter of Credit, or grant of an accommodation shall constitute a representation by Credit Parties that the foregoing conditions are satisfied on the date of such request and on the date of such funding, issuance, or grant.

SECTION 7.

REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent, LC Issuer, the Lenders and each other Secured Party, as applicable, to enter into this Agreement, provide their respective Commitments, make Loans and permit them to remain outstanding, issue Letters of Credit, and make any other extension of credit or financial accommodation hereunder or under the other Loan Documents, each Credit Party makes the following representations and warranties, all of which shall survive the execution and delivery of this Agreement and the other Loan Documents, and each of which shall be deemed made as of the Closing Date and as of the date of each request for the making of a Loan, the issuance of a Letter of Credit, or the making of any other extension of credit or financial accommodation hereunder or under the other Loan Documents:

7.1 **Organization and Qualification.** Each Credit Party and each of its Subsidiaries (a) is a corporation, limited liability company, or limited partnership, as applicable, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, organization, or formation, except to the extent that the failure to be in good standing would not reasonably be expected to have a Material Adverse Effect, (b) has all requisite power and authority to (i) own and operate its Properties and to carry on its business as now conducted and as proposed to be conducted, except where the failure to have such power and authority or to carry on such business would not be reasonably expected to have a Material Adverse Effect, and (ii) enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is duly qualified, authorized to do business, and is in good standing in each jurisdiction where failure to be so qualified, authorized or in good standing could reasonably be expected to have a Material Adverse Effect.

7.2 **Power and Authority.** Each Credit Party and each Subsidiary is duly authorized to execute, deliver, and perform its Obligations under each of the Loan Documents to which it is a party. Each Credit Party's and Subsidiary's execution, delivery, and performance of each of the Loan Documents to which it is a party have been duly authorized by all necessary corporate, company or partnership action. The execution, delivery and performance by the Credit Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate in any material respect any provision of any Applicable Law relating to any Credit Party, any of the Organizational Documents of any Credit Party, or any order, judgment or decree of any Governmental Authority binding on any Credit Party (or its Property); (b) except as would not reasonably be expected to have a Material Adverse Effect, conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any other Material Contract of any Credit Party; (c) result in or require the creation or imposition of any Lien upon any of the Properties of any Credit Party (other than any Liens created under any of the Loan Documents in favor of Administrative Agent for the benefit of the holders of the Obligations) whether now owned or hereafter acquired; or (d) require any approval of stockholders, members or partners of any Credit Party or any approval or consent of any Person under any Material Contract or Organizational Document of any Credit Party (other than any approvals that have been obtained). The execution, delivery and performance by Credit Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents applicable thereto do not and will not require, as a condition to the effectiveness thereof, any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for (x) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and recordation, as of the Closing Date, (y) other filings, recordings or consents that have been obtained or made, as applicable, and (z) such registrations, consents, approvals, notices and other actions the failure to be obtained or made which would not reasonably be expected to have a Material Adverse Effect.

7.3 **Enforceability.** Each Loan Document has been duly executed and delivered by each Credit Party that is a party thereto and constitutes a legal, valid, and binding obligation of each Credit Party that is a party thereto, enforceable in accordance with its terms, except as enforceability may be

limited by any Debtor Relief Law or by general principles of equity (regardless of whether such enforcement is considered in a proceeding at law or in equity).

7.4 Capital Structure. As of the Closing Date, **Schedule 7.4** sets forth, for each Credit Party and each Subsidiary, (a) such Person's true and correct legal name; (b) such Person's jurisdiction of incorporation, organization, or formation, as applicable; (c) other than with respect to the Company, such Person's authorized, issued and outstanding Equity Interests; and (d) other than with respect to the Company, the number, type or class, and holders, of such Person's issued and outstanding Equity Interests, together with the number and percentage of Equity Interests held by each such holder and whether such Equity Interests constitute Voting Equity Interests or otherwise. As of the Closing Date, there are no agreements binding on any such holders with respect to their interests or rights in and to such Equity Interests. In the five (5) years preceding the Closing Date, no Credit Party or any Subsidiary has consummated any Acquisition or otherwise acquired any substantial part of the assets of any Person or been the surviving Entity in a merger or combination, except as may be set forth on **Schedule 7.4** or as consummated as part of the Legal Entity Rationalization. Each Credit Party and each Subsidiary has good title to its Equity Interests in its Subsidiaries, free and clear of all Liens other than Permitted Liens, and all Equity Interests of Credit Parties and all such Subsidiaries are duly issued, fully paid, and non-assessable. Except as set forth on **Schedule 7.4** as of the Closing Date, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights, or powers of attorney relating to Equity Interests of any Credit Party or Subsidiary. None of the Equity Interests issued by any Credit Party or Subsidiary has been issued in violation of the Exchange Act or the securities, "Blue Sky," or any other Applicable Law of any applicable jurisdiction. Except as set forth on **Schedule 7.4**, no Credit Party or any of its Subsidiaries is subject to any obligation (contingent or otherwise) to make any Restricted Payment with respect to any Equity Interests issued by such Person or to register any such Equity Interests, and none of such Equity Interests is subject to any Restrictive Agreement, other than as set forth in **Schedule 7.17** or otherwise permitted hereunder.

7.5 Title to Properties; Priority of Liens. Each Credit Party and each Subsidiary has good and marketable title to (or valid leasehold interests in) all of its Property, free and clear of all Liens other than Permitted Liens, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Each Credit Party and each Subsidiary has good Mining Title to all of its Mines. has paid and discharged all claims that, if unpaid, could become a Lien (other than a Permitted Lien) on its Properties. Administrative Agent's Liens in the Collateral are duly perfected and constitute first-priority Liens, subject, in the case of priority, only to Permitted Liens that are expressly permitted under the Loan Documents to have priority.

7.6 Licenses and Permits. Each Credit Party and each Subsidiary has obtained and holds in full force and effect, all franchises, licenses, leases, Permits, certificates, authorizations, qualifications, easements, rights of way, and other rights and approvals that are necessary for the operation of its business as presently conducted and whose absence or failure to obtain could reasonably be expected to have a Material Adverse Effect. Neither any Credit Party nor any Subsidiary is in violation of the terms of any such franchises, licenses, leases, Permits, certificates, authorizations, qualifications, easements, rights of way, or right or approval in any such case that could reasonably be expected to have a Material Adverse Effect.

7.7 Real Estate. (a) As of the ~~Closing~~**First Amendment** Date, all Material Leased Real Estate leased (or subleased) by a Credit Party or a Subsidiary as of the Closing Date, together with the name of the lessor (and, as applicable, sub-lessor) of such Material Leased Real Estate are set forth in **Schedule 7.7**. The leases (and subleases) of each Credit Party and each Subsidiary are valid, enforceable (except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditor's rights generally), and in full

force and effect. As of the ~~Closing~~First Amendment Date, (i) the Company and its Subsidiaries possess all leasehold interests necessary for the operation of the Mines currently being operated by each of them, except where the failure to possess such leasehold interests would not reasonably be expected to have a Material Adverse Effect, (ii) each of their respective rights under the leases, contracts, rights-of-way and easements necessary for the operation of such Mines are in full force and effect, except to the extent that failure to maintain such leases, contracts, rights of way and easements in full force and effect would not reasonably be expected to have a Material Adverse Effect.

(b) As of the ~~Closing~~First Amendment Date, all Material Owned Real ~~Estate~~Property owned by a Credit Party or a Subsidiary as of the Closing Date is set forth on Schedule 7.7. No Credit Party or any Subsidiary owns or holds, or is obligated under or a party to, any option, right of first refusal, or any other contractual right to purchase, acquire, sell, assign, or dispose of any Real Estate owned or leased (or subleased) by it that could result in a Material Adverse Effect.

7.8 Casualties; Taking of Properties; etc. Since the date of the most recent audited financial statements of the Tested Companies described in the Historical Financial Statements, neither the business nor the Properties of any Credit Party or any Subsidiary has been affected as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labor disturbance, embargo, requisition or taking of Property or cancellation of contracts, permits or concessions by any Governmental Authority, riot, activities of armed forces, or acts of God, or of any public enemy, that, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

7.9 Deposit Accounts; Securities Accounts; Commodity Accounts. As of the Closing Date, no Credit Party nor any Subsidiary has opened, or otherwise maintains, any Deposit Accounts, Securities Accounts or Commodity Accounts, except for those listed in Schedule 7.9.

7.10 Intellectual Property. Each Credit Party and each Subsidiary owns or possesses adequate Licenses, patents, patent applications, copyrights, service marks, trademarks, and trade names (or adequate rights in any of the foregoing) to continue to conduct its business as heretofore conducted by it without conflict with any rights of others, in each case except where the failure to so own or possess would not reasonably be expected to have a Material Adverse Effect. Schedule 7.10 sets forth with respect to each Credit Party and each Subsidiary (a) all of such Person's federal, state, and foreign registrations of trademarks and all pending applications for any such registrations; and (b) all of such Person's patents and registered copyrights and pending applications therefor. No Credit Party nor any Subsidiary's use of any Licenses (other than any software Licenses to the extent such software is fungible and reasonably available for purchase by Administrative Agent for a nominal sum per licensed user) (collectively, the "Proprietary Rights") infringes upon or otherwise violates the rights of any Third Party Claimant in or to such Proprietary Rights except for any infringement that would not reasonably be expected to have a Material Adverse Effect, and no proceeding has been instituted against or notice received by any Credit Party or any Subsidiary that is presently outstanding alleging that the use of any of the Proprietary Rights infringes upon or otherwise violates the rights of any Third Party Claimant in or to any of the Proprietary Rights. Each License (other than any software Licenses to the extent such software is fungible and reasonably available for purchase by Administrative Agent for a nominal sum per licensed user) in favor of any Credit Party or any Subsidiary sets forth the entire agreement, arrangements, or understandings, written or oral, relating to the matters covered thereby or the rights of any Credit Party or Subsidiary, as applicable, is the legal, valid, and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms except for such limits thereon arising from any applicable Debtor Relief Laws.

7.11 Financial Statements; Projections.

(a) Annual Audit. The audited balance sheet of the Tested Companies for the most recent Fiscal Year ended, and the related statements of income or operations, shareholders' equity and cash flows of Tested Companies for such Fiscal Year, including the notes thereto, as described more particularly in the Historical Financial Statements, copies of which have been furnished to Administrative Agent and each Lender (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present, in all material respects, the financial condition of Tested Companies as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Debts and other liabilities, direct or contingent, of the Tested Companies as of the date thereof, including liabilities for taxes, material commitments and Debt.

(b) Interim Quarterly Reports. The unaudited balance sheet of Tested Companies for the most recent Fiscal Quarter ended, and Fiscal Year to date, and the related statements of income or operations, shareholders' equity and cash flows of the Tested Companies for such Fiscal Quarter and the Fiscal Year to date, as described more particularly in the Historical Financial Statements, copies of which have been furnished to Administrative Agent and each Lender (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present, in all material respects, the financial condition of Tested Companies as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments, and (iii) show all material Debts and other liabilities, direct or contingent, of the Tested Companies as of the date of such financial statements, including liabilities for taxes, material commitments and Debt.

(c) Projections. The Projections of the Tested Companies delivered pursuant to **Section 6.1(i)** were prepared in Good Faith on the basis of estimates and assumptions believed by the Credit Parties to be reasonable at the time made.

7.12 Accounts. In determining which Accounts are Eligible Accounts, Administrative Agent may rely on all statements and representations made by Borrowers with respect thereto. Borrowers represent and warrant that, with respect to each Account (and, to the extent applicable, the Account Debtor related thereto) at the time it is included as an Eligible Account in a Borrowing Base Certificate, that:

(a) such Account satisfies all of the requirements of an Eligible Account set forth in the definition of "Eligible Account";

(b) such Account is, in all respects, genuine, and enforceable in accordance with its terms except for such limits thereon arising from any applicable Debtor Relief Laws;

(c) such Account arises out of a completed, bona fide sale and delivery of Goods or rendering of services in the Ordinary Course of Business, substantially in accordance with any purchase order, contract, or other document relating thereto;

(d) such Account is for a sum certain shown on the invoice covering such sale or rendering of services (or a schedule thereto) and will mature as stated in such invoice;

(e) such Account is not a Sold Receivable or subject to a supply chain finance, forfaiting or factoring transaction, including any Permitted Receivables Transaction (other than

an Account subject to the Permitted [REDACTED] Receivables Transaction or the Permitted Other Pre-Closing Forfeiting Arrangements, in each case, subject to the requirements of clause (gg) of the definition of “Eligible Accounts”);

(f) such Account is absolutely owing by such Account Debtor, without contingency in any respect;

(g) no extension, compromise, settlement, modification, credit, deduction, discount, allowance, or return has been authorized with respect to such Account, except extensions, modifications, credits, deductions, discounts or allowances granted in the Ordinary Course of Business that are reflected on the face of the invoice related thereto;

(h) such Account is not subject to any right of offset, Lien (other than Administrative Agent’s Lien), discount, charge back, deduction, defense, dispute, counterclaim, or other adverse condition except, in each case, as arising in the Ordinary Course of Business;

(i) no purchase order, agreement, document, or Applicable Law restricts assignment of such Account to Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(j) to Borrowers’ knowledge, (i) there are no facts, events, or circumstances that are reasonably likely to impair the validity, enforceability, or collectibility of such Account, or delay payment, thereunder; and (ii) the related Account Debtor had the capacity to contract when such Account arose, continues to meet the applicable Borrower’s customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed or suspended or ceased doing business; and

(k) none of the transactions giving rise to such Account violate any Applicable Law, all documentation relating thereto is legally sufficient under such Applicable Law, and all such documentation is legally enforceable in accordance with its terms except as enforceability may be limited by any Debtor Relief Law or by general principles of equity (whether such enforcement is considered in a proceeding at law or in equity).

7.13 **Taxes.** Each Credit Party and each Subsidiary has (a) filed all federal, state, and other material tax returns and other reports with respect to Taxes (including excise Taxes and Severance Taxes) that it is required by Applicable Law to file and (b) has timely paid, or made provision for the payment of, all federal, state, and other material Taxes imposed, levied, or assessed upon it, its income, and its Properties that are due and payable (except to the extent such Taxes are being Properly Contested), in each case except where failure to do any of the foregoing would not reasonably be expected to result in a Material Adverse Effect. No Credit Party nor any Subsidiary is subject to any material tax Lien that would not be permitted under **Section 9.2**. To the knowledge of a Responsible Officer of the Company, there is no proposed tax assessment or deficiency against any Credit Party or any Subsidiary that could, if made, reasonably be expected to have a Material Adverse Effect.

7.14 **Insurance.** The Properties of Credit Parties and their Subsidiaries are insured with financially sound and licensed insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar Properties in localities where the applicable Credit Party or the applicable Subsidiary operates, and otherwise in compliance in all respects with **Section 8.3**. As to any Building located on Real Estate and constituting Collateral, all flood hazard insurance policies required under any

Loan Document have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

7.15 **Solvent; Fraudulent Transfer.** The Credit Parties and their Subsidiaries, on a consolidated basis, are Solvent and, after consummation of the transactions contemplated to occur under this Agreement and the other Loan Documents, will be Solvent. No transfer of Property is being made and no obligation is being incurred by any Credit Party or any Subsidiary in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Person.

7.16 **Litigation.** Except as otherwise may be set forth on **Schedule 7.16**, (i) there are no Commercial Tort Claims existing in favor of any Credit Party, and (ii) there are no Adverse Proceedings pending or, to any Credit Party's knowledge, threatened against any Credit Party or any Subsidiaries, or any of their respective businesses, operations, or Properties that (a) relate to this Agreement or any other Loan Document or transactions contemplated herein or therein or (b) could reasonably be expected to have a Material Adverse Effect if determined adversely to any Credit Party or any Subsidiary. No Credit Party nor any Subsidiary is in default with respect to any order, injunction, or judgment of any Governmental Authority, excepting therefrom any that would not reasonably be expected to have a Material Adverse Effect. There does not exist any unusual or unduly burdensome restriction, restraint, or hazard relative to the business or Property of any Credit Party or any Subsidiary that is not customary for, or generally applicable to, similarly situated businesses in the same industry as such Credit Party and such Subsidiary excepting therefrom any that would not reasonably be expected to have a Material Adverse Effect.

7.17 **Restrictive Agreements.** As of the Closing Date, no Credit Party nor any Subsidiary is a party or subject to any Restrictive Agreement, except as permitted by **Section 9.8**.

7.18 **Surety Obligations.** All surety, reclamation and similar bonds required to be maintained by the Company or any of its Subsidiaries under any Environmental Laws or Contractual Obligation are in full force and effect except for any failure which individually or when taken together with all failures under all such bonds would not reasonably be expected to result in a Material Adverse Effect, and were not and will not be terminated, suspended, revoked or otherwise adversely affected by virtue of the consummation of the financing contemplated by this Agreement (including the making of Loans and issuance of Letters of Credit hereunder), **provided**, that certain of such bonds may be terminated, suspended or revoked so long as, taken together, such events could not reasonably be expected to result in a Material Adverse Effect. All required guaranties of, and letters of credit with respect to, such surety, reclamation and similar bonds are in full force and effect except where such failure to be in full force and effect could not reasonably be expected to result in a Material Adverse Effect.

7.19 **Governmental Approvals.** Each Credit Party and each Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease, and operate its businesses and Properties, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Credit Parties and their Subsidiaries have obtained all material import, export, or other licenses, Permits, or certificates necessary to the import or handling of their Goods and other Collateral, and such material licenses, Permits, and certificates are in full force and effect. Credit Parties and their Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of their Goods and other Collateral, except where noncompliance would not reasonably be expected to have a Material Adverse Effect.

7.20 **Brokers.** No brokerage commissions, finder's fees, investment banking fees, or similar fees, commissions, or charges are payable or will become payable under any circumstances in connection with any transactions contemplated by this Agreement or the other Loan Documents, excepting therefrom any payable to Administrative Agent, LC Issuer, any Lender or any Affiliate thereof.

7.21 **Compliance with Laws.** Each Credit Party and each Subsidiary is in compliance with (a) all Anti-Terrorism Laws and all Anti-Corruption Laws; and (b) except such non-compliance with such other Applicable Law that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, all other Applicable Law not described in clause (a) above. Each Credit Party and each Subsidiary has complied, and its Properties and business operations are in compliance, with all Applicable Law, except where any failure to so comply would reasonably be expected to have a Material Adverse Effect. No Governmental Authority has issued or, to the Credit Parties' knowledge, threatened to issue to any Credit Party or any Subsidiary any citation, notice, or order asserting or alleging any non-compliance with, or material violation of, any Applicable Law that would reasonably be expected to have a Material Adverse Effect.

7.22 **ERISA.** Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and state laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Credit Parties, nothing has occurred that would prevent, or cause the loss of, such qualification. Each Borrower and ERISA Affiliate has made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of Credit Parties, threatened claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) no Credit Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Credit Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred that, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Credit Party or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(d) No Credit Party or, to each Credit Party's knowledge, any of its ERISA Affiliates has made any promises of pension or retiree health or life insurance benefits to employees, except as set forth in any Plan.

(e) No ERISA Event or event described in Section 4062(e) of ERISA has occurred and is continuing with respect to any Plan.

(f) No Credit Party, nor any of its Subsidiaries, is a Benefit Plan and neither the execution of this Agreement nor the making of any credit extensions hereunder will give rise to a prohibited transaction withing the meaning of Section 406 of ERISA or Section 4975 of the Code.

(g) With respect to any Foreign Plan (i) all employer and employee contributions required by law or by the terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

(h) No Credit Party, nor any of its Subsidiaries, is (and will not be) a Plan.

7.23 Environmental Matters. Except as otherwise may be set forth on **Schedule 7.23**:

(a) the Credit Parties and their Subsidiaries and the Real Estate are and have been in substantial compliance with all Environmental Laws and Environmental Orders (if any such orders are in effect), except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect;

(b) (i) the Credit Parties and their Subsidiaries hold and are operating in substantial compliance with applicable Environmental Permits, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect, (ii) none of the Credit Parties has received any written notice from a Governmental Authority that such Governmental Authority has or intends to suspend, revoke or adversely amend or alter, whether in whole or in part, any such Environmental Permit, and (iii) there are no actions, suits, proceedings or investigations pending or, to the knowledge of any Credit Party, threatened against any Credit Party or any Subsidiary of any Credit Party at law or equity before any Governmental Authority challenging an application for, or the modification, amendment or issuance of, any Environmental Permit, except, in the case of either (i), (ii) or (iii), which could not reasonably be expected to result in a Material Adverse Effect;

(c) there are no pending or, to the knowledge of any Credit Party, threatened Environmental Claims against any Credit Party or any Subsidiary of any Credit Party, in each case which could reasonably be expected to result in a Material Adverse Effect;

(d) neither the Credit Parties nor their Subsidiaries, nor the Real Estate, are subject to any Environmental Orders, except where the existence of any such Environmental Orders could not reasonably be expected to result in a Material Adverse Effect; and

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

whether owned or leased, of any Credit Party or any Subsidiary, which Lien or encumbrance could reasonably be expected to result in a Material Adverse Effect.

7.24 **Regulated Entity.**

(a) **Investment Company Act.** No Credit Party nor any Subsidiary is subject to regulation under the Investment Company Act of 1940. No Credit Party nor any Subsidiary is an “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.

(b) **Enemy Act.** No Credit Party nor any Subsidiary is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*), as amended. To its knowledge, No Credit Party nor any Subsidiary is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the PATRIOT Act. No Credit Party nor any Subsidiary (i) is a Sanctioned Person or (ii) to its knowledge, engages in any dealings or transactions, or is otherwise associated, with any Sanctioned Person.

(c) **OFAC.** The Credit Parties and each of their Subsidiaries, and, to their knowledge, their respective directors, officers, officers and employees, are in compliance with applicable Sanctions and are not engaged in any activity that could reasonably be expected to result in any Credit Party or Subsidiary being designated as a Sanctioned Person. None of the Credit Parties, their Subsidiaries and their respective Affiliates is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

(d) **Sanctions.** None of the Credit Parties and their Subsidiaries or, to the knowledge of each Credit Party or its Subsidiaries, any of their respective directors, officers, employees or Affiliates (i) is a Sanctioned Person, (ii) has any of its assets located in a Sanctioned Country, or (iii) derives any of its operating income from investments in, or transactions with Sanctioned Persons. The proceeds of any Loan, Letter of Credit, credit extension or other transaction contemplated by this Agreement or any other Loan Document have not been used (x) in violation of any Sanctions, (y) to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country or (z) in any other manner that would result in a violation of Sanctions by any Person (including Administrative Agent, the LC Issuer, the Lenders or any other Person making, issuing or participating in such Loans, Letters of Credit, other credit extensions or other transactions whether as an underwriter, advisor, investor or otherwise).

(e) **Anti-Corruption Laws.** Each of the Credit Parties and their Subsidiaries and, to the knowledge of each Credit Party and its Subsidiaries, each of their respective directors, officers, employees and Affiliates, is in compliance with Anti-Corruption Laws. None of the Credit Parties or their respective Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent

to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or any of its Subsidiaries or to any other Person, in violation of any Anti-Corruption Law. No part of the proceeds of any Loans, Letters of Credit, other credit extension or other transaction contemplated by this Agreement or any other Loan Document will violate any receipt or use restrictions in any Anti-Corruption Laws.

(f) PATRIOT Act. To the extent applicable, each Credit Party and its Subsidiaries are in compliance with the PATRIOT Act. Without limitation of the foregoing, all information set forth in each Beneficial Ownership Certification is true and correct in all respects as of the date hereof and will be true and correct as of the date of each Loan made and each Letter of Credit issued pursuant hereto, except only as to which Administrative Agent has received notice pursuant to **Section 8.6(j)(iii)**.

(g) Margin Stock. No Credit Party nor any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock; no part of the proceeds of any credit extension made to such Credit Party will be used (i) to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time or (ii) to finance or refinance any (A) commercial paper issued by such Credit Party or (B) any other Debt, except for Debt that such Credit Party incurred for general corporate or working capital purposes, if and to the extent that the financing (and refinancing) thereof are expressly permitted herein.

(h) EEA. No Credit Party is an Affected Financial Institution.

7.25 Labor Relations and Related Matters. Except as set forth on **Schedule 7.25**:

(a) Collective Bargaining Agreement. No Credit Party or Subsidiary is party to or bound by any collective bargaining agreement.

(b) Fair Labor. No Credit Party nor any Subsidiary 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 Credit Party or any Subsidiaries, or to the knowledge of any Credit Party, 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 Credit Party or any Subsidiaries or to the knowledge of each Credit Party, threatened against any of them, (b) no strike or work stoppage in existence or to the knowledge of each Credit Party, threatened that involves any Credit Party or any Subsidiaries, and (c) to the knowledge of each Credit Party, no union representation question existing with respect to the employees of any Credit Party or any Subsidiaries and, to the knowledge of each Credit Party, 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 would not reasonably be expected to have a Material Adverse Effect. No Goods have been or will be produced, and no services have been or will be rendered, by any Credit Party or Subsidiary in violation of any applicable labor laws or regulations (including any minimum wage or wage-and-hour laws and regulations), any collective bargaining or other labor agreement, or any other similar laws, regulations, or agreements.

(c) WARN Act. No Credit Party or Subsidiary has, within the two (2) year period preceding the date of this Agreement, taken any action that would have constituted or resulted in

a “plant closing” or “mass layoff” within the meaning of the Federal Worker Adjustment and Retraining Notification Act of 1988 or any similar applicable Federal, state, or local law or regulation, and no Credit Party has any reasonable expectation that any such action is or will be required at any time before the Stated Revolving Commitment Termination Date.

7.26 **Relations with Vendors and Customers.** There exists no actual or threatened termination, limitation, or modification of any business relationship between any Credit Party or Subsidiary and any customer or supplier, or any group of customers or suppliers, who individually or in the aggregate are material to the business of such Credit Party or Subsidiary that could reasonably be expected to have a Material Adverse Effect.

7.27 **Use of Proceeds.** The Credit Parties will use the proceeds of any initial Loan or Letter of Credit only: (a) for general corporate and working capital purposes, (b) to refinance simultaneously with the closing of this Agreement certain existing Debt that such Credit Party incurred for working capital or general corporate purposes, and (c) to pay transaction fees, costs and expenses related to the credit facilities with Lenders established pursuant to this Agreement and the other Loan Documents; in each case not in contravention of Applicable Law, this Agreement (including particularly but without limitation **Section 8.1**) or any Loan Document.

7.28 **Accuracy and Completeness of Information.** No covenant, representation or warranty of any Credit Party contained in any Loan Document or in any other documents, certificates or written statements furnished to the Lenders by or on behalf of any Credit Party or any of its Subsidiaries for use in connection with the transactions contemplated hereby (other than projections and pro forma financial information contained in such materials when taken as a whole) contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party, in the case of any document not furnished by any of them) necessary in order to make the statements contained herein or therein not misleading in any material manner in light of the circumstances in which the same were made. All projections and pro forma financial information contained in such materials are based upon Good Faith estimates and assumptions believed by the Credit Parties to be reasonable at the time made, and represented, at the time of delivery, Credit Parties’ best estimate of their future financial condition and performance, it being recognized by Administrative Agent and the 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 and that such differences may be material. There are no facts known to any Credit Party (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 the Lenders.

7.29 **Absence of Certain Defaults; No Material Adverse Effect.**

(a) **No Defaults.** No Default or Event of Default exists.

(b) **Material Contracts.** No Credit Party nor any Subsidiary is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract, that would reasonably be expected to have a Material Adverse Effect.

(c) **No Material Adverse Effect.** No event or circumstance that, taken alone or in conjunction with other events or circumstances has had, or could reasonably be expected to have,

a Material Adverse Effect has occurred since the date of the audited financial statements of the Company and its Subsidiaries described in the Historical Financial Statements.

7.30 **Senior Debt.** The obligations of each Credit Party under this Agreement and any other Loan Documents to which it is party do rank and will rank at least *pari passu* in priority of payment with all other Debt of such Credit Party except Debt of such Credit Party to the extent secured by Permitted Liens entitled to priority over Administrative Agent's Liens. Without limitation of the foregoing, the Obligations do and will constitute "Senior Debt" (or the equivalent thereof) under the documentation governing any Subordinated Debt permitted to be incurred hereunder.

SECTION 8.

AFFIRMATIVE COVENANTS AND CONTINUING AGREEMENTS

Until Payment in Full of the Obligations and termination of the Commitments, each Credit Party shall, and shall cause each Subsidiary, as applicable, to:

8.1 **Use of Proceeds.** Use the proceeds of the Loans and any Letters of Credit only (a) for Borrowers' working capital and general corporate (or company) purposes to the extent permitted by this Agreement (including to finance Capital Expenditures, Permitted Acquisitions, other permitted Investments, and Restricted Payments); (b) to refinance simultaneously with the closing of the credit facility(ies) evidenced herein certain Debt of Borrowers existing as of the Closing Date that Borrowers incurred for working capital or general corporate (or company) purposes; (c) to pay fees and transaction expenses associated with the closing of the credit facility(ies) evidenced herein; and (d) to pay Obligations from time to time subsequent to the Closing Date in accordance with the terms of this Agreement. Without limitation of the foregoing and notwithstanding anything to the contrary set forth herein, no portion of the proceeds of any Loan or Letter of Credit shall be used, directly or indirectly, (i) to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for the purpose of reducing or retiring any Debt that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might constitute a "purpose credit" under Regulation U, or in any manner or for any other purpose that causes or might cause a violation of, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time or any other regulation thereof, or violation of the Exchange Act, (ii) to finance (or refinance) any commercial paper, including, without limitation, any issued by a Credit Party, or any other Debt, except for Debt that such Credit Party incurred for working capital or general corporate (or company) purposes, if and to the extent that the financing (and refinancing) thereof are expressly permitted herein, (iii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (iv) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or, in any event, in violation of any applicable Sanctions, or (v) for the benefit or on behalf of any Person that is not a Borrower.

8.2 **Maintenance of Existence and Rights; Conduct of Business.**

(a) **Legal Existence.** Except as expressly permitted by **Section 9.7**, preserve and maintain its legal existence, authorities to transact business, rights, franchises, governmental licenses, and privileges in its jurisdiction of incorporation or organization; and

(b) **Qualification.** Qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires

such qualification or authorization, except where the failure to so qualify or maintain such qualification and authorization would not reasonably be expected to have a Material Adverse Effect.

8.3 Insurance.

(a) Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Credit Party or its Subsidiary operates.

(b) Without limitation of the foregoing, if and to the extent that at any time any Real Estate constitutes Collateral, Administrative Agent first shall have requested and received executed flood hazard determinations and a flood zone certification (together with notice to Borrower Representative regarding such flood zone certification) such other documents as the Administrative Agent may reasonably request on behalf of any Lender that is a regulated financial institution or any affiliate of such a Lender (each, a “Regulated Lender Entity”), in each case, to the extent such other documents are required for compliance by such Regulated Lender Entity with applicable law with respect to flood insurance diligence, documentation and coverage under the Flood Disaster Protection Act of 1973, as amended, and to the extent that any such Building or Real Estate is determined to be located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards and that participates in the National Flood Insurance Program, Borrowers shall have provided Administrative Agent with evidence of flood insurance thereon, which shall be satisfactory in form and substance to Administrative Agent. Prior to signing by the Credit Parties of any mortgage or deed of trust to secure the Obligations, the applicable Credit Parties and the Administrative Agent shall have provided each Regulated Lender Entity requesting the same a copy of the life of loan flood zone determination relative to the property to be subject to such mortgage or deed of trust delivered to the Administrative Agent and copies of the other documents required by any such Regulated Lender Entity as provided in the preceding sentence and shall have received confirmation from each Regulated Lender Entity that flood insurance due diligence and flood insurance compliance has been completed by such Regulated Lender Entity (such confirmation not to be unreasonably withheld, conditioned or delayed, and shall be delivered promptly upon such completion by the applicable Regulated Lender Entity).

(c) Cause Administrative Agent to at all times be named as lender’s loss payee and an additional insured (but without any liability for premiums), as applicable, under each insurance policy maintained under **Section 8.3(a)** providing coverage with respect to any Collateral (provided, that Borrowers shall use commercially reasonable efforts to cause all property and casualty insurance policies with respect to the ~~Material~~-Real Estate which does not constitute Excluded Collateral to include, if customary in the applicable jurisdiction, a “standard” or “New York” lender’s loss payable endorsement, in form and substance reasonably satisfactory to Administrative Agent). Borrowers shall cause each such property and casualty and liability insurance policy to provide that it shall not be canceled or not renewed upon less than thirty (30) days’ (or ten (10) days’ in the case of non-payment) prior written notice thereof by the insurer to Administrative Agent.

(d) During the existence and continuation of a Cash Dominion Period all Net Proceeds (Loss) shall be payable to Administrative Agent for application to (or Cash Collateralization of) the Obligations in accordance with Section 5.2(c). While no Event of

Default exists, Credit Parties may settle, adjust, or compromise any insurance claim so long as the Net Proceeds (Loss) are delivered to Administrative Agent for application to the Obligations, as and to the extent provided herein. If an Event of Default exists, only Administrative Agent shall be authorized to settle, adjust, and compromise such claims unless and except to the extent otherwise approved by Administrative Agent in its discretion from time to time.

8.4 **Inspections; Appraisals.**

(a) **Inspections.** Permit Administrative Agent and its agents from time to time, subject to reasonable advance written notice and during normal business hours (except when an Event of Default exists), to visit, inspect, appraise and examine the Properties of any Credit Party or Subsidiary, inspect, audit, and make extracts from any Credit Party's or Subsidiary's books and records (except to the extent (i) any such access is restricted by an Applicable Law or (ii) any such agreements, contracts or the like are subject to a written confidentiality agreement with a non-Affiliate that prohibits the Credit Parties or Subsidiaries from granting such access to Administrative Agent; provided, that, with respect to such confidentiality restrictions affecting the Credit Parties or Subsidiaries, a Responsible Officer of the Borrower Representative is made available to Administrative Agent to discuss such confidential information to the extent permitted, subject to **Section 15.14** of this Agreement), and discuss with such Person's officers, employees, agents, advisors, and independent public accountants such Person's business, financial condition, assets, prospects, and results of operations; provided, that, so long as no Event of Default exists, Administrative Agent shall give the Company reasonable advance written notice prior to any contact with such accountants and give the Company the opportunity to participate in such discussions. Lenders may participate in any such visit or inspection at their own expense. Neither Administrative Agent nor any Lender shall have any duty to any Credit Party or Subsidiary to make any inspection, appraisal or report nor to share any results of any inspection, appraisal, or report with any Credit Party or Subsidiary. Credit Parties acknowledge that all inspections, appraisals and reports are prepared by Administrative Agent and Lenders for their own purposes, and no Credit Party or Subsidiary shall be entitled to receive them or rely upon them.

(b) **Reimbursements.** Reimburse Administrative Agent for all charges, costs, and expenses of Administrative Agent and its agents in connection with (i) field examinations of any Credit Party's or Subsidiary's books and records or any other financial or Collateral matters as Administrative Agent deems appropriate, up to two (2) times per Loan Year at any time an Increased Reporting Period is not in effect, and (ii) appraisals of Inventory up to two (2) times per Loan Year at any time an Increased Reporting Period is not in effect; provided, that during any Increased Reporting Period, one (1) additional field exam and one (1) additional Inventory appraisal may be conducted at Borrowers' expense in any Loan Year; and provided, further, that if an examination or appraisal is initiated during the existence of a Default or Event of Default, all charges, costs, and expenses therefor shall be reimbursed by Borrowers without regard to any such limits. Subject to and without limiting the foregoing, Borrowers specifically agree to pay the standard charges of Administrative Agent's internal field examination group (including Administrative Agent's then standard per-person charges for each day that an employee or agent of Administrative Agent or its Affiliates is engaged in any field examination activities). This **Section 8.4** shall not be construed to limit Administrative Agent's right to conduct field examinations or obtain appraisals at any time and from time to time in its discretion, or use third parties for such purposes. Notwithstanding the foregoing, Mine visits are only permitted if the agents and independent contractors of Administrative Agent agree to be bound by and adhere to all Applicable Laws and any policies of the Company related thereto.

8.5 **Adequate Books and Records.** Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions.

8.6 **Borrowing Base Reporting; Financial and Other Information.** Comply with the following:

(a) **Borrowing Base Certificate; Collateral Reports.** Borrower Representative shall deliver a fully completed and executed Borrowing Base Certificate with supporting documentation to Administrative Agent no later than (1) the twentieth (20th) day of each Fiscal Month at any time an Increased Reporting Period is not in effect, beginning with the first Fiscal Month ending immediately after the Closing Date, prepared as of the end of the immediately preceding Fiscal Month or (2) during any Increased Reporting Period, weekly, on or before the third (3rd) Business Day of each week; provided, that during any Increased Reporting Period (A) Inventory reporting shall be updated on a bi-weekly basis and (B) ineligibility in respect of the eligibility criteria set forth in the definitions of “Eligible Accounts” (and “Eligible Billed Accounts” and “Eligible Unbilled Accounts,” as applicable) and “Eligible Inventory” shall be reported on a monthly basis, which Borrowing Base Certificate shall reflect the Collateral contained in the Borrowing Base (including a breakdown of Eligible Inventory constituting Clean Coal and Raw Coal). Borrower Representative shall attach the following to each Borrowing Base Certificate, each of which shall be in form and substance satisfactory to Administrative Agent and certified by Borrower Representative’s Responsible Officer to be complete and accurate in all material respects and in compliance with the terms of this Agreement and the other Loan Documents:

(i) an Accounts receivable aging report showing Accounts outstanding aged from the invoice date as follows: one (1) to thirty (30) days, thirty one (31) to sixty (60) days, sixty one (61) to ninety (90) days and ninety one (91) days or more, accompanied by a comparison to the prior month’s or week’s Accounts receivable aging report and supporting detail and documentation (including, without limitation, aged totals and customer names) as shall be reasonably satisfactory to Administrative Agent (each, an “Accounts Receivable Report”);

(ii) a summary of unbilled shipments of each of Borrowers, which shall include dates of shipment and customer names and accompanied by such supporting detail and documentation as shall be reasonably satisfactory to Administrative Agent;

(iii) a roll-forward of billed Accounts of Borrowers showing the ending balance as of the date of the most recently delivered Borrowing Base Certificate, billings, cash receipts, credit memos, other debit adjustments, and other credit adjustments for the current period, and the ending balance as of the date of the most recently delivered Borrowing Base Certificate;

(iv) a summary of Inventory by location and type of each of the Credit Parties, accompanied by such supporting detail and documentation (including, without limitation, the name of the location of such Inventory, the quantity of Coal, the cost per ton and the total Inventory Value thereof) as shall be reasonably satisfactory to Administrative Agent (each, an “Inventory Report”);

(v) a reconciliation of the Accounts receivable aging report and Inventory reports of each of the Credit Parties to the general ledger of such Credit Party;

(vi) confirmation that all Royalty payments and Production Payments due and owing during the previous Fiscal Month with respect to any Mine or other Material Leased Real Estate have been paid, unless the same are being Properly Contested; provided, that the foregoing confirmation shall only be due monthly no later than the twentieth (20th) day of each Fiscal Month;

(vii) confirmation that all sums due and owing during the previous Fiscal Month pursuant to (A) any excise and Severance Taxes, (B) Joint Venture arrangements, including relating to DTA, (C) railroad arrangements, including with CSX and Norfolk Southern, (D) bonding arrangements and (E) reclamation arrangements, in each case, confirming that the foregoing have been paid or otherwise disclosing which of the foregoing have not been paid and whether such unpaid amounts are being Properly Contested; and

(viii) with respect to Liens granted in favor of any surety on any Collateral, written notice of entry into such arrangements.

Additionally, (x) at any other time when Administrative Agent reasonably believes that the then-existing Borrowing Base Certificate is materially inaccurate and has delivered to the Company a written statement describing the material inaccuracy, Borrower Representative shall deliver to Administrative Agent a fully completed and executed Borrowing Base Certificate with supporting documentation and (y) as soon as reasonably available after such request, Borrower Representative shall deliver to Administrative Agent such other reports, statements and reconciliations with respect to the Borrowing Base or Collateral of any or all Credit Parties as Administrative Agent shall from time to time reasonably request.

(b) Interim Statements. As soon as available, but in any event within sixty (60) days after the end of the first three Fiscal Quarters of each Fiscal Year of the Company (or, if earlier, in the case of the first three Fiscal Quarters of such Fiscal Year, by the date that the Quarterly Report on Form 10-Q of the Company for such Fiscal Quarter would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form) commencing with the Fiscal Quarter ended September 30, 2023, a Consolidated balance sheet of the Tested Companies as at the end of such Fiscal Quarter, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such Fiscal Quarter and for the portion of Borrowers' Fiscal Year then ended, setting forth in each case in comparative form commencing with the Fiscal Quarter ended September 30, 2023, the figures for the corresponding Fiscal Quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail, and such consolidated statements shall be certified by a Responsible Officer of the Borrower Representative as fairly presenting in all material respects the financial condition, results of operations, changes in shareholders' equity and cash flows of the Tested Companies in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Annual Statements. As soon as available, but in any event within one hundred twenty (120) days after the end of each Fiscal Year of the Company (or, if earlier, by the date that the Annual Report on Form 10-K of the Company for such Fiscal Year would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form) commencing with the Fiscal Year ended

December 31, 2023, a Consolidated balance sheet of the Tested Companies as at the end of such Fiscal Year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, and such Consolidated statements shall be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than with respect to or resulting from the upcoming maturity of any Loans under this Agreement occurring within one (1) year from the time such opinion is delivered).

(d) Compliance and No Default Certificate. Together with the reports and statements required by subsections (b) and (c) of this **Section 8.6**, Borrower Representative shall deliver a Compliance Certificate signed by a Responsible Officer of Borrower Representative (i) stating that such statements and reports are true and correct and fairly present, in all material respects, the Consolidated financial condition and results of operations of the Tested Companies for the period presented and that such statements were prepared in accordance with GAAP (except, with respect to statements delivered for any Fiscal Quarter, the absence of footnotes and subject to normal year-end adjustments); (ii) stating that no Default or Event of Default then exists or, if a Default or Event of Default exists, the nature and duration thereof and Credit Parties' intention with respect thereto; and (iii) to which will be attached or accompanied by a spreadsheet showing calculations of all Financial Covenants, that must be of such detail as requested by Administrative Agent from time to time.

(e) Auditor's Management Letter. Promptly upon receipt thereof (but, in any event, within five (5) Business Days after receipt), Borrower Representative shall deliver to Administrative Agent copies of each final report submitted to the board of directors of the Company by independent public accountants in connection with any annual, interim or special audit made by them of such Credit Party's books including each final report concerning its accounting practices and systems (subject, in all cases, to applicable professional guidelines or ethical rules or the terms of any applicable engagement letter).

(f) Projections. As soon as available, but in any event within ninety (90) days (or, if a Cash Dominion Period exists, thirty (30) days) after the commencement of each Fiscal Year, beginning with the first Fiscal Year ending immediately after the Closing Date, Borrower Representative shall deliver to Administrative Agent Projections for such Fiscal Year, prepared on a quarter-by-quarter basis.

(g) Supplements to Collateral Disclosure Certificate. Concurrently with the delivery of financial statements referred to in **Section 8.6(b)** and **Section 8.6(c)** (or sooner if requested by Administrative Agent while any Event of Default is continuing), Borrower Representative shall deliver to Administrative Agent a supplement to the Collateral Disclosure Certificate; provided, that such supplement to the Collateral Disclosure Certificate shall not be deemed a waiver of any Default or Event of Default resulting from the matters disclosed therein, except as consented to by Administrative Agent and the Required Lenders or all Lenders, as applicable in accordance with **Section 15.2**.

(h) PATRIOT Act. Promptly following any request therefor, Borrowers shall deliver to Administrative Agent such information and documentation reasonably requested by Administrative Agent and or any Lender for purposes of compliance with applicable "know your

customer” requirements under the PATRIOT Act, Beneficial Ownership Regulators or any applicable Anti-Corruption Laws or Anti-Terrorism Laws.

(i) Other Information. Promptly following any request therefor, Borrowers shall deliver to Administrative Agent such additional information regarding the business, financial or corporate affairs of the Credit Parties or any Subsidiary, or compliance with the terms of the Loan Documents, as Administrative Agent or any Lender may from time to time reasonably request and which the Company determines, in its sole discretion, may be provided to a third-party without causing a breach of any Applicable Law, rule, regulation or Contractual Obligation of such Credit Party or Subsidiary.

(j) Certain Notices. Borrower Representative shall notify Administrative Agent in writing:

(i) promptly (but in any event within three (3) Business Days) after any Responsible Officer of any Credit Party obtains knowledge thereof, of any Accounts of Borrowers in an aggregate face amount of \$5,000,000 or more ceasing to be Eligible Accounts;

(ii) promptly (but in any event within five (5) Business Days) after any Responsible Officer of any Credit Party obtains knowledge thereof, of (A) the occurrence or existence of any Default or Event of Default; or (B) the occurrence or existence of any default or event of default under the Permitted Bond Documents (or under the documentation for a Permitted Convertible Debt Transaction, as applicable) or the commencement of the exercise of any remedies with respect thereto;

(iii) promptly (but in any event within five (5) Business Days) after any Responsible Officer of any Credit Party obtains knowledge thereof, of any violation or asserted violation of any Anti-Terrorism Laws or Anti-Corruption Laws or any change to any information set forth in any Beneficial Ownership Certification or in any document made or delivered in connection therewith;

(iv) at any time after Mortgages and other Mortgage Documents are required to be delivered in accordance with **Section 8.16**, promptly (but in any event within five (5) Business Days) after any Responsible Officer of any Credit Party obtains knowledge thereof, as to any redesignation of any property on which a Building constituting Collateral is placed into or out of a special flood hazard area;

(v) promptly (but in any event within five (5) Business Days) after any Responsible Officer of any Credit Party obtains knowledge thereof, of any event which would reasonably be expected to have a Material Adverse Effect;

(vi) promptly upon the filing or commencement of, or any written and known threat or written and known notice of intention of any person to file or commence, any action, suit, proceeding, claim or dispute whether at law or in equity or otherwise by or before any Governmental Authority, (A) against any Borrower or any Subsidiary or against any of their properties or revenues that has had, or would reasonably be expected to result in, a Material Adverse Effect or (B) with respect to this Agreement or any other Loan Document;

(vii) as soon as possible and in any event within thirty (30) days after a Responsible Officer of the Borrower Representative knows or has obtained written notice thereof, of the occurrence of any ERISA Event that, individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect;

(viii) promptly (but in any event within five (5) Business Days) after any Responsible Officer of any Credit Party obtains knowledge thereof, of any of the following that affects any Credit Party or Subsidiary or their respective Properties: (A) any Adverse Proceeding whether or not covered by insurance, if (1) an adverse determination in respect thereof could reasonably be expected to have a Material Adverse Effect or (2) relating to Collateral having a value of more than the Threshold Amount; (B) any material change in any existing Adverse Proceeding; (C) any pending material labor dispute, strike, or walkout, or the expiration of any material labor contract; (D) any order, judgment, or decree in an amount exceeding the Threshold Amount; (E) any such Person's delivery or receipt of any material Environmental Notice or becoming subject to a material Environmental Claim or material Environmental Order; (F) the occurrence of any material Environmental Release by any such Person or on any Property owned, leased, or Controlled by such Person; (G) any claim or obligations arising under any Mining Law or Environmental Law or with respect to workers' compensation benefits which could reasonably be expected to result in liability in excess of the Threshold Amount; or (H) any acceleration of the maturity of any Debt of any such Person in excess of the Threshold Amount or the occurrence or existence of any event or circumstances that gives the holder of such Debt or securities laws the right to accelerate or terminate any commitment with respect to such Debt;

(ix) with respect to any credit insurance policy maintained by the Credit Parties, (i) promptly (but in any event within five (5) Business Days after a Credit Party has knowledge thereof), provide Administrative Agent written notice of any termination by insurer or receipt of notice of termination from the insurer, (ii) promptly deliver any supplementary contracts issued in connection with such credit insurance policy, (iii) promptly deliver written notice to Administrative Agent of any claims made under such credit insurance policy, (iv) promptly provide to Administrative Agent copies of any claim or notification of claim filed or submitted by a Credit Party with insurer, and (v) concurrently with the delivery of the Borrowing Base Certificate required pursuant to **Section 8.6(a)**, provide written notice to Administrative Agent of any Account Debtor approved for coverage under such credit insurance policy or any Account Debtor which is no longer approved for coverage under such credit insurance policy; and

(x) promptly (but in any event with at least ten (10) days prior written notice thereof and complying with all requirements of Administrative Agent in regard thereto, including with respect to execution and delivery of all documents, certificates, and information requested by Administrative Agent to maintain the validity, perfection, and priority of the security interests of Administrative Agent in the Collateral), notice of any (i) change in a Credit Party's legal name or the jurisdiction in which it is organized; (ii) a Credit Party's intent to conduct business under any trade name, assumed name, or fictitious name that was not listed in **Schedule 7.7** as of the Closing Date; (iii) change in a Credit Party's tax, charter, or other organizational identification number; (iv) change in its organizational form (*i.e.*, corporation, limited liability company, partnership, etc.); or (v) change in the location of a Credit Party's chief executive office or other office where books or records are kept.

(k) Deemed Delivery by Public Filing. Documents required to be delivered pursuant to **Section 8.6(b)** and **8.6(c)** shall be deemed to have been delivered on the date on which the Company's annual reports on Form 10-K and quarterly reports on Form 10-Q, as applicable, are filed and are publicly available on the Electronic DACA Gathering and Retrieval System of the SEC.

(l) Certain Transactions. Concurrently with the delivery of the Compliance Certificate in accordance with Section 8.6(d), Borrower Representative shall provide to Administrative Agent a list describing the following transactions subject to Payment Conditions consummated or made during the previous Fiscal Quarter: (i) all Permitted Acquisitions, (ii) Permitted Asset Dispositions made pursuant to clause (u) of the definition of "Permitted Asset Disposition" and (iii) Investments in excess of \$25,000,000 made pursuant to Section 9.4(q), Section 9.4(u) or Section 9.4(z).

8.7 **Compliance with Laws.** Except to the extent more specifically set forth herein, comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, Mining Laws, Anti-Terrorism Laws, Anti-Corruption Laws and securities laws, and maintain all Governmental Approvals necessary for the lawful ownership of its Properties and conduct of its business, unless failure to so comply (other than failure to comply with Anti-Terrorism Laws and Anti-Corruption Laws) or maintain would not reasonably be expected to have a Material Adverse Effect.

8.8 **ERISA.** (a) Make, or cause to be made, prompt payment of contributions required to meet the minimum funding standards set forth in ERISA with respect to each Credit Party's and ERISA Affiliates' Pension Plans; (b) furnish to Administrative Agent, promptly upon Administrative Agent's reasonably request therefor, such information concerning any such Pension Plan as may be reasonably requested by Administrative Agent from time to time; and (c) furnish to the Administrative Agent promptly following receipt thereof, copies of any documents described in Sections 101(k) or 101(l) of ERISA that any Credit Party or any of the ERISA Affiliates may request with respect to any Multiemployer Plan if the potential liability of any Credit Party or any ERISA Affiliate would reasonably be expected to exceed the Threshold Amount; provided, that if the Credit Party or any of its ERISA Affiliates has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, then, upon reasonable request of the Administrative Agent, the Credit Parties or their ERISA Affiliates, as applicable, shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents or notices to the Administrative Agent promptly after receipt thereof.

8.9 **Environmental.**

(a) Reports. If an Event of Default shall have occurred and be continuing that is caused by reason of a breach of (i) a representation or warranty under **Section 7.23** or (ii) **Section 8.7** with respect to compliance with Environmental Laws, then, at the reasonable request of the Required Lenders through Administrative Agent, provide to the Lenders within sixty (60) days after such request (or such longer period as may be agreed) detailed information regarding the nature of the breach and the Remedial Action or other action being taken or proposed to be taken with respect to the Properties which are the subject of the breach.

(b) Certain Long Term Liabilities and Environmental Reserves. To the extent applicable and, in the case of reserves, required by GAAP, maintain adequate reserves for (i) future costs associated with any lung disease claim alleging pneumoconiosis or silicosis or arising out of exposure or alleged exposure to coal dust or the coal mining environment, (ii) future costs associated with retiree and health care benefits, (iii) future costs associated with

reclamation of disturbed acreage, removal of facilities and other closing costs in connection with closing its mining operations, and (iv) future costs associated with other potential environmental liabilities.

(c) **Indemnity.** In addition to, and not in limitation of, Section 15.3, at all times indemnify, defend and hold harmless each Indemnitee against and from any and all Claims arising under or on account of Environmental Laws, Mining Laws or otherwise relating to environmental and health and safety matters, including with respect to (i) any breach of the representations contained at Section 7.21 with respect to Mining Laws or Section 7.23; (ii) any breach or violation of the covenants contained at Section 8.7 with respect to Environmental Laws or Mining Laws; and (iii) any other environmental matter affecting the Properties.

8.10 **Margin Stock.** If so requested by Administrative Agent, promptly (but, in any event, within five (5) Business Days) after request, furnish Administrative Agent with (a) a statement or statements in conformity with the requirements of Federal Reserve Form U-1 referred to in Regulation U of said Board of Governors and (b) other documents evidencing its compliance with the margin regulations included in said Regulation U, including, if reasonably requested by Administrative Agent, an opinion of counsel in regard thereto from legal counsel to the Credit Parties in form and substance satisfactory to Administrative Agent.

8.11 **Taxes; Claims.** Pay (a) all federal, state and other material 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, in each case except where failure to do any of the foregoing would not reasonably be expected to result in a Material Adverse Effect, and (b) 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 (other than a Permitted Lien), 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 Properly Contested.

8.12 **Cash Management; Deposit Accounts.**

(a) (i) On or before the Closing Date (or such later date to which Administrative Agent may consent in writing (including by electronic mail) in its reasonable discretion), establish one or more Collection Accounts and related lockboxes and, thereafter, maintain each such Collection Account and lockbox and (ii) as soon as practicable after, but in any event not later than ninety days (90) after, the Closing Date (or such later date as Administrative Agent may agree in writing) direct all of Credit Parties' Account Debtors to make all payments on Accounts or as Proceeds of any Inventory or other Collateral to a Collection Account (if made electronically) or lockbox (if in the form of a tangible Payment Item);

(b) **Making Deposits.** Hold in trust for Administrative Agent and promptly (but, in any event, on the Business Day immediately following its receipt thereof) forward to a lockbox or deposit into a Collection Account all tangible Payment Items and cash such Credit Party receives on account of the payment of any of such Credit Party's Accounts or as Proceeds of any Inventory or other Collateral (other than any portion thereof that constitutes Term Priority Collateral);

(c) **Maintenance of Accounts.** Not establish or maintain any Deposit Accounts or Securities Accounts other than Deposit Accounts and Securities Accounts: (i) listed in **Schedule 7.9**; provided that, unless such Deposit Accounts or Securities Accounts are covered either by clause (ii) or clause (iv) below, such Deposit Accounts and Securities Accounts are

terminated as soon as practicable after, but in any event within ninety (90) days after, the Closing Date (or such later date as Administrative Agent may agree in writing) unless within such time period Credit Parties shall have complied with clause (iii) below in regard thereto; (ii) maintained at Administrative Agent (including such Collection Accounts and related lockboxes, blocked accounts, disbursement accounts as needed in connection with the operations of the Credit Parties in the Ordinary Course of Business); (iii) with the consent of Administrative Agent, maintained at any Permitted Third Party Bank subject to Administrative Agent's Article 9 Control pursuant to an Article 9 Control Agreement having terms acceptable to Administrative Agent; and (iv) that constitute Excluded Accounts, unless otherwise approved by Administrative Agent;

(d) Control. Without limitation of the generality of the foregoing subsection (c) of this **Section 8.12**, but in furtherance thereof, to the extent requested by Administrative Agent from time to time, promptly (but, in any event, within five (5) Business Days) after request take all actions requested by Administrative Agent to establish or continue Administrative Agent's Article 9 Control over any of Credit Parties' Deposit Accounts and Securities Accounts, other than any Excluded Accounts;

(e) Notices. (i) Promptly (but, in any event, within five (5) Business Days) after any Credit Party's entering into any agreement with any Person pursuant to which such Person will provide merchant card services or credit card processing services to such Credit Party, provide notice of such agreement to Administrative Agent, together with a true and complete copy of such agreement, the name and address of such Person, and such other information regarding the same as Administrative Agent may request from time to time and (ii) upon Administrative Agent's request, exercise its best efforts to cause such Person to enter into a Third Party Claimant Agreement (and such Credit Party's compliance with the terms of this clause (e)(ii) shall not diminish Administrative Agent's rights to establish a Reserve therefor); and

(f) Remote Deposit Capture System. Administrative Agent acknowledges that one or more Credit Parties are employing, or may from time to time employ, Administrative Agent's remote deposit capture system for purposes of submitting Payment Items in the form of checks for collection. Each Credit Party employing such a system agrees that (i) it will employ such system only in accordance with the agreements relating thereto and all applicable law; (ii) it shall cause all collected funds obtained from the use of such system to be directed for deposit directly into a Collection Account and to no other Deposit Account; and (iii) it will process each check through such system on the Business Day on which it receives such check.

8.13 Covenants Regarding Collateral and Property. Except as would not be reasonably expected to result in a Material Adverse Effect, at all times (i) use all its Property in the Ordinary Course of Business and not permit (to the extent in Borrower's reasonable control with respect to Real Property) such Property to be used in violation of any Applicable Law or policy of insurance; (ii) maintain, preserve, and protect all Property used or useful in the conduct of its business as currently conducted; (iii) keep the same in good repair, working order and condition, normal wear and tear excepted; and (iv) make, or cause to be made, all necessary and useful repairs, renewals, replacements, betterments, and improvements to its Property so that the business carried on in connection therewith may be conducted properly and in accordance with standards generally accepted in business of a similar type and size as the business of such Credit Party or Subsidiary thereof is currently conducted.

8.14 Future Subsidiaries. Contemporaneously with, but in any event within five (5) Business Days following (or at such later date as may be agreed to by Administrative Agent in writing in its discretion) any Person's becoming a direct or indirect Subsidiary of any Credit Party, including by any

Division, provide Administrative Agent with written notice thereof and within thirty (30) days following (or at such later date as may be agreed to by Administrative Agent in writing in its discretion) any Person's becoming a direct or indirect Subsidiary of any Credit Party (a) with respect to all Subsidiaries (other than Foreign Subsidiaries or any Domestic Subsidiary substantially all of the assets of which consist of the Equity Interests of one or more Foreign Subsidiaries), cause such Subsidiary to execute and deliver to Administrative Agent a Joinder Agreement, causing such Subsidiary to become a party to this Agreement, as a joint and several "Borrower" (if such Subsidiary is a wholly-owned Subsidiary of a Borrower), "Guarantor" or other "Credit Party" (if otherwise), as the case may be, and a party to a Security Agreement granting a first priority Lien upon its Collateral, subject to Permitted Liens, to secure payment of all Obligations pursuant thereto; (b) cause each Subsidiary that is added as a Borrower to execute and deliver to Administrative Agent one or more Notes in favor of one or more of the Lenders, evidencing the Debts owing to them hereunder, if so requested by such Lenders; (c) cause each Subsidiary that is added as a Guarantor or other Credit Party hereto (other than as a Borrower) to execute and deliver to Administrative Agent a Guaranty of all Obligations and a Security Agreement granting a first priority Lien upon its Collateral, subject to Permitted Liens, to secure payment of all Obligations; (d) (i) with respect to all such Subsidiaries (other than Foreign Subsidiaries or any Domestic Subsidiary substantially all of the assets of which consist of the Equity Interests of one or more Foreign Subsidiaries), pledge or cause to be pledged one hundred percent (100%) of the Equity Interests of such Subsidiary to Administrative Agent for the benefit of the Secured Parties pursuant to a Security Document and (ii) with respect to Foreign Subsidiaries or any Domestic Subsidiary substantially all of the assets of which consist of the Equity Interests of one or more Subsidiaries, if the Equity Interests of such Foreign Subsidiary are owned by a Credit Party, pledge or cause to be pledged sixty-five percent (65%) (or such greater percentage to the extent requested by Administrative Agent and the pledge thereof would not result in material and adverse tax consequences to any Credit Party or their Affiliates pursuant to the Code) of the Equity Interests of such Subsidiary to Administrative Agent for the benefit of the Secured Parties pursuant to a Security Document, and, in each case, deliver or cause to be delivered the original certificate(s) evidencing such Equity Interests (if any) and the related undated stock powers executed in blank; and (e) deliver such other documentation as Administrative Agent may request in connection with the foregoing, including appropriate Financing Statements, Article 9 Control Agreements, Third Party Claimant Agreements, evidence of insurance as required by this Agreement or the other Loan Documents, certified resolutions and other organizational and authorizing documents of such Subsidiary, and upon the request of Administrative Agent, favorable opinions of counsel to such Subsidiary (that shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above and the attachment and perfection of security interests granted thereunder), all in form, content, and scope satisfactory to Administrative Agent; provided, however, that (x) nothing in this **Section 8.14** shall authorize any Credit Party or any Subsidiary to consummate any Acquisition or form any Subsidiary, except in conformity with **Section 9.7(e)**; (y) any document, agreement, or instrument executed or issued pursuant to this **Section 8.14** shall be a "Loan Document" for purposes of this Agreement; and (z) unless otherwise agreed to by Administrative Agent in its discretion, none of the Property of any such Subsidiary that becomes a "Borrower" shall be included in the calculation of the Borrowing Base unless and until Administrative Agent shall have (1) conducted a field examination and, if applicable, obtained a Qualified Appraisal of such Property (with each such field examination and appraisal being at such Subsidiaries' sole cost and expense and in excess of any other field examination or appraisal otherwise permitted by this Agreement or the other Loan Documents to be charged to the Credit Parties) and found the results thereof satisfactory, (2) received a revised Borrowing Base Certificate (and all supporting documentation and reports) giving effect to such Property and its inclusion in such calculation, and (3) established such Reserves in connection therewith as Administrative Agent shall require.

8.15 Further Assurances. At its expense, promptly, (a) execute and deliver to Administrative Agent, LC Issuer and the Lenders, or cause to be executed and delivered to Administrative Agent, LC

Issuer and the Lenders, all documents, agreements, and instruments that are, in Administrative Agent's determination, necessary to (i) correct any omissions in the Loan Documents or any agreement relating to Bank Products; (ii) more fully state the Obligations set out in this Agreement or in any other Loan Document or agreement relating to Bank Products; (b) obtain any consents, as may be necessary or appropriate in connection therewith as may be requested by Administrative Agent; and (c) deliver such instruments, assignments, title certificates, or other documents or agreements, and take such actions, as Administrative Agent deems appropriate under Applicable Law to evidence or perfect Administrative Agent's Lien in and to any Collateral.

8.16 **Springing Real Estate Covenant.** ~~At any time that~~ On the earlier to occur of (i) the date that is 180 days after the date on which Liquidity is first less than \$90,000,000, ~~Borrowers and Guarantors shall, subject to Section 8.3, at Borrowers' expense and within ninety (90) days thereafter (or at~~ and (ii) the date that Mortgages and Mortgage Documents are required to be delivered pursuant to the Permitted Bond Documents as a closing condition or post-closing covenant set forth therein (or, in the case of either the foregoing clause (i) or (ii), such later date as which may be agreed to by Administrative Agent in writing in its discretion), and at such other times as required by Section 7 of the Security Agreement, Borrowers and Guarantors shall, subject to Section 8.3, execute and deliver all such Mortgages, and other Mortgage Documents, ~~Fixture filings, surveys, title insurance,~~ and such other documentation and instruments required by and in accordance with Section 7 of the Security Agreement to grant Collateral Agent a first priority Lien (or, if delivered in connection with a Permitted Bond Transaction, a second priority Lien subject only to the first priority Lien in favor of the Senior Notes Agent) on all Material Owned Real ~~Estate~~ Property owned by any Borrower and any Guarantor as security for the payment and performance of the Obligations, excluding any parcels of Real Estate specified by Administrative Agent in writing.

8.17 **Post-Closing Matters.**

(a) Within thirty (30) days after the Closing Date (or such later date as Administrative Agent may, in its discretion, specify in writing), Administrative Agent shall have received copies of acknowledgments of all "as-extracted" financing statements filings or recordations necessary to perfect its Liens in the "as-extracted" Collateral.

(b) Within thirty (30) days after the Closing Date (or such later date as Administrative Agent may, in its discretion, specify in writing), Administrative Agent shall have received all original certificates and executed powers, as reasonably required by Administrative Agent, with respect to Equity Interests pledged to Administrative Agent pursuant to the Loan Documents.

SECTION 9.

NEGATIVE COVENANTS

Until Payment in Full of the Obligations and termination of the Commitments, no Credit Party shall, nor shall it permit any Subsidiary to:

9.1 **Debt.** Create, incur, Guarantee, or suffer to exist any Debt, except:

(a) the Obligations;

(b) Subordinated Debt in an aggregate outstanding principal amount not to exceed at any time Five Million Dollars (\$5,000,000);

(c) Permitted Purchase Money Debt, so long as (i) such Permitted Purchase Money Debt and the associated Purchase Money Lien (if any) are incurred and granted, respectively, not more than ten (10) days after the acquisition of the fixed asset that is the subject thereof and (ii) the aggregate amount of such Debt does not, at any one time, exceed \$60,000,000;

(d) Funded Debt (other than the Obligations and Permitted Purchase Money Debt permitted under **Section 9.1(c)** hereof), to the extent outstanding on the Closing Date and listed on **Schedule 9.1** (provided that individual obligations in an amount less than \$2,000,000 are not required to be listed on such Schedule);

(e) Guarantees by the Credit Parties or any Subsidiaries in respect of Debt otherwise permitted under this **Section 9.1**;

(f) Debt incurred or assumed in connection with Permitted Acquisitions and other permitted Investments consisting of the purchase of a business unit, line of business or a division of a Person or all or substantially all of the assets or all of the Equity Interests of another Person to the extent such Debt was not incurred in connection with, or in contemplation of, such Person's becoming a Subsidiary or such Acquisition, not to exceed \$25,000,000 in the aggregate at any time; provided, that to the extent such Debt is secured by a Lien on any Accounts or Inventory, such Lien shall be junior to the Lien of Administrative Agent and the Credit Parties shall segregate (and not commingle) any such Accounts or Inventory and proceeds thereof, in each case, pursuant to intercreditor arrangements reasonably satisfactory to Administrative Agent in consultation with the Company;

(g) Debt arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business;

(h) Debt of Borrowers or any Subsidiary in connection with one or more standby or trade-related letters of credit, performance bonds, bid bonds, appeal bonds, wage bonds, bonds issued in favor of any Governmental Authority, bankers acceptances, insurance obligations, reclamation obligations, bank guarantees, surety bonds, completion guarantees or other similar bonds and obligations, including self-bonding arrangements, issued by Borrowers or a Subsidiary, in each case, in the Ordinary Course of Business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances;

(i) Debt consisting of customary indemnification obligations in favor of purchasers in connection with Permitted Asset Dispositions;

(j) Debt arising from Investments in Subsidiaries permitted by **Section 9.4**;

(k) Intercompany Debt, provided that (i) all such Debt shall be unsecured Debt; (ii) all such Debt shall constitute Subordinated Debt, as and when incurred, without necessity of further action on the part of Administrative Agent or Borrower(s) obligated thereon or holding such Debt, (iii) such Debt shall not be paid, in whole or in part, except as provided in clause (iv) below, unless and until all Obligations have been Paid in Full; (iv) such Debt may be paid (but unless approved by the Required Lenders, or paid to Administrative Agent for applications to the Obligations, not prepaid) in accordance with its terms from time to time so long as no Default or Event of Default then exists and none would be caused by such payment being made; (v) shall be

deemed assigned to Administrative Agent as additional Collateral effective with the incurrence thereof without necessity of further action on the part of Administrative Agent or Borrower(s) obligated thereon or holding such Debt, and Administrative Agent at any time, following an Event of Default, shall have the right (but not the obligation) to enforce the payment and collection of such Debt and to require that such Debt be evidenced by one or more promissory notes (if not then so evidenced) and be endorsed to and deposited with Administrative Agent to facilitate the assignment thereof to Administrative Agent, and in such event, Administrative Agent shall be a holder in due course thereof; (vi) shall not be assigned to any Person by the holder thereof, except to Administrative Agent as provided above, (vii) shall not be reduced or forgiven, or converted to equity, or be subordinated (except pursuant hereto) by any holder of such Debt and (viii) if any Bankruptcy Event of Default shall have occurred, Administrative Agent shall have the sole and exclusive right (but not the obligation) to file proofs of claim and take other actions, in its discretion, in respect of such Debt in such proceeding and to receive the entirety of any payments made thereon for application to the Obligations;

(l) Permitted Refinancing Debt of Debt permitted under clauses (b), (c), (d), ~~and (f)~~ ~~above~~ and (t) of this Section or of Debt subsequently incurred under this clause (l);

(m) Debt arising in connection with (i) the financing of insurance premiums so long as each insurance policy subject to such premium finance arrangement provides that it shall not be canceled or not renewed upon less than thirty (30) days' (or ten (10) days' in the case of non-payment) prior written notice thereof by the insurer to Administrative Agent or (ii) take-or-pay obligations contained in supply or other arrangements, in each case in the Ordinary Course of Business;

(n) Debt representing deferred compensation to officers, directors or employees of any Credit Party issued or incurred in the Ordinary Course of Business;

(o) Debt consisting of unsecured indemnification, adjustment of purchase price, Earn-Outs or similar deferred or contingent obligations, seller promissory notes and payment obligations in respect of non-competition agreements, in each case, incurred or assumed in connection with any Acquisition or Asset Disposition or disposition of any business or any Subsidiary to the extent permitted hereby; provided that any Earn-Out or seller promissory note in excess of \$5,000,000 shall be subordinated in right of payment to the Obligations pursuant to a Subordination Agreement on terms acceptable to Administrative Agent;

(p) Debt in respect of obligations under Swap Agreements incurred in the Ordinary Course of Business and not for speculative purposes;

(q) Guarantees by Borrowers or any Subsidiaries of borrowings by current or former officers, managers, directors, employees or consultants in connection with the purchase of Equity Interests of Borrowers by any such person in an aggregate principal amount not to exceed \$1,000,000 any one time outstanding;

(r) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course of Business;

(s) any transaction permitted under **Section 9.11**; ~~and~~

(t) either (i) Senior Notes Debt incurred pursuant to a Permitted Bond Transaction, subject to the limitations, if any, set forth in the Approved Intercreditor Agreement or (ii) Convertible Notes Debt incurred pursuant to a Permitted Convertible Debt Transaction;

(u) ~~(+)~~additional Debt of the Credit Parties in an amount not to exceed \$250,000,000 (or, if a Permitted Bond Transaction or Permitted Convertible Debt Transaction has been consummated, \$200,000,000) in the aggregate at any time outstanding so long as each of the Payment Conditions shall have been satisfied at the time and immediately after giving effect to the ~~occurrence~~incurrence of such Debt; and

(v) unsecured Guarantees by Borrowers or any Subsidiaries of Debt incurred by non-wholly owned Subsidiaries and Joint Ventures so long as (i) such Guarantees are in an aggregate amount, together with amounts incurred under Section 9.4(g), not to exceed the greater of \$200,000,000 and 20% of Consolidated Net Tangible Assets and (ii) each of the Payment Conditions is satisfied at the time of and immediately after giving effect to the consummation of the relevant Guarantee;

provided, however, that, for the avoidance of any doubt, and notwithstanding any provision of the foregoing that may be to the contrary, no Credit Party shall Guarantee any Debt of any Credit Party except for Debt of another Credit Party that is expressly permitted to be created, incurred or assumed pursuant hereto, and Debt consisting of any Obligations; provided, further, that the aggregate Debt (including Intercompany Debt) of all Immaterial Restricted Subsidiaries (other than Intercompany Debt incurred by Immaterial Restricted Subsidiaries related to reclamation, Black Lung and worker's compensation liabilities existing as of the Closing Date) and Subsidiaries of Credit Parties that are not Credit Parties of this **Section 9.1** shall not, when aggregated with Investments made under **Section 9.4(u)**, exceed the greater of \$70,000,000 and 8% of Consolidated Tangible Net Assets in the aggregate at any time.

No Debt permitted above other than the Obligations shall constitute "ABL Debt" as defined in the Approved Intercreditor Agreement.

9.2 **Liens.** Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):

(a) Liens in favor of Administrative Agent, LC Issuer, any Lender or any other Secured Party arising pursuant hereto or under any other Loan Document;

(b) Purchase Money Liens securing Permitted Purchase Money Debt;

(c) Liens for Taxes not yet due or payable or being Properly Contested;

(d) Liens (other than Liens for Taxes or imposed under ERISA or pursuant to any Environmental Law) arising as a matter of law and in the Ordinary Course of Business, but only if (i) payment of the obligations secured thereby is not yet due or payable or is being Properly Contested; (ii) such Liens do not materially impair the value or use of the Property or materially impair operation of the business of any Borrower or Subsidiary; and (iii) such Liens do not secure Debt;

(e) Liens consisting of (i) deposits or pledges made in the Ordinary Course of Business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation (other than

bonds related to judgments or Adverse Proceedings unless permitted by **Section 9.2(g)**), or arising as a result of progress payments under government contracts, and other obligations of a like nature incurred in the Ordinary Course of Business and (ii) deposits securing liability to insurance carriers under insurance or self-insurance arrangements;

(f) Liens arising as a matter of law in the Ordinary Course of Business that are subject to Third Party Claimant Agreements;

(g) Liens arising as a matter of law by virtue of a judgment or judicial order against any Credit Party or Subsidiary, or any Property of a Credit Party or Subsidiary, as long as (i) such Liens do not constitute an Event of Default under **Section 11.1(h)**; (ii) such Liens are at all times junior to Administrative Agent's Liens; and (iii) the execution or enforcement of such Liens is and continues to be effectively stayed and bonded on appeal;

(h) easements, rights of way, zoning restrictions, other restrictions, covenants and other non-monetary encumbrances which do not in any case secure any monetary obligation and do not materially or adversely detract from the value of the Property subject thereto or materially interfere with the Ordinary Course of Business;

(i) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on Payment Items in the course of collection;

(j) Liens on acquired Property (other than Accounts and Inventory) securing Debt permitted under **Section 9.1(f)**; provided that such Liens (i) are not incurred in connection with, or in anticipation of, a Person becoming a Subsidiary or the acquisition of the Property subject to such Lien; (ii) are applicable only to the Property of such Subsidiary or Property acquired (and proceeds thereof) and do not attach to any other Property of the Credit Parties or any of their Subsidiaries, and (iii) the amount of the Debt secured thereby is not increased;

(k) Liens in favor of customs and revenue authorities arising as a matter of Applicable Law to secure payment of customs duties in connection with the importation of Goods;

(l) (i) any interest or title of a lessor or sub-lessor under any lease of Real Estate made by any Credit Party or any of its Subsidiaries as lessee or sub-lessee, to the extent permitted hereunder and (ii) leases, subleases, licenses and rights-of-use granted by any Credit Party or any of its Subsidiaries to others in the Ordinary Course of Business and that do not materially and adversely affect the use of the Property encumbered thereby for its intended purpose;

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

(n) purported Liens evidenced by the filing of precautionary Financing Statements relating solely to operating leases of personal property entered into in the Ordinary Course of Business;

(o) Liens existing on the Closing Date and listed on **Schedule 9.2**, including Liens securing Permitted Refinancing Debt permitted under **Section 9.1(l)**;

(p) (i) Liens (including deposits) to secure the performance of bids, trade contracts and leases (other than Debt), reclamation bonds, insurance bonds, statutory obligations, surety and appeal bonds, performance bonds, wage bonds, bonds issued in favor of any Governmental Authority, bank guarantees and letters of credit and other obligations of a like nature incurred in the Ordinary Course of Business or (ii) Liens created under or by any turnover trust; provided, that in each case with respect to the foregoing, no UCC financing statement has been filed by surety and no other action has been taken to perfect any such Liens of any surety;

(q) Liens in favor of an escrow agent arising under an escrow arrangement incurred in connection with the issuance of notes with respect to the proceeds of such notes and anticipated interest expenses with respect to such notes, solely to the extent such notes constitute permitted Debt under **Section 9.1**;

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

(s) rights of first refusal and rights of first offer in respect of transfers of Equity Interests in Joint Ventures to the extent such rights constitute Liens;

(t) Permitted Real Estate Encumbrances;

(u) Production Payments, Royalties with respect to Mining Title, dedication of reserves under supply agreements or similar or related rights or interests granted, taken subject to, or otherwise imposed on properties;

(v) Liens under ERISA or the Code with respect to a Plan that does not constitute an Event of Default under **Section 11.1(m)**;

(w) landlord's, carrier's, warehousemen's mechanic's, workmen's, materialmen's, repairmen's or other like Liens but only, in each case, to the extent (i) arising by operation of law and in the Ordinary Course of Business, (ii) payment of the obligations secured thereby is not overdue by more than sixty (60) days or is being Properly Contested and (c) such Liens do not materially impair the value or use of the Property or materially impair operation of the business by any Credit Party or Subsidiary;

(x) Liens of landlords incurred in the Ordinary Course of Business securing obligations to pay lease or royalty payments that are not yet due and payable or in default beyond all applicable notice and cure periods;

(y) transfer of a Sold Receivable pursuant to a Permitted Receivables Transaction so long as the purchase price therefor is immediately remitted to the Collections Account in cash or other immediately available funds as a condition to such transfer; ~~and~~

(z) Liens in favor of Senior Notes Agent to secure the Senior Notes Debt incurred pursuant to a Permitted Bond Transaction and which are subject to the terms of the Approved Intercreditor Agreement (in each case, the priority of which Liens shall be as provided in the Approved Intercreditor Agreement); and

(aa) ~~(z)~~ other Liens on assets other than Inventory and Accounts securing Debt of the Credit Parties in an aggregate amount at any time outstanding not to exceed \$40,000,000 so long

as at the time of and immediately after giving effect to the occurrence thereof, each of the Payment Conditions shall have been satisfied.

9.3 **Restricted Payments.** Declare or make any Restricted Payment, except the following:

(a) Each Subsidiary that is not a Credit Party may make Restricted Payments to a Credit Party, and each Credit Party may make Restricted Payments to another Credit Party (subject, in the case of Restricted Payments received by Immaterial Restricted Subsidiaries, to the limitation set forth at the end of this **Section 9.3**);

(b) Borrowers and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other Equity Interests of such Person;

(c) any Credit Party (including any Borrower) may pay dividends or make distributions on Equity Interests that accrue (but are not paid in cash) or are paid in-kind with Equity Interests of such Credit Party equal or junior ranking;

(d) any Borrower may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issuance of new shares of common stock or other Equity Interests that are not Disqualified Equity Interests of such Borrower;

(e) Borrowers or any of their Subsidiaries may purchase (i) Equity Interests issued by any Credit Party or options with respect thereto held by directors, officers or employees of Borrowers or any Subsidiary (or their estates or authorized representatives) in connection with (A) the death, disability or termination of employment of any such director, officer or employee or (B) any benefit, incentive or equity compensation plans to provide funds for the payment of any Tax or other amounts owing by such directors, officers or employees upon vesting or exercise or settlement of the Equity Interests or options provided under such plans; and (ii) Equity Interests issued by any Credit Party for future issuance under any benefit, incentive or equity compensation plan; provided, that (x) no Event of Default has occurred and is continuing at the time of such purchase and (y) for both sub-clauses (i) and (ii), the aggregate cash consideration paid therefor in any twelve-month period after the Closing Date shall not exceed \$50,000,000 in the aggregate;

(f) cash payments in lieu of fractional shares upon exercise of options or warrants or conversion or exchange of convertible securities, repurchases of Equity Interests deemed to occur upon the exercise of options, warrants or other convertible securities to the extent such securities represent a portion of the exercise price of such options, warrants or other convertible securities and repurchases of Equity Interests in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the Taxes payable by such director or employee upon such grant or award; ~~and~~

(g) to the extent constituting a Restricted Payment, the Company may

(i) repurchase or induce the conversion of any Convertible Notes Debt solely by delivery of the shares of the Company's common stock (other than Disqualified Equity Interests) and/or by payment of cash in lieu of any fractional share of common stock of the Company in accordance with the terms of the documents relating to such Convertible Notes Debt,

(ii) make required cash interest payments in respect of any Convertible Notes Debt permitted by Section 9.6(a),

(iii) make prepayments, redemptions, or repurchases of any Convertible Notes Debt permitted by Section 9.6(d)(i),

(iv) make mandatory prepayments in respect of any Convertible Notes Debt upon the occurrence of a “change of control” or “fundamental change” permitted by Section 9.6(c)(ii), and

(v) make any payment to the holders of Convertible Notes Debt for which a corresponding amount has been received (or will be received in connection with a contemporaneous exercise or unwind of a Permitted Convertible Debt Hedge) from the counterparties to a Permitted Convertible Debt Hedge, so long as (A) no Default or Event of Default exists at the time of such payment or would result therefrom and (B) such payment is not made with proceeds of Revolving Loans;

(h) to the extent constituting a Restricted Payment, the Company may

(i) enter into a Permitted Convertible Debt Hedge in connection with Convertible Notes Debt (including any payments of premiums upon entering into such transactions),

(ii) make any payment in respect of a Permitted Convertible Debt Hedge solely by delivery of shares of the Company’s common stock (other than Disqualified Equity Interests) and/or by payment of cash in lieu of any fractional share of common stock of the Company in accordance with the terms of the documents relating to such Permitted Convertible Debt Hedge; and

(i) ~~(g)~~ other Restricted Payments so long as, at the time of and immediately after giving effect thereto, each of the Payment Conditions shall have been satisfied.

Notwithstanding the foregoing, (i) if a dividend or distribution is permitted pursuant to any of the foregoing clauses (a) through ~~(g)~~, the applicable Credit Party or Subsidiary can pay any such dividend or distribution within thirty (30) days after the date of declaration thereof, and (ii) the aggregate amount of Restricted Payments that are paid to Immaterial Restricted Subsidiaries (to the extent such Restricted Payment is not concurrently paid to a Borrower) shall not exceed \$50,000,000 in any Fiscal Year.

9.4 **Investments.** Make any Investment, except the following:

(a) Investments in existence on the Closing Date and described on **Schedule 9.4(a)** (provided that individual Investments in an amount less than \$2,000,000 are not required to be listed on such Schedule) and extensions, renewals, modifications, restatements or replacements thereof; provided, that no such extension, renewal, modification, restatement or replacement shall increase the amount of such Investment except, in the case of a loan, by an amount equal to the amount determined by reference to clause (a) of the definition of “Permitted Refinancing Debt”;

(b) subject to the requirements of **Section 8.12**, Investments in cash or Cash Equivalents;

(c) [reserved];

(d) deposits made in the Ordinary Course of Business (i) to secure the performance of leases (or subleases), (ii) pursuant to surety bonds, reclamation bonds, performance bonds, bid bonds, appeal bonds, wage bonds, bonds issued in favor of any Governmental Authority and related letters of credit or similar obligations, in each case, to the extent such surety bonds, reclamation bonds, performance bonds, bid bonds, appeal bonds, wage bonds, bonds issued in favor of any Governmental Authority, related letters of credit and similar obligations are permitted under this Agreement and (iii) consisting of indemnification obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, reclamation bonds, wage bonds, bonds issued in favor of any Governmental Authority and completion guarantees and similar obligations under any Mining Law or Environmental Law or with respect to workers' compensation benefits, in each case entered into in the Ordinary Course of Business, and pledges or deposits made in the Ordinary Course of Business in support of obligations under existing coal sales contracts (and extensions or renewals thereof on similar terms);

(e) Bank Product Obligations and obligations under Swap Agreements permitted pursuant to **Section 9.1(p)**;

(f) Equity Interests or obligations issued to any Credit Party by any Person (or the representative of such Person) in respect of Debt of such Person owing to such Credit Party in connection with the insolvency, bankruptcy, receivership, or reorganization of such Person or a composition or readjustment of the Debts of such Person;

(g) advances to an officer, director, or employee for salary, travel expenses, entertainment, relocation, commissions and similar items in the Ordinary Course of Business not to exceed at any time \$2,500,000 in the aggregate as to all such Persons at any time outstanding;

(h) Investments constituting deposits for the purchase of goods made in the Ordinary Course of Business;

(i) prepaid expenses and extensions of trade credit in the nature of accounts receivable arising in the Ordinary Course of Business and consistent with customary credit practices and policies;

(j) deposits with financial institutions (including Regions Bank) expressly permitted hereunder;

(k) Permitted Acquisitions;

(l) Investments made after the Closing Date (i) by a Borrower to another Borrower; (ii) by any Credit Party to any other Credit Party; (iii) by any Foreign Subsidiary to any other Foreign Subsidiary; (iv) by any Domestic Subsidiary that is not a Credit Party to any other Domestic Subsidiary that is not a Credit Party; or (v) by any Subsidiary that is not a Credit Party to any Credit Party;

(m) Intercompany Debt, subject to **Section 9.1(k)**;

(n) Investments (including Debt and Equity Interests) received in satisfaction of judgments or in connection with the bankruptcy or reorganization of suppliers and customers of

Borrowers and their Subsidiaries and in settlement of delinquent obligations of, and other disputes with, such customers and suppliers arising in the Ordinary Course of Business;

(o) payments or other arrangements whereby Borrowers or a Subsidiary provides a loan, advance payment or guarantee in return for future coal deliveries, in each case consistent with normal practices in the mining industry and the Ordinary Course of Business;

(p) promissory notes and other similar non-cash consideration received by Borrowers and their Subsidiaries in connection with Asset Dispositions not otherwise prohibited under this Agreement;

(q) Investments by Borrowers or any Subsidiary in non-wholly owned Subsidiaries and Joint Ventures in an aggregate amount, together with amounts incurred under Section 9.1(v), not to exceed the greater of \$200,000,000 and 20% of Consolidated Net Tangible Assets, and so long as each of the Payment Conditions is satisfied at the time of and immediately after giving effect to the consummation of the relevant Investment;

(r) Investments acquired as a capital contribution to Borrowers, or made in exchange for, or out of the net cash proceeds of, a substantially concurrent offering of Equity Interests that do not constitute Disqualified Equity Interests of the Company (or any direct or indirect parent thereof);

(s) endorsements for collection or deposit in the Ordinary Course of Business;

(t) [reserved];

(u) Investments by Borrowers or any Subsidiary in Immaterial Restricted Subsidiaries or any Subsidiary that is not a Credit Party and Investments by any Immaterial Restricted Subsidiary in Borrowers; provided, that (i) Investments in Immaterial Restricted Subsidiaries and Subsidiaries that are not Credit Parties made after the Closing Date shall not, when aggregated with Intercompany Debt of Immaterial Restricted Subsidiaries incurred pursuant to **Section 9.1(k)** (subject to the proviso at the end of **Section 9.1**), in the aggregate exceed the greater of \$70,000,000 and 8% of Consolidated Net Tangible Assets (other than Investments in Immaterial Restricted Subsidiaries related to reclamation, Black Lung and worker's compensation liabilities existing as of the Closing Date) and (ii) each of the Payment Conditions is satisfied at the time of and immediately after giving effect to the consummation of the relevant Investment;

(v) Investments by any Credit Party in the Owner Trustee in an amount not to exceed \$100,000 in connection with the (A) the Trust Agreement (N731BP) dated July 26, 2016 between Owner Trustee, and Alpha Metallurgical Services, LLC, as operator and (B) the Aircraft Operating Agreement dated July 26, 2016 between Alpha Metallurgical Services, LLC and Owner Trustee;

(w) ~~[reserved]~~; to the extent constituting Investments, the issuance of, entry into (including any payments of premiums in connection therewith), and performance of obligations under any Convertible Notes Debt and any Permitted Convertible Debt Hedge in connection with such Convertible Notes Debt, in each case, to the extent permitted by this Agreement;

(x) Investments in, and solely to the extent contemplated by the Organizational Documents (as in effect on the Closing Date) of, the Joint Ventures identified on **Schedule 9.4(x)** to which any Credit Party is a party on the Closing Date;

(y) Investments in any assets constituting a business unit received by Borrowers or their Subsidiaries by virtue of a Permitted Asset Swap; and

(z) other Investments to the extent not violative of the foregoing clauses (a) through (y) so long as, at the time of and immediately after giving effect thereto, each of the Payment Conditions shall have been satisfied.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment that results in or facilitates in any manner any Restricted Payment not otherwise permitted under the terms of **Section 9.3**.

9.5 Disposition of Assets. Make or consummate any Asset Disposition, except a Permitted Asset Disposition. To the extent Required Lenders waive the provisions of this **Section 9.5** with respect to an Asset Disposition, Required Lenders authorize Administrative Agent to release Liens on such Property subject to the Asset Disposition in accordance with **Section 12.2(a)**.

9.6 Restrictions on Payment of Certain Debt. Make any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance, acquisition, or deposit), or set aside funds for any such payment, with respect to any Funded Debt (other than the Obligations); provided, however, that Credit Parties and their Subsidiaries may make:

(a) regularly scheduled payments of principal, interest, or fees with respect to (i) all Funded Debt (other than Subordinated Debt) that exists as of the Closing Date and is disclosed in **Schedule 9.1** or (ii) Funded Debt (other than Subordinated Debt) that otherwise is incurred after the Closing Date in accordance with the terms of this Agreement (including any Senior Notes Debt incurred in connection with a Permitted Bond Transaction or Convertible Notes Debt incurred in connection with a Permitted Convertible Debt Transaction);

(b) subject to Section 9.3(h) with respect to Convertible Notes Debt and any related Permitted Convertible Debt Hedge, prepayments, repayments, redemptions, repurchases, defeasances or other acquisitions or retirement for value of unsecured Funded Debt and any Subordinated Debt (i) with the net cash proceeds of, or in exchange for, Permitted Refinancing Debt or (ii) in exchange for, or out of the proceeds of, a substantially concurrent issue of new shares of common stock or other Equity Interests that are not Disqualified Equity Interests of the Company;

(c) mandatory prepayments, ~~repayments, redemptions, repurchases, defeasances or other acquisitions or retirement for value of, to the extent constituting Funded Debt, unsecured Debt set forth on **Schedule 9.1**; and~~ (i) in respect of Senior Notes Debt from proceeds of Term Priority Collateral to the extent required by the Permitted Bond Documents and permitted by the Approved Intercreditor Agreement, and (ii) in respect of the Senior Notes Debt or Convertible Notes Debt, in each case, upon the occurrence of a “change of control” or “fundamental change” so long as no Default or Event of Default exists at the time of such prepayment or would result therefrom and so long as such prepayments are not made with proceeds of Revolving Loans;

(d) so long as each of the Payment Conditions shall have been satisfied at the time of and immediately after giving effect to payment thereof, ~~Borrowers may make payments in respect of any unsecured Debt or;~~

(i) voluntary prepayments, redemptions, or repurchases in respect of any Convertible Notes Debt in accordance with the terms thereof, and

(ii) voluntary prepayments, redemptions, or repurchases in respect of any Senior Notes Debt in accordance with the terms thereof; and

(e) payments in respect of Subordinated Debt, ~~in each case,~~ in accordance with the terms thereof ~~and only~~ to the extent permitted by and subject to the subordination provisions contained in the ~~Intercreditor Agreement or~~ applicable Subordination Agreement with respect thereto.

9.7 **Fundamental Changes.**

(a) Merge, Divide, combine, or consolidate with or into any Person, or liquidate (or suffer any liquidation), wind up its affairs, or dissolve itself (or suffer any dissolution), in each case whether in a single transaction or in a series of related transactions, except that so long as no Event of Default then exists or would result therefrom (i) any Credit Party may merge with, or sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets to, any other Credit Party (including any Borrower), or Divide itself into two or more Credit Parties; provided that, (A) if any Borrower is party to any such merger, such Borrower must be the surviving Person; (B) no Credit Party may sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets except to a Borrower (except that a Guarantor may sell, assign, transfer, lease or otherwise dispose of all or substantially all of its assets to another Guarantor); and (C) in any Division of any Credit Party, the Persons resulting from such Division must all become Credit Parties of the same type; upon such Division becoming effective; e.g., all Persons resulting from the Division of a Borrower must become Borrowers (or if permitted by Administrative Agent, Guarantors), in accordance with **Section 8.14**; (ii) any Domestic Subsidiary that is not a Credit Party may merge with, or sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets to, any other Domestic Subsidiary that is not a Credit Party, or Divide itself into two or more Domestic Subsidiaries that are not Credit Parties; (iii) any Foreign Subsidiary may merge with, or sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets to, any other wholly owned Foreign Subsidiary or Divide itself into two or more Foreign Subsidiaries; (iv) any Subsidiary may, in accordance with Applicable Law, liquidate or dissolve itself into a Credit Party or another Domestic Subsidiary that is wholly owned by a Credit Party; provided, that if an Immaterial Restricted Subsidiary is subject to liquidation or dissolution, then the applicable Credit Party shall deliver (or shall cause to be delivered) to Administrative Agent, to the extent not previously provided in respect of such Subsidiary, the results of customary lien searches in respect of such Subsidiary and such other diligence as Administrative Agent may reasonably require prior to such liquidation or dissolution; and (v) any Foreign Subsidiary of a Credit Party may liquidate or dissolve itself into another wholly owned Foreign Subsidiary of a Credit Party in accordance with Applicable Law.

(b) [Reserved].

(c) Locate its chief executive office or keep its books and records in any jurisdiction other than in a State within the United States of America or the District of Columbia;

(d) Amend, restate, amend and restate, or otherwise modify its Organizational Documents in any manner that would be contrary to the terms and conditions of this Agreement or the other Loan Documents or in any manner that could be adverse to any Secured Party or could reasonably be expected to have a Material Adverse Effect;

(e) Form any Subsidiary or consummate any Acquisition except a Permitted Acquisition; provided, however, any Credit Party or any Subsidiary may (i) form a Domestic Subsidiary or (ii) consummate a Permitted Acquisition, so long as, in each case, such Borrower and each Person that becomes a Subsidiary on account thereof complies with **Section 8.14** and **Section 8.15**, to the extent applicable;

(f) [Reserved];

(g) Become a partner or joint venturer with any third party after the Closing Date except as expressly permitted by **Section 9.4**;

(h) Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2** or change its year-end for accounting purposes from the Fiscal Year ending December 31;

(i) File or consent to the filing of any consolidated income tax return with any Person other than Credit Parties and their Subsidiaries;

(j) (i) Engage to a material extent in any business other than a business in similar or ancillary to the same field as the business conducted by Credit Parties and their Subsidiaries on the Closing Date; or (ii) permit or undergo any changes in its business and related activities that could result in the termination, revocation, ineffectiveness, or unenforceability of any of such policies of insurance; or

(k) in the case of any Subsidiary of the Company that is a Credit Party, (i) authorize, issue or sell any Equity Interests (other than to its immediate parent as existing on the Closing Date or another Credit Party) or (ii) grant any options, warrants or other rights to purchase any such Equity Interests (other than to such parent or another Credit Party), other than pursuant to a transaction otherwise permitted by this Agreement or any other Loan Document.

9.8 Restrictive Agreements; Certain Restrictions; Inconsistent Agreements.

(a) Become a party to any Restrictive Agreement, except a Restrictive Agreement which:

(i) is in effect on the Closing Date and listed on **Schedule 7.17**;

(ii) (A) relates to secured Debt permitted hereunder, as long as the restrictions apply only to collateral for such Debt or (B) that arises in connection with covenants in documents creating Liens permitted by **Section 9.2** prohibiting further Liens on the properties encumbered thereby;

(iii) contains customary restrictions on assignment in leases, subleases, licenses, asset sale agreements, and other contracts permitted hereby so long as such restrictions relate to the assets subject thereto;

(iv) contains customary restrictions on dispositions of Real Estate found in reciprocal easement or other similar agreements;

(v) contains customary restrictions related to the sale of assets (to the extent such sale is permitted pursuant to **Section 9.5**) that limit the encumbrance of such assets pending the consummation of such sale;

(vi) contains in the organizational or constitutional documents and agreements or any related joint venture or similar agreements binding on or applicable to any Joint Venture or other Subsidiary that is not a wholly-owned Subsidiary (but only to the extent such encumbrance or restriction covers the assets of such Joint Venture or Subsidiary or any Equity Interests in such Joint Venture or Subsidiary);

(vii) contains customary limitations (including financial maintenance covenants) existing under or by reason of leases entered into in the Ordinary Course of Business;

(viii) contains customary provisions restricting assignment of any agreements;

(ix) arise in connection with applicable law, rule, regulation, order, approval, license, permit or similar restriction (whether or not existing on the Closing Date) or are mandated by any Governmental Authority;

(x) contains customary provisions related to Swap Obligations; or

(xi) are set forth in any agreement evidencing an amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the Restrictive Agreements referred to in clauses (i) through (x) above; provided, that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Company, not materially less favorable to the Credit Party with respect to such limitations than those applicable pursuant to such Restrictive Agreement prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

9.9 **Affiliate Transactions.** Enter into or be party to any transaction involving an aggregate consideration in excess of \$10,000,000, including, without limitation, any purchase, sale, lease or exchange of property or assets or the rendering of any service, with an Affiliate of any Credit Party or any Subsidiary (a “Related Party Transaction”), unless the Related Party Transaction is not otherwise prohibited by this Agreement and is on fair and reasonable terms that are not materially less favorable (as reasonably determined by the relevant Credit Party) to the Credit Party or any of the relevant Subsidiaries than those that could be obtained in a comparable arm’s-length transaction with a Person that is not an Affiliate of such Credit Party or Subsidiary; provided, that (i) any Related Party Transaction or series of Related Party Transactions with an aggregate value in excess of \$20,000,000 must first be approved by a majority of the board of directors of the Company who are disinterested in the subject matter of the transaction pursuant to a resolution by the board of directors of the Company and (ii) with respect to any Related Party Transaction or series of Related Party Transactions with an aggregate value in excess of \$35,000,000, the Company must deliver to Administrative Agent an opinion from an accounting, appraisal, or investment banking firm of national standing in the applicable jurisdiction (x) stating that its terms are not materially less favorable to the relevant Credit Party that would have been obtained in a comparable transaction with an unrelated Person or (y) as to the fairness to the Credit Parties or any of the relevant Subsidiaries of such Related Party Transaction from a financial point of view.

Notwithstanding the foregoing, the restrictions contained in this **Section 9.9** shall not apply to the following transactions or arrangements:

- (a) transactions between or among the Company and any of the Credit Parties or between and among any Credit Parties, in each case, to the extent permitted by this Agreement;
- (b) transactions that are expressly permitted under this Agreement or any other Loan Documents, including, among others, Intercompany Debt permitted pursuant to **Section 9.1**, Restricted Payments permitted pursuant to **Section 9.3**, intercompany Investments permitted pursuant to **Section 9.4**, Permitted Asset Dispositions, and fundamental changes permitted pursuant to **Section 9.7**;
- (c) payment of reasonable compensation to officers and employees for services actually rendered and loans and advances permitted by **Section 9.4(g)**;
- (d) payment of usual and customary fees, expenses and indemnities in the Ordinary Course of Business to directors of the Company;
- (e) transactions with Affiliates consummated on or before the Closing Date and listed on **Schedule 9.9**;
- (f) the arrangements with respect to the procurement of services of directors, officers, independent contractors, consultants or employees in the Ordinary Course of Business and the payment of customary compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable reimbursement arrangements in connection therewith;
- (g) payments to directors and officers of Borrowers and their Subsidiaries in respect of the indemnification of such Persons in such respective capacities from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, pursuant to the Organizational Documents or other corporate action of Borrowers or their Subsidiaries, respectively, or pursuant to Applicable Law; and
- (h) transactions with DTA and Marshall Land LLC; provided, that such transactions are on fair and reasonable terms that are not materially less favorable (as reasonably determined by the Company) to Credit Parties than those that could be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of the Company.

9.10 **Plans.** Become or be deemed to hold the assets of a Benefit Plan. Fail to meet all of the applicable minimum funding requirements of ERISA and the Code with respect to any Plan, without regard to any waivers thereof, and, to the extent that the assets of any of such Plan would be less (by the Threshold Amount or more) than an amount sufficient to provide all accrued benefits payable under such Plan, Credit Parties shall make the maximum deductible contributions allowable under the Code (based on Credit Parties' current actuarial assumptions). No Credit Party nor any ERISA Affiliate of a Credit Party shall (a) cause or permit to occur any event that could result in the imposition of a Lien under Section 412 of the Code or Section 302 or 4068 of ERISA; or (b) cause or permit to occur an ERISA Event.

9.11 **Sales and Leasebacks.** Enter into any arrangement, whereby one Person shall, directly or indirectly, sell or transfer any Property with a fair market value in excess of \$70,000,000 in the aggregate to another Person who shall then or thereafter rent or lease as lessee such Property or any part

thereof or other Property that such Person intends to use for substantially the same purpose or purposes as the Property sold or transferred.

9.12 **Certain Agreements.** To the extent any of the following would reasonably be expected to have a Material Adverse Effect: (a) Permit any Material Contract to be cancelled or terminated before its stated maturity or expiration date, (b) amend, restate, amend and restate, supplement, waive any term of, consent to any change in, or otherwise modify any Material Contract, (c) default in the performance under any Material Contract beyond all applicable notice and cure periods, ~~or~~ (d) agree to or accept any waiver thereunder that would adversely affect the rights of any Secured Party, or (e) amend, restate, amend and restate, supplement, waive any term of, consent to any change in, or otherwise modify the terms of any document relating to any Convertible Notes Debt if such amendment or modification would cause the terms of such document to fail to satisfy the qualifications set forth in the definition of "Permitted Convertible Debt Transaction"; provided, however, that nothing in this **Section 9.12** shall prohibit any Permitted Refinancing Debt or the repayment, prepayment, retirement, or extinguishment of any Debt, to the extent the same is otherwise permitted to be made or incurred under this Agreement and the other Loan Documents.

9.13 **Disqualified Equity Interests.** Issue or suffer to exist with respect to such Person any Disqualified Equity Interests or be subject to any other obligation that requires such Person to purchase, redeem, retire, or otherwise acquire for value any Equity Interests of such Person, including any "put" or similar rights.

SECTION 10.

FINANCIAL COVENANTS

10.1 **Financial Covenants.** Until Payment in Full of the Obligations and termination of the Commitments, Credit Parties shall comply, or cause compliance with, each of the following covenants:

(a) Minimum Liquidity. Borrowers shall maintain Liquidity of not less than \$75,000,000 at all times.

SECTION 11.

EVENTS OF DEFAULT; REMEDIES UPON DEFAULT

11.1 **Events of Default.** Each of the following shall be an "Event of Default" hereunder and under the other Loan Documents (called herein and therein an "Event of Default"), if the same shall occur for any reason whatsoever, whether voluntary or involuntary, pursuant to any judgment or order of any court or any order, rule, or regulation of any Governmental Authority, or otherwise:

(a) Payment. Any Credit Party (i) shall fail to pay any principal of any Loan when the same shall become due and payable; or (ii) shall fail to pay (x) any interest on any Loan or (y) any other Obligation, in each case within five (5) Business Days after the same shall become due and payable (in any event, whether at stated maturity, on demand, upon acceleration, or otherwise); or

(b) Certain Covenants. Any Credit Party (i) shall default in the performance of any agreement, covenant, or obligation contained in any of **Sections 8.1, 8.2(a), 8.6(b), 8.6(c), 8.6(d), 8.12, Section 9, or Section 10**; or (ii) fails to deliver any Borrowing Base Certificate as required by **Section 8.6(a)** when due if an Increased Reporting Period exists or, in the absence of an

Increased Reporting Period, such failure continues for three (3) Business Days; or (iii) fails to comply with **Section 8.4** hereof after Administrative Agent or its agents have complied in all material respects with any obligations set forth in **Section 8.4**, and such failure continues for five (5) Business Days after written notice from Administrative Agent to the Company; or

(c) Other Covenants. Any Credit Party or its Subsidiaries shall default in the performance of any other agreement, covenant, or obligation contained in this Agreement or any other Loan Document and not provided for elsewhere in this **Section 11.1** and such default shall not have been cured to Administrative Agent's satisfaction or Required Lenders' satisfaction within thirty (30) days after the sooner to occur of (a) receipt by the applicable Credit Party of notice of such default from Administrative Agent or any Lender and (b) the date on which such default first became known to a Responsible Officer of such Credit Party; or

(d) Representations. Any representation or warranty made by or on behalf of any Credit Party in this Agreement (including, particularly, but without limitation, **Section 7**), or in any other Loan Document, that (i) if subject to a materiality, "Material Adverse Effect" or similar qualification, shall be untrue, incorrect, or misleading when made or deemed made or (ii) if not subject to a materiality, "Material Adverse Effect" or similar qualification, shall be untrue, incorrect, or misleading in any material respect when made or deemed made; or

(e) Revocation. Either: (i) Any Credit Party shall repudiate, revoke, or attempt to repudiate or revoke, in whole or in part, any of its Obligations hereunder or under any other Loan Document; or (ii) any Credit Party shall deny or contest in writing the validity or enforceability of this Agreement or any other Loan Document or all or any part of the Obligations or the existence, perfection or priority of any Lien granted to Administrative Agent or any Lender as security for payment or performance of any Obligations; or

(f) Cessation of Lien. Either: (i) This Agreement or any other material Loan Document, shall cease to be in full force or effect at any time after its execution and delivery (other than as expressly permitted hereunder or by waiver or release thereof by Administrative Agent, LC Issuer, a Lender, the Lenders or a Bank Product Provider, as applicable, made in accordance herewith, or upon Payment in Full); or (ii) any Security Document (including this Agreement) shall for any reason fail or cease to create a valid, perfected, and, except to the extent permitted by the terms hereof or thereof, first-priority Lien in favor of Administrative Agent, for the benefit of the Secured Parties, on any Collateral purported to be covered thereby; or (iii) any Swap Agreement entered into between any Credit Party or a Subsidiary, on the one hand, and Administrative Agent or any Lender (or any of their respective Affiliates), on the other hand, shall be terminated as a result of a default or event of default by such Credit Party or Subsidiary, or otherwise is revoked; or

(g) Cross Default. Credit Parties or Subsidiaries, or any one or more of them, shall fail to make any payment in respect of outstanding Debt (other than the Obligations, to the extent described in **subsection (a)** above) having an aggregate outstanding principal amount in excess of the Threshold Amount (determined singly or in the aggregate with other Debt of such Credit Parties or Subsidiaries similarly affected) or under the Permitted Bond Documents or the documentation for a Permitted Convertible Debt Transaction, in each case, when due after the expiration of any applicable grace period, or any event or condition shall occur that results in the acceleration of the maturity of such Debt ~~(including any required mandatory prepayment or "put" of such Debt to any such Person) or~~ or enables (or, with the giving of notice or passing of time or both, would enable) the holder(s) of such Debt or a commitment related to such Debt (or any Person acting on such holders' behalf) to accelerate the maturity thereof or terminate any such

commitment before its normal expiration ~~(including any required mandatory prepayment or “put” of such Debt to such Person); or, in each case; provided, however, that any redemption, repurchase, conversion, or settlement (or right to redeem, require repurchase, convert, or settle) of any Convertible Notes Debt pursuant to its terms and otherwise permitted pursuant to the terms of this Agreement shall not constitute an Event of Default under this clause (g), unless such redemption, repurchase, conversion, or settlement results (i) from a default thereunder or from an event of the type that constitutes an Event of Default pursuant to another clause of this Section 11.1 or (ii) from the occurrence of a “fundamental change” or “change of control” or equivalent as defined in the documentation relating to such Convertible Notes Debt that requires cash payment thereon or cash redemption thereof; or~~

(h) Judgment. Either (i) a judgment, order, or award for the payment of money shall be entered against any Credit Party or Subsidiary in an amount that exceeds, individually or cumulatively with all unsatisfied judgments, orders, or awards against all Credit Parties and Subsidiaries, an amount in excess of insurance coverage therefor and the same shall remain undischarged, undismissed, and unstayed for more than sixty (60) days; or (ii) any non-monetary judgment or order shall be rendered against any Credit Party or Subsidiary that could reasonably be expected to have a Material Adverse Effect, and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or (iii) any order, judgment or decree shall be entered against any Credit Party or Subsidiary decreeing the dissolution or split up of such Person and such order, judgment or decree shall remain undischarged, unvacated, unbonded or unstayed for a period in excess of sixty (60) days; or (iv) any Person shall issue, order, or institute any levy upon, or attachment, garnishment, writ, or other seizure of (A) Accounts or Inventory in excess of \$5,000,000, or (B) any portion of the Collateral in excess of the Threshold Amount, and in either case, such default is not cured within thirty (30) days; or

(i) Inability to Pay Debts; Attachment. Either (i) any Credit Party or Subsidiary (other than an Immaterial Restricted Subsidiary) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any substantial part of the property of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(j) Subordinated Debt. Any Subordinated Debt permitted hereunder or the guarantees thereof shall cease, for any reason, to be validly subordinated to the Obligations of the Credit Parties hereunder, as provided in ~~any~~ the Approved Intercreditor Agreement ~~or, if applicable, or any~~ Subordination Agreement; or

(k) Voluntary Bankruptcy. Either: (i) Any Credit Party or Subsidiary (other than an Immaterial Restricted Subsidiary) shall (A) file any petition seeking to take advantage of or commence any Insolvency Proceeding for its own relief, benefit, or advantage; (B) make an offer of settlement, extension, or composition to its unsecured creditors generally; (C) voluntarily dissolve, liquidate, or terminate operations, except as otherwise permitted in this Agreement or the other Loan Documents; (D) admit in writing its inability, or become generally unable, or fail generally, to pay its Debts as such Debts become due; or (E) take any corporate, limited liability company, partnership, or similar action for the purpose of effecting any of the foregoing; or (ii) any trustee or receiver shall be appointed to take possession of any substantial Property of, or to operate any of the business or Properties of, any Credit Party or Subsidiary; or

(l) Involuntary Bankruptcy. Either: (i) An Insolvency Proceeding shall be commenced against any Credit Party or Subsidiary (other than an Immaterial Restricted

Subsidiary) and either (A) such Credit Party or Subsidiary shall consent to the institution of such proceeding, or (B) such Credit Party or Subsidiary shall acquiesce in writing to the commencement of such proceeding or shall fail, in a timely and appropriate manner, to contest vigorously any petition commencing such proceeding, or (C) any such petition shall not be dismissed within sixty (60) days after the filing thereof, or (D) an order for relief shall be entered in such proceeding; or (ii) any Credit Party shall become subject to a Bail-In Action; or

(m) ERISA. Either: (i) An ERISA Event shall have occurred, and such event or condition, together with all such events or conditions, if any, could reasonably be expected to result in a Material Adverse Effect or (ii) (A) a trustee shall be appointed by a United States district court to administer any Pension Plan(s); (B) the PBGC shall institute proceedings to terminate any Pension Plan(s); (C) any Credit Party or any of their respective ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed withdrawal liability to such Multiemployer Plan and such entity does not have reasonable grounds for contesting such withdrawal liability or is not contesting such withdrawal liability in a timely and appropriate manner; or (D) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (ii)(A) through (ii)(D) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to result in a Material Adverse Effect; or

(n) Control. A Change of Control shall occur.

11.2 Remedies upon Default.

(a) Bankruptcy Event of Default. Immediately upon the occurrence of any Bankruptcy Event of Default, all Commitments shall, automatically and without notice to any Person, terminate, and all Obligations (other than Obligations under any Swap Agreements between a Credit Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements) shall, automatically and without notice to any Person, become immediately due and payable, without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by Credit Parties to the fullest extent permitted by Applicable Law, and at or subsequent thereto.

(b) Events of Default Generally. Immediately upon the occurrence of any Event of Default (other than a Bankruptcy Event of Default, to the extent of any rights and remedies set forth in **subsection (a)** above attendant thereupon), and during its continuation, Administrative Agent may (and, at the written direction of the Required Lenders, Administrative Agent shall) do one or more of the following at any time and from time to time:

(i) declare any Obligations immediately due and payable (other than Obligations under any Swap Agreements between a Credit Party and Administrative Agent or any Lender (or any of their respective Affiliates), all of which shall be due in accordance with and governed by the provisions of such Swap Agreements), whereupon they shall be immediately due and payable without diligence, presentment, demand, protest, or notice of any kind, all of which are hereby waived by all Credit Parties to the fullest extent permitted by Applicable Law;

(ii) (A) refuse to make Loans, cease the issuance of any Letters of Credit, and refuse to make any other extensions of credit or grant any other financial accommodations to or for the benefit of any Credit Parties; (B) terminate, reduce, or

further condition access to any Commitment; (C) without limiting the exercise of any such right existing hereunder prior to any Event of Default occurring, make any adjustment to the Borrowing Base (including by instituting additional Reserves); and (D) without limiting the exercise of any such right existing hereunder prior to any Event of Default occurring, **ON DEMAND**, require Credit Parties to Cash Collateralize LC Obligations, Bank Product Obligations, and other Obligations that are contingent or not yet due and payable (and, if Credit Parties do not, for whatever reason, provide such Cash Collateral **ON DEMAND**, Administrative Agent may provide such Cash Collateral with the proceeds of a Revolving Loan funded by itself and each Lender shall fund its Pro Rata Share thereof in accordance with **Section 4.1**, regardless of whether an Over Advance exists or would result therefrom or any condition precedent to the making of any such Loan has not been satisfied); and

(iii) exercise such other rights and remedies that may be available to it under this Agreement, the other Loan Documents, any agreements relating to Bank Products, or under Applicable Law (including the rights of a secured party under the UCC), all of which shall be cumulative with the rights and remedies elsewhere described in this **Section 11.2** and elsewhere described in this Agreement and in the other Loan Documents.

(c) **Immaterial Restricted Subsidiaries.** If any Insolvency Proceeding or other event described in **Section 11.1(i), (k) or (l)** occurs with respect to an Immaterial Restricted Subsidiary (and not with respect to any Credit Party that is not an Immaterial Restricted Subsidiary), to the extent permitted by law, Administrative Agent shall have the right to file a claim against, demand payment of the Obligations from, and to exercise all other remedies against, such Immaterial Restricted Subsidiary (but not any Credit Party that is not an Immaterial Restricted Subsidiary) under this Agreement, the Guaranty, the Security Agreement and any other Loan Documents to which such Immaterial Restricted Subsidiary is a party, without accelerating the maturity of the Obligations of the other Credit Parties or otherwise exercising any remedies against or with respect to such other Credit Parties, and this Agreement and the other Loan Documents shall remain in full force and effect as to such other Credit Parties as though such event had not occurred with respect to the applicable Immaterial Restricted Subsidiary.

(d) **Safekeeping.** In respect of its exercise of any rights and remedies regarding any Collateral, whether before or after an Event of Default exists, Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto, for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whatsoever, and the same shall be at all times at Credit Parties' sole risk.

11.3 License. Each Credit Party hereby grants to Administrative Agent during the existence of any Event of Default an irrevocable, non-exclusive license or other right to use, license, or sublicense (without payment of any royalty or other compensation to such Credit Party or any other Person) any or all of such Credit Party's Intellectual Property, computing hardware, brochures, promotional and advertising materials, labels, packaging materials, and other Property in connection with the advertising for sale or lease, marketing, selling, leasing, liquidating, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, including in such license reasonable 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 thereof. Each Credit Party's rights and interests in and to any Intellectual Property shall inure to Administrative Agent's benefit. Nothing contained

herein is intended, or shall be construed, to limit the exercise of Administrative Agent's rights and remedies respecting such Intellectual Property and other Properties, to the extent constituting Collateral.

11.4 **Receiver.** In addition to any other right and remedy available to it, Administrative Agent, either on its own motion or upon the request of the Required Lenders, shall have the right, during the existence of an Event of Default, to seek the appointment of a receiver to take possession of and operate and/or dispose of the business and Property of any Credit Party and Subsidiaries, and Credit Parties hereby consent (for themselves and on behalf of the Subsidiaries) to such rights and such appointment and hereby waive any objection Credit Parties may have thereto or their right to have a bond or other security posted by Administrative Agent in connection therewith.

11.5 **Deposits; Insurance.** Without limiting the exercise of any such right existing hereunder prior to any Event of Default occurring, Credit Parties (a) authorize Administrative Agent, during the existence of an Event of Default, to settle, collect, and apply against the Obligations any refund of insurance premiums or any insurance proceeds payable to any Credit Party on account of any Loss or otherwise and (b) irrevocably appoint Administrative Agent during the existence of an Event of Default as their attorney-in-fact to endorse any check or draft or take other action necessary to obtain such funds.

11.6 **Remedies Cumulative.** All rights and remedies of Administrative Agent, LC Issuer, any Lender or any other Secured Party contained in the Loan Documents, the UCC, and under Applicable Law attendant upon the occurrence of any Default or Event of Default are cumulative and not in derogation or substitution of each other. In particular, the foregoing rights and remedies of Administrative Agent and the other Secured Parties may be exercised at any time and from time to time, concurrently or in any order, and shall not be exclusive of any other rights or remedies that Administrative Agent or the other Secured Parties may have, whether under any Loan Document, the UCC, Applicable Law and shall include the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Credit Party of this Agreement or any of the other Loan Documents. Administrative Agent and the other Secured Parties may at any time or times, proceed directly against any Credit Party to collect the Obligations without prior recourse to any other Credit Party the Collateral. All rights and remedies of Administrative Agent and the other Secured Parties shall continue in full force and effect until Payment in Full of all Obligations.

SECTION 12.

ADMINISTRATIVE AGENT

12.1 **Appointment, Authority, and Duties of Administrative Agent; Professionals.**

(a) **Appointment and Authority.** Each Lender, LC Issuer and other Secured Party hereby irrevocably appoints Regions Bank to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to (i) take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are incidental thereto and (ii) enter into all Loan Documents to which Administrative Agent is intended to be a party and accept all Security Documents for Administrative Agent's benefit and the Pro Rata benefit of the Lenders, all of which shall be binding upon the Secured Parties. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive authority to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents; (ii) execute and deliver as Administrative Agent each Loan Document, including ~~any~~the Approved Intercreditor Agreement or any Subordination Agreement, and accept delivery of each Loan Document from any Credit Party or other Person;

(iii) act as collateral agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (iv) manage, supervise, or otherwise deal with Collateral; and (v) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law, or otherwise. Subject to **Section 15.2(a)(iv)(C)**, Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts, Eligible Billed Accounts, Eligible Unbilled Accounts, or Eligible Inventory or whether to impose or release any Reserve, which determinations and judgments, if exercised in Good Faith, shall exonerate Administrative Agent from liability to any LC Issuer, Lender or other Secured Party or other Person for any error in judgment. It is understood and agreed that the use of the term “agent” (or any other similar nomenclature) herein or in any other Loan Documents with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Duties; Delegation. The duties of Administrative Agent shall be ministerial and administrative in nature, and Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement or the other Loan Documents. Administrative Agent shall not have a fiduciary relationship with any Lender, LC Issuer, Secured Party, Participant or other Person, whether by reason of this Agreement or any other Loan Document or any transaction relating hereto or thereto or otherwise, and regardless whether a Default or Event of Default exists. The conferral upon Administrative Agent of any right shall not imply a duty on Administrative Agent’s part to exercise such right, unless instructed to do so by Required Lenders in accordance with and pursuant to this Agreement or any other Loan Document. Administrative Agent may perform its duties through agents, employees and other Related Parties and may consult with and employ Administrative Agent Professionals and shall be entitled to act upon (or refrain from acting upon), and shall be fully protected in any action taken (or omitted to be taken) in Good Faith reliance upon, any advice given by any Administrative Agent Professional. Administrative Agent shall not be responsible for the negligence or misconduct of any agents, employees, other Related Parties or Administrative Agent Professionals selected by it. Except as otherwise may be expressly set forth herein or in any of the other Loan Documents, Administrative Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its agents, employees, other Related Parties or Administrative Agent Professionals in any capacity.

(c) Instructions of Required Lenders. The rights and remedies conferred upon Administrative Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by Applicable Law. Administrative Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with this Agreement or any other Loan Document and may seek assurances to its satisfaction from Lenders of their indemnification obligations under **Section 12.5** against all Claims that could be incurred by Administrative Agent in connection with any act (or failure to act). Administrative Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and Administrative Agent shall not incur liability to any Person by reason of so refraining. Instructions of the Required Lenders shall be binding upon all Lenders, and no Lender or any other Person shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent’s acting or refraining from acting in accordance with the instructions of the Required Lenders. Notwithstanding the foregoing,

instructions by and consent of all Lenders (except any Defaulting Lender) shall be required in the circumstances described in **Section 15.2(a)(iv)**. The Required Lenders, without the prior written consent of each Lender, may not direct Administrative Agent to accelerate and demand payment of Loans held by one Lender without accelerating and demanding payment of all other Loans or terminate the Commitments of one Lender without terminating the Commitments of all Lenders. Administrative Agent shall not be required to take any action that, in its opinion, or in the opinion of its legal counsel, is contrary to Applicable Law or any Loan Document or could subject any Administrative Agent Indemnitee to liability, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of Property of a Defaulting Lender in violation of any Debtor Relief Law.

(d) Legal Representation of Administrative Agent. In connection with the negotiation, drafting and execution of this Agreement and the other Loan Documents, or in connection with future legal representation relating to any amendments, waivers, consents or other modifications to this Agreement or any other Loan Documents, or the administration or enforcement hereof or thereof, Parker, Hudson, Rainer & Dobbs LLP has represented, and such law firm (or its successors serving in such capacity) shall represent, only Regions Bank, in its capacity as Administrative Agent and a Lender or other Secured Party, and not any other Lender or other Secured Party.

12.2 Guarantors and Collateral; Intercreditor ~~Agreements~~ Agreement; and Field Examination Reports.

(a) Lien Releases; Release of Guarantors; Care of Collateral. To the extent any property is disposed of pursuant to a Permitted Asset Disposition, such property (unless sold, transferred or otherwise disposed of to another Credit Party) shall be disposed of free and clear of the Liens created by the Security Documents. Each Secured Party authorizes Administrative Agent to (i) release any Lien with respect to any Collateral (A) upon Payment in Full of the Obligations or (B) that is the subject of an Asset Disposition that Borrower Representative certifies in writing to Administrative Agent is a Permitted Asset Disposition (and Administrative Agent may rely conclusively on any such certificate without further inquiry), (ii) subordinate its Liens in any Collateral in favor of any other Lien if Borrower Representative certifies that such other Lien is a Permitted Lien entitled to priority over Administrative Agent's Liens (and Administrative Agent may rely conclusively on any such certificate without further inquiry) and (iii) release any Guarantor from its obligations under this Agreement and the other Loan Documents if such Person ceases to be a Guarantor as a result of a transaction permitted hereunder or thereunder. Administrative Agent shall have no obligation whatsoever to any Lenders to assure that any Collateral exists or is owned by a Credit Party or any other Person, or is cared for, protected, insured or encumbered, nor to assure that Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of Property, or to release any Guarantor from its obligations under this Agreement or any other Loan Document pursuant to this **Section 12.2(a)**.

(b) Possession of Collateral. Administrative Agent and the Lenders appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or under Article 9 Control of such Lender, to the extent such Liens are perfected by possession or Article 9 Control. If any Lender obtains possession or Article 9 Control of any

Collateral, it shall notify Administrative Agent thereof and, promptly upon Administrative Agent's request (but, in any case, within five (5) Business Days) deliver such Collateral to Administrative Agent or otherwise deal with such Collateral in accordance with Administrative Agent's instructions.

(c) Approved Intercreditor Agreement. If Borrowers enter into a Permitted Bond Transaction:

(i) Each Lender hereby irrevocably authorizes and instructs Administrative Agent to enter into the Approved Intercreditor Agreement and acknowledges (or is deemed to acknowledge) that a copy of the Approved Intercreditor Agreement in the form of Exhibit I hereto has been made available to such Lender. Each Lender hereby acknowledges that it has received and reviewed the Approved Intercreditor Agreement in the form of Exhibit I hereto, and each Lender agrees to be bound by the Approved Intercreditor Agreement substantially in the form of Exhibit I hereto (subject to any modifications as may be agreed to by Administrative Agent pursuant to the definition of "Approved Intercreditor Agreement"). Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Liens and, to the extent applicable, the rights granted pursuant to this Agreement or any other Loan Document shall be subject to the terms, provisions and conditions (and the exercise of any right or remedy by Administrative Agent hereunder or thereunder shall be subject to the terms and conditions of) the Approved Intercreditor Agreement. Any reference in this Agreement or any other Loan Document to "first priority Lien" or words of similar effect in describing the Liens created hereunder or under any other Loan Document shall be understood to refer to such priority as set forth in the Approved Intercreditor Agreement. In the event of any conflict between this Agreement or any other Loan Document, on the one hand, and the Approved Intercreditor Agreement, on the other hand, with respect to Lien priority or rights and remedies in connection with the Collateral, the Approved Intercreditor Agreement shall control, and no right, power, or remedy granted to Administrative Agent hereunder or under any other Loan Document shall be exercised by Administrative Agent, and no direction shall be given by Administrative Agent, in contravention of the Approved Intercreditor Agreement.

(ii) No reference to the Approved Intercreditor Agreement in any Loan Document shall be construed to provide that any Credit Party is a third party beneficiary of the provisions of the Approved Intercreditor Agreement or may assert any rights, defenses, or claims on account of the Approved Intercreditor Agreement or this Section 12.2(c), in each case, except as expressly set forth in the Approved Intercreditor Agreement, and each Credit Party agrees that nothing in the Approved Intercreditor Agreement is intended to or shall impair the obligation of any Credit Party to pay the obligations under this Agreement or any other Loan Document as and when the same become due and payable in accordance with their respective terms or to affect the relative rights of the creditors with respect to any Credit Party, or, except as expressly otherwise provided in the Approved Intercreditor Agreement as to a Credit Party's obligations, such Credit Party's properties.

(iii) In furtherance of the foregoing, notwithstanding anything to the contrary set forth herein or in any other Loan Document, so long as the Permitted Bond Documents are in effect and any Senior Notes Debt is outstanding, to the extent that any Credit Party is required to give physical possession over, grant "control" of, or take any other action in respect of, any Term Priority Collateral with respect to Administrative

Agent under this Agreement or the other Loan Documents, such requirement shall be satisfied if such action is taken with respect to the Senior Notes Agent; provided that, in the case of any requirement to grant “control” over any deposit account or securities account established for the proceeds of any disposition of Term Priority Collateral, such Credit Party shall enter into “4-party” control agreements, in form and substance reasonably satisfactory to Administrative Agent, with the Senior Notes Agent and Administrative Agent with respect to such Collateral to the extent such control agreements are not prohibited by the Permitted Bond Documents. To the extent that any covenants, representations or warranties set forth in this Agreement or any other Loan Document are untrue or incorrect solely as a result of the delivery to, or grant of possession or control to, Senior Notes Agent in accordance with this Section 12.2(c), such covenant, representation or warranty shall not be deemed to be untrue or incorrect for purposes of this Agreement or such other Loan Document.

(d) ~~(e)~~ Reports. Upon any such Person’s request therefor, Administrative Agent shall promptly forward to LC Issuer and each Lender, when complete, copies of any field audit, field examination, or appraisal report prepared by or for Administrative Agent with respect to any Credit Party or Subsidiary or any Collateral (each, a “Report”). LC Issuer and each Lender agrees (i) that neither Regions Bank nor Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report and shall not be liable for any information contained in or omitted from any Report; (ii) that the Reports are not intended to be comprehensive audits or examinations of any Person, thing, or matter and that Administrative Agent or any other Person performing any such audit, examination, or appraisal will inspect only specific information regarding the subject matter thereof and will rely significantly upon the books and records, as well as upon representations of, the Persons (and their officers and employees) subject to such audit, examination, or appraisal; and (iii) to keep all Reports confidential in accordance with **Section 15.14**. Each of LC Issuer and each of the Lenders agrees to indemnify, defend and hold harmless Administrative Agent and any other Person preparing a Report (excepting therefrom any Credit Party) from any action that LC Issuer or such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any Claims arising in connection with any third parties that obtain any information contained in a Report through LC Issuer or such Lender.

(e) ~~(f)~~ Rights of Individual Secured Parties. Anything contained in any of the Loan Documents to the contrary notwithstanding, each of the Credit Parties, Administrative Agent and each other Secured Party hereby acknowledge and agree that (i) no Secured Party except Administrative Agent shall have any power, right or remedy hereunder individually to realize upon any of the Collateral or to enforce this Agreement or any other Loan Document, it being understood and agreed that all such powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and thereof, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, Administrative Agent or any other Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition and Administrative Agent, as agent for and representative of the Secured Parties (but not any of the other Secured Parties in their respective individual capacities) 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 public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale or other disposition.

12.3 Reliance By Administrative Agent. Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, or other writing (including any electronic message, facsimile, Internet or intranet website posting, or other distribution), or any statement made to it (orally or otherwise) that is believed by it to be genuine and to have been made, signed, sent, or otherwise authenticated, as applicable, by the proper Person. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or LC Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or LC Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or LC Issuer in accordance with **Section 15.1** before the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other Administrative Agent Professionals selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

12.4 Action Upon Default. Administrative Agent shall be entitled to assume that no Default or Event of Default has occurred and is continuing and shall not be deemed to have knowledge of any Default or Event of Default unless, in its capacity as a Lender it has actual knowledge thereof, or it has received written notice from any other Lender or any Credit Party specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default or Event of Default, it shall promptly notify Administrative Agent and the other Lenders thereof in writing specifying in detail the nature thereof. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of Administrative Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations under any Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales, or other similar dispositions of Collateral. Notwithstanding the foregoing, however, a Lender may take action to preserve or enforce its rights against a Borrower where a deadline or limitation period is applicable that would, absent such action, bar enforcement of Obligations held by such Lender, including the filing of proofs of claim in an Insolvency Proceeding.

12.5 Indemnification of Administrative Agent Indemnitees. EACH SECURED PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ADMINISTRATIVE AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY CREDIT PARTIES (BUT WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS OF CREDIT PARTIES UNDER ANY LOAN DOCUMENTS), ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY ADMINISTRATIVE AGENT INDEMNITEE, PROVIDED SUCH CLAIM RELATES TO OR ARISES FROM AN ADMINISTRATIVE AGENT INDEMNITEE'S ACTING AS OR FOR ADMINISTRATIVE AGENT (IN ITS CAPACITY AS ADMINISTRATIVE AGENT). In Administrative Agent's discretion, it may reserve for any such Claims made against an Administrative Agent Indemnitee and may satisfy any judgment, order, or settlement relating thereto, from proceeds of Collateral before making any distribution of Collateral proceeds to any other Secured Parties. If Administrative Agent is sued by any receiver, bankruptcy trustee, debtor-in-possession, or other Person for any alleged preference or fraudulent transfer, then any monies paid by Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs, and expenses (including attorneys' fees) incurred in the defense of same, shall be reimbursed to Administrative Agent by each Lender to the extent of its Pro Rata Share. All payment obligations under this **Section 12.5** shall be due and payable **ON DEMAND**, together with interest thereon, computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

12.6 **Limitation on Responsibilities of Administrative Agent.** Administrative Agent shall not be liable for any action taken or not taken by it under any Loan Document (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in Good Faith shall be necessary, under the circumstances as provided in **Section 15.2**) or (b) in the absence of its own gross negligence, bad faith or willful misconduct or a material breach of its obligations under the Loan Documents, as determined by a court of competent jurisdiction by final and non-appealable judgment binding on Administrative Agent. Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Credit Party or any Secured Party of any obligations under the Loan Documents. Administrative Agent does not make to Lenders any express or implied warranty, representation, or Guarantee with respect to any Obligations, Collateral, Loan Documents, or Borrower. No Administrative Agent Indemnitee shall be responsible to any Secured Party for (a) any recitals, statements, information, representations, or warranties contained in any Loan Documents; (b) the execution, validity, genuineness, effectiveness, or enforceability of any Loan Documents; (c) the genuineness, enforceability, collectibility, value, sufficiency, location, or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; (d) the validity, enforceability or collectibility of any Obligations; or (e) the assets, liabilities, financial condition, results of operations, business, creditworthiness, or legal status of any Credit Party or Account Debtor. No Administrative Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document, or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **Section 6** or elsewhere herein or in any other Loan Document. Administrative Agent shall have no liability with respect to the administration, submission or any other matter related to the rates in the definition of Term SOFR or with respect to any comparable or successor rate thereto.

12.7 **Resignation; Successor Administrative Agent.** Subject to the appointment and acceptance of a successor Administrative Agent as provided below, Administrative Agent may resign at any time by giving at least thirty (30) days prior written notice thereof to Lenders and Borrower Representative. Upon receipt of such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent that must be either (i) a Lender or an Affiliate of a Lender (in each case excluding Defaulting Lenders) or (ii) if no Lender or such Affiliate of a Lender willing to accept such appointment, then, a commercial bank that is organized under the laws of the United States or any state or district thereof, or an Affiliate of such bank, and (provided no Default or Event of Default exists) is reasonably acceptable to Borrowers. If no successor agent is appointed before the effective date of the resignation of Administrative Agent, then Administrative Agent may appoint a successor agent meeting the qualifications set forth above, provided that if Administrative Agent shall notify Borrowers and Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral security held by Administrative Agent on behalf of the Lenders or LC Issuer under any of the Loan Documents the retiring Administrative Agent shall continue to hold such Collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications, and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and LC Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon acceptance by a successor Administrative Agent of an appointment to serve as Administrative Agent hereunder, such

successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this **Section 12.7**) but shall continue to have the benefits of the indemnification set forth in **Sections 12.5, 15.3, and 15.4**. Notwithstanding any Administrative Agent's resignation, the provisions of this **Section 12.7** shall continue in effect for its benefit with respect to any actions taken or omitted to be taken by it while Administrative Agent. Any successor to Regions Bank by merger or acquisition of Equity Interests or its Loans hereunder shall continue to be Administrative Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above. In addition to the foregoing, and notwithstanding anything to the contrary contained herein, if the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law by notice in writing to Borrower Representative and such Person remove such Person as Administrative Agent and, in consultation with Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then, such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date and the Required Lenders instituting such removal shall continue thereafter as co-Administrative Agents unless and until a successor Administrative Agent is appointed and accepts such appointment.

12.8 Separate Collateral Agent. It is the intent of the parties that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business in any jurisdiction. If Administrative Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any Applicable Law, Administrative Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If Administrative Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to Administrative Agent under the Loan Documents shall also be vested in such separate agent. Every covenant and obligation necessary to the exercise thereof by such agent shall run to and be enforceable by it as well as Administrative Agent. Lenders shall execute and deliver such documents as Administrative Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign, or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Administrative Agent until appointment of a new agent.

12.9 Due Diligence and Non-Reliance. Each Secured Party acknowledges and agrees that it has, independently and without reliance upon Administrative Agent or any other Secured Party, or any of their respective Related Parties, and based upon such documents, information, and analyses as it has deemed appropriate, made its own credit analysis of each Credit Party and its own decision to enter into this Agreement and to fund Loans, issue Letters of Credit, participate in LC Obligations hereunder, make or participate in other credit extensions to Credit Parties hereunder and grant other financial accommodations to or on behalf of any Credit Party pursuant hereto. Each Secured Party has made such inquiries concerning the Loan Documents, the Collateral and each Credit Party as such Lender believes necessary. Each Secured Party further acknowledges and agrees that the other Secured Parties, including Administrative Agent, or any of their respective Related Parties, have made no representations or warranties concerning any Credit Party or Subsidiary, any Collateral, or the legality, validity, sufficiency, or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon the other Secured Parties, including Administrative Agent and or any of their respective Related Parties, and based upon such financial statements, documents, and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, issuing Letters of Credit, participating in LC Obligations, making or participating in other credit extensions to Credit Parties and granting other financial accommodations to or on behalf of any Credit

Party and in taking or refraining from any action under any Loan Documents. Except as expressly required hereby and except for notices, reports, and other information expressly requested by a LC Issuer or any Lender, Administrative Agent shall have no duty or responsibility to provide LC Issuer, any Lender or any other Secured Party with any notices, reports, or certificates furnished to Administrative Agent by any Credit Party or Subsidiary or any credit or other information concerning the affairs, financial condition, business, or Properties of any Credit Party or Subsidiary that may come into possession of Administrative Agent or any of its Affiliates.

12.10 **Remittance of Payments.**

(a) **Remittances Generally.** All payments by any Lender to Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Administrative Agent and request for payment is made by Administrative Agent by 11:00 a.m. on a Business Day, payment shall be made by such Lender not later than 2:00 p.m. on such day, and if request is made after 11:00 a.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Administrative Agent to any Lender shall be made by wire transfer, in the type of funds received by Administrative Agent. Any such payment shall be subject to Administrative Agent's right of offset for any amounts due from such Lender under the Loan Documents. From and after the due date for payment by lenders, such payment shall bear interest computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

(b) **Failure to Pay.** If any Lender fails to pay any amount when due by it to Administrative Agent pursuant to the terms hereof, such amount shall bear interest from the due date until paid at the rate determined by Administrative Agent as customary in the banking industry for interbank compensation. In no event shall Borrowers be entitled to receive credit for any interest paid by a Lender to Administrative Agent.

(c) **Recovery of Payments.** If Administrative Agent pays any amount to a Secured Party in the expectation that a related payment will be received by Administrative Agent from a Credit Party and such related payment is not received, then Administrative Agent may recover such amount from each Secured Party that received it. If Administrative Agent determines at any time that an amount received under any Loan Document must be returned to a Credit Party or paid to any other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Administrative Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Administrative Agent to any Obligations are later required to be returned by Administrative Agent pursuant to Applicable Law, each Lender shall pay to Administrative Agent, **ON DEMAND**, such Lender's Pro Rata Share of the amounts required to be returned in accordance with Section 4.1. together with interest thereon, computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, for three (3) Business Days at the Federal Funds Rate and thereafter at the interest rate then applicable to Base Rate Revolving Loans until such defaulted sum is Paid in Full.

(d) **Payments Made in Error.**

(i) If Administrative Agent (x) notifies a Lender, LC Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, LC Issuer or Secured

Party (any such Lender, LC Issuer, Secured Party or other recipient (and each of their respective successors and assigns), a “Payment Recipient”) that Administrative Agent has determined in its discretion (whether or not after receipt of any notice under immediately succeeding clause (ii)) that any funds (as set forth in such notice from Administrative Agent) received by such Payment Recipient from Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, LC Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Administrative Agent pending its return or repayment as contemplated below in this **Section 12.10(d)** and held in trust for the benefit of Administrative Agent, and such Lender, LC Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as Administrative Agent may, in its discretion, specify in writing), return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with then standard banking industry rules on interbank compensation from time to time in effect. A notice of Administrative Agent to any Payment Recipient under this clause (i) shall be conclusive, absent manifest error.

(ii) Without limiting the immediately preceding clause (i), each Lender, LC Issuer, Secured Party or any Person who has received funds on behalf of a Lender, LC Issuer or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates), or (z) that such Lender, LC Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then, in each such case:

(A) it acknowledges and agrees that (1) in the case of immediately preceding sub-clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from Administrative Agent to the contrary) or (2) an error and mistake has been made (in the case of immediately preceding sub-clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(B) such Lender, LC Issuer or Secured Party shall use commercially reasonable efforts to, (and shall use commercially reasonable efforts to cause any

other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding sub-clauses (x), (y) and (z)) notify Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Administrative Agent pursuant to this **Section 12.10**. For the avoidance of doubt, the failure to deliver a notice to Administrative Agent pursuant hereto shall not have any effect on a Payment Recipient's obligations pursuant hereto or on whether or not an Erroneous Payment has been made.

(iii) Each Lender, LC Issuer or Secured Party hereby authorizes Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, LC Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Lender, LC Issuer or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Administrative Agent has demanded to be returned under immediately preceding clause (ii).

(iv) (A) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (i), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon Administrative Agent's notice to such Lender at any time, then, effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent in its discretion may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by Administrative Agent in such instance)), and is hereby (together with Borrowers) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an MarkitClear or another electronic platform as to which Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to Borrowers or Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) Administrative Agent and Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) Administrative Agent will reflect in the Register its

ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(B) Subject to **Section 13.1** (but excluding, in all events, any assignment consent or approval requirements (whether from Borrowers or otherwise)), Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by Administrative Agent) and (y) may, in the sole discretion of Administrative Agent, be reduced by any amount specified by Administrative Agent in writing to the applicable Lender from time to time.

(v) The parties hereto agree that (x) irrespective of whether Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, LC Issuer or Secured Party, to the rights and interests of such Lender, LC Issuer or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the “Erroneous Payment Subrogation Rights”) (provided that the Credit Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by Borrowers or any other Credit Party; provided that this **Section 12.10(d)** shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of Borrowers relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding sub-clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from Borrowers for the purpose of making such Erroneous Payment.

(vi) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any

Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(vii) Each party’s obligations, agreements and waivers under this **Section 10.2(d)** shall survive the resignation or replacement of Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or LC Issuer the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

12.11 **Administrative Agent in its Individual Capacity.** As a Lender, Administrative Agent shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms “Lenders,” “Required Lenders,” or any similar term, as and when used herein or in any other Loan Document, unless otherwise expressly provided, shall include Administrative Agent in its capacity as a Lender. Each of Administrative Agent and its Affiliates may accept deposits from, maintain deposits or credit balances for, invest in, lend money to, be a Bank Product Provider to, act as trustee under indentures of, serve as financial or other advisor to, and generally engage in any kind of business with, Borrowers and their Affiliates, as if Administrative Agent were any other bank, without any duty to account therefor (including any fees or other consideration received in connection therewith) to the other Lenders. In their individual capacity, Administrative Agent and its Affiliates may receive information regarding Borrowers, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and each Lender agrees that Administrative Agent and its Affiliates shall be under no obligation to provide such information to Lenders if acquired in such individual capacity and not as Administrative Agent hereunder.

12.12 **Administrative Agent Titles.** Each Lender, other than Administrative Agent, that is designated (on the cover page of this Agreement or otherwise) by Administrative Agent as an “Arranger,” “Documentation Agent,” or “Syndication Agent” or words of similar type or effect shall not have any right, power, responsibility, or duty under any Loan Documents other than those applicable to all Lenders and shall in no event be deemed to have any fiduciary relationship with any other Lender or Secured Party.

12.13 **Bank Product Providers.** Notwithstanding any term of this Agreement or any other Loan Document to the contrary, Bank Product Obligations owed to any Lender (other than any owed to Regions Bank and its Affiliates) shall be excluded from the benefits of clauses (vii) and (viii) of Section 5.5(a) unless such Lender, in its capacity as a Bank Product Provider, has delivered to Administrative Agent a Secured Party Designation Notice in respect thereof; provided, that each holder of Bank Product Obligations not party to this Agreement as a Lender (other than any Affiliate of Regions Bank) shall be excluded from all benefits of this Agreement and the other Loan Documents, including **Section 5.5(a)**, unless such Bank Product Provider has delivered to Administrative Agent a Secured Party Designation Notice in regard thereto; provided, further, that, unless otherwise approved by Administrative Agent, no Secured Party Designation Notice may be delivered by any Lender or other Person (other than an Affiliate of Regions Bank) to Administrative Agent if an Event of Default then exists. Each Bank Product Provider not a party to this Agreement as a Lender (other than any Affiliate of Regions Bank), by its delivery of any such Secured Party Designation Notice, shall be deemed to have agreed to be bound by this Agreement and the other Loan Documents in relation to its Bank Products identified in such notice, to have agreed to perform in accordance with its terms all the obligations that by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Bank Product Provider, and to have appointed and authorized Administrative Agent to act as its agent in connection therewith to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant thereto as are delegated to Administrative Agent by the terms thereof, together with such powers as are incidental

thereto. Each holder of Bank Product Obligations (including any not otherwise a party hereto) shall indemnify, defend and hold harmless Administrative Agent Indemnitees, to the extent not reimbursed by Credit Parties, against all Claims that may be incurred by or asserted against any Administrative Agent Indemnitee in connection with the Bank Product Obligations of such Bank Product Provider. Anything contained in this Agreement or any of the other Loan Documents to the contrary notwithstanding, no Bank Product Provider, in its capacity as such, will create (or be deemed to have created) in its favor any rights in connection with the management or release of any Collateral or of the Obligations of any Borrower or any other Credit Party under the Loan Documents except as otherwise may be expressly provided herein or in the other Loan Documents. Furthermore, it is understood and agreed that each Bank Product Provider, in its capacity as such, shall not have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Loan Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Loan Documents), other than in its capacity (if any) as a Lender and, in any event, only as expressly provided herein or therein.

12.14 No Third Party Beneficiaries. This **Section 12** is an agreement solely among Administrative Agent, LC Issuer, Lenders and the other Secured Parties and shall survive Payment in Full of the Obligations. This Section 12 does not confer any rights or benefits upon Credit Parties, any Credit Party or any other Person, and no Credit Party, Credit Party or other Person shall have any standing to enforce this **Section 12**. As between Credit Parties and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by LC Issuer, the Lenders and the other Secured Parties, as applicable.

12.15 Certifications From Lenders and Participants; PATRIOT Act; No Reliance.

(a) **PATRIOT Act Certifications.** Each Lender or assignee or Participant of a Lender that is not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender, assignee or Participant is not a “shell” and certifying to other matters as required by Section 313 of the PATRIOT Act and the applicable regulations: (1) within ten (10) days prior to the Closing Date, and (2) as such other times as are required under the PATRIOT Act.

(b) **No Reliance.** Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, Participants or assignees, may rely on Administrative Agent to carry out such Lender’s, Affiliate’s, Participant’s or assignee’s customer identification program, or other obligations required or imposed under or pursuant to the PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 1020.220 (as hereafter amended or replaced, the “CIP Regulations”), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of the Credit Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such other Anti-Terrorism Laws.

12.16 **Bankruptcy.**

(a) **Proofs of Claim.** In case of the pendency of any Insolvency Proceeding relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan or LC Obligation 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 any Borrower) shall be entitled and empowered (but not obligated) by intervention in such Insolvency Proceeding or otherwise: (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Obligations 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 Lenders, LC Issuer and Administrative Agent (including any claim for compensation, expenses, disbursements and advances of Lenders, LC Issuer and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, LC Issuer and Administrative Agent arising hereunder) allowed in such Insolvency Proceeding; and (ii) 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, or other similar official in any such judicial proceeding is hereby authorized by each Lender and LC Issuer to make such payments directly to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and/or LC Issuer, to pay to Administrative Agent any amount due for the compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent hereunder.

(b) **Credit Bids.** The holders of the Obligations hereby irrevocably authorize Administrative Agent, acting at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of all or some of the Obligations pursuant to a deed in lieu of foreclosure, strict foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including Sections 363, 1123 or 1129 thereof, or any similar Applicable Law in any other jurisdictions to which a Credit Party is subject, or (b) at any sale or foreclosure or acceptance of collateral in lieu of Debt conducted by (or with the consent of, or at the direction of) Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the holders thereof shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or Debt instruments of the acquisition vehicle(s) used to consummate such purchase). In connection with any such credit bid (i) Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle(s) (provided that any actions by Administrative Agent with respect to such acquisition vehicle(s), including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement) and (iii) to the extent that any Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (whether as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Debt that is credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the holders of the Obligations pro rata and the Equity Interests or Debt instruments issued by any acquisition vehicle on account of the Obligations that had been

assigned to the acquisition vehicle shall automatically be cancelled without the need for any Lender or any acquisition vehicle to take any further action.

SECTION 13.

ASSIGNMENTS AND PARTICIPATIONS

13.1 Successors and Assigns.

(a) Binding Effect. Subject to **Section 6.1**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto as of the Closing Date. Thereupon, the provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that neither any Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Documents except (i) to an assignee in accordance with the provisions of subsection (b) of this **Section 13.1**, (ii) by way of participation in accordance with the provisions of subsection (d) of this **Section 13.1** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **subsection (e)** of this **Section 13.1**; and any other attempted assignment or transfer by any party hereto shall be null and void ab initio. Nothing in this Agreement or any other Loan Document, whether expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this **Section 13.1** and, to the extent expressly contemplated hereby, the Indemnitees and any other express third party beneficiaries) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

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

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it (in each case with respect to any credit facility) or contemporaneous assignments to Approved Funds that equal at least the amounts specified in subsection (b)(i)(B) of this **Section 13.1** in the aggregate, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, or if Regions Bank is the assignor, no minimum amount need be assigned; and

(B) in any event not described in subsection (b)(i)(A) of this **Section 13.1**, the aggregate amount of the Commitments (which for this purpose includes Loans and Obligations in respect thereof outstanding thereunder) or, if any of the Commitments are not then in effect, the principal outstanding balance of the Loans and other Obligations of the assigning Lender subject to each such

assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to Administrative Agent or, if a “Trade Date” is specified in the Assignment Agreement, as of the Trade Date) shall not be less than Two Million Dollars (\$2,000,000), in the case of any assignment in respect of any Revolving Commitments and/or Revolving Loans, unless each of Administrative Agent and, so long as no Event of Default shall have occurred and is continuing, Borrower Representative otherwise consents (with any such consent of Borrower Representative not to be unreasonably withheld, conditioned or delayed).

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

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this **Section 13.1** and, in addition thereto:

(A) the consent of Borrower Representative (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Specified Event of Default shall have occurred and is continuing at the time of such assignment or (y) such assignment is made by Regions Bank or is made by any Lender other than Regions Bank to any other Lender, or to an Affiliate of a Lender or to an Approved Fund with respect to a Lender; provided that Borrower Representative shall be deemed to have consented to any such assignment requiring its consent unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of Administrative Agent shall be required unless such assignment is made by Regions Bank or is made by any Lender other than Regions Bank to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the LC Issuer shall be required for any assignment in respect of the assignment of any Revolving Commitment; and

(D) the consent of the Swing Line Lender shall be required for any assignment in respect of the assignment of any Revolving Commitment.

(iv) Assignment Agreement. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment Agreement, together with a processing and recordation fee in an amount determined by Administrative Agent, unless waived, in whole or in part by Administrative Agent in its discretion. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire and any applicable tax forms as required under **Section 14.3(g)**.

(v) No Assignment to Certain Persons. No such assignment shall be made by any Lender to (A) any Borrower or other Credit Party or any of a Borrower’s or a Credit Party’s Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute

any of the foregoing Persons described in this sub-clause (v) or (C) any Disqualified Institution.

(vi) No Assignment to Natural Persons. No such assignment shall be made by any Lender to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (that may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of Borrower Representative and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, each LC Issuer, each Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Revolving Commitment. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this **Section 13.1**, then, the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this **Section 13.1**, from and after the effective date specified in each Assignment Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 14.2**, **Section 14.3** and **Section 15.3** with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Borrowers will execute and deliver on request, at their own expense, Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. Administrative Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Borrowers,

Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement and the other Loan Documents. The Register shall be available for inspection by Borrower Representative and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Administrative Agent, sell participations to any Person (other than a natural Person or a Borrower or other Credit Party or any of a Borrower's or other Credit Party's Affiliates or Subsidiaries) (subject to the foregoing prohibitions, each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans owing to it); provided that, notwithstanding the sale of such participation, (i) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrowers, Administrative Agent, the LC Issuer and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 15.3** with respect to any payments made by such Lender to its Participant(s). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in (iii) and (iv) of **Section 15.2(a)** that affects such Participant. Borrowers agree that each Participant shall be entitled to the benefits of **Sections 14.1, 14.2 and 14.3** (subject to the requirements and limitations therein, including the requirements under **Section 14.3** (it being understood that the documentation required under **Section 14.3** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of **Section 14.4** as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under **Sections 14.2 or 14.3**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation pursuant hereto agrees, at Borrowers' request and expense, to use reasonable efforts to cooperate with Borrowers to effectuate the provisions of **Section 14.4** with respect to any Participant. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of **Section 15.6** as though it were a Lender; provided that such Participant agrees to be subject to **Section 5.6** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such

participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, or any promissory notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 14.

YIELD PROTECTION

14.1 Making or Maintaining Term SOFR 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 date after the Closing Date, with respect to any Term SOFR Loans, that reasonable and adequate means do not exist for ascertaining the interest rate applicable to such Term SOFR Loans, on the basis provided for in the definition of Term SOFR, Administrative Agent shall on such date give notice to Borrower Representative and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Term SOFR Loans, until such time as Administrative Agent notifies Borrower Representative and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Borrowers (or Borrower Representative) with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrowers (or Borrower Representative) and such Loans shall be automatically made or continued as, or converted to, as applicable, Base Rate Loans but without reference to the Term SOFR component of the Base Rate, unless Borrowers prepay such Loans prior thereto in accordance with the terms hereof. If the circumstances described in this **Section 14.1(a)** occur but only with respect to limited, but not all, tenors of the then applicable term rate Benchmark (including Term SOFR), then (i) Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such illegal or impracticable tenor and (ii) if a tenor that was removed pursuant to clause (i) of this sentence is subsequently displayed on a screen or information service for a Benchmark, then, Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(b) Illegality or Impracticability.

(i) Subject to **Section 14.1(b)(ii)**, in the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after notice to and consultation with the Borrower and Administrative Agent) that a Benchmark Illegality/Impracticability Event has occurred with respect to such Lender, such Lender shall be an “Affected Lender” and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and Administrative Agent of such determination (which notice

Administrative Agent shall promptly transmit to each other Lender). Thereafter (1) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Term SOFR Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Term SOFR Loan then being requested by Borrowers pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan without reference to Term SOFR (or other then-current Benchmark) component of the Base Rate, (3) the Affected Lender's obligation to maintain its outstanding Term SOFR 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 (4) the Affected Loans shall automatically convert into Base Rate Loans without reference to Term SOFR (or other then-current Benchmark) component of the Base Rate on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Term SOFR Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Borrower shall have the option, subject to the provisions of **Section 3.1(a)**, to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this **Section 14.1(b)(i)** shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Term SOFR Loans in accordance with the terms hereof. If a Benchmark Illegality/Impracticability Event occurs but only with respect to limited, but not all, tenors of the then applicable term rate Benchmark (including Term SOFR), then (i) Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such illegal or impracticable tenor and (ii) if a tenor that was removed pursuant to clause (i) of this sentence is not, or is no longer, subject to a Benchmark Illegality/Impracticability Event, then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(ii) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders (individually or jointly) notify Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower Representative) that the Required Lenders (as applicable) have determined, that a Benchmark Illegality/Impracticability Event has occurred, then, on a date and time determined by Administrative Agent (any such date, the "Benchmark Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated, the then current Benchmark will be replaced hereunder and under any Loan Document with the Benchmark Replacement.

Notwithstanding anything to the contrary herein, (i) if Administrative Agent determines that neither of the non-Term SOFR alternatives set forth in the definition of Benchmark Replacement is available on or prior to the Benchmark Replacement Date or (ii) a Benchmark Illegality/Impracticability Event has occurred with respect to any non-Term SOFR Benchmark Replacement then in effect, then in each case, Administrative Agent

and Borrowers may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Benchmark Replacement in accordance with this **Section 14.1** at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Benchmark Replacement Adjustment, giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such Benchmark Replacement Adjustment shall be published on an information service as selected by Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and Benchmark Replacement Adjustment shall constitute a Benchmark Replacement. Any such amendment shall become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower Representative without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders then comprising the Required Lenders.

Administrative Agent will notify (in one or more notices) Borrower Representative and each Lender of the implementation of any Benchmark Replacement.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by Administrative Agent.

Notwithstanding anything else herein, if at any time any Benchmark Replacement as so determined in accordance herewith would otherwise be less than zero percent (0%), the Benchmark Replacement will be deemed to be zero percent (0%) for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Benchmark Replacement, Administrative Agent will have the right to make Benchmark Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Benchmark Conforming Changes to Borrower Representative and the Lenders reasonably promptly after such amendment becomes effective.

Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this **Section 14.1(b)(ii)**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from

any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this **Section 14.1(b)(ii)**.

(c) Compensation for Breakage or Non Commencement of Interest Periods.

Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable out-of-pocket loss, cost and liabilities attributable to such event (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its Term SOFR 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 sustains: (i) if for any reason (other than a default by such Lender) a borrowing of any Term SOFR Loans does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Term SOFR Loans does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Term SOFR Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), including as a result of an assignment in connection with the replacement of a Lender pursuant to **Section 14.4(b)**; or (iii) if any prepayment of any of its Term SOFR Loans is not made on any date specified in a notice of prepayment given by Borrowers. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender for actual breakage or otherwise, as specified herein, and the circumstances giving rise thereto shall be delivered to Borrower Representative and shall be conclusive absent manifest error. In the absence of any such manifest error, Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Borrowers shall not be required to compensate a Lender pursuant to this **Section 14.1** for any such amounts incurred more than six (6) months prior to the date that such Lender delivers to Borrower Representative the foregoing certificate.

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

(e) Conforming Changes Relating to Term SOFR. In connection with the use or administration of Term SOFR, Administrative Agent will have the right to make Benchmark Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, and any amendments implementing such Benchmark Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Credit Document. Administrative Agent will promptly notify Borrowers and Lenders of the effectiveness of any Benchmark Conforming Changes in connection with the use or administration of Term SOFR.

(f) Rates. Administrative Agent does not warrant, nor accept responsibility, nor shall Administrative Agent have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement) or any related spread or other adjustment, including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, Term SOFR

Reference Rate, Term SOFR, or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Conforming Changes. Administrative Agent and its Affiliates or other Related Parties may engage in transactions that affect the calculation of the Base Rate, Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner that may be adverse to Borrowers. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, Term SOFR Reference Rate, Term SOFR, or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other Person or Entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity) or lost profits, for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

14.2 **Increased Costs.**

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

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

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or LC Issuer or the applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, LC Issuer or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such LC Issuer or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, LC Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, LC Issuer or other Recipient, Credit Parties will pay to such Lender, LC Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, LC Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital and Liquidity Requirements.** If any Lender (including Swing Line Lender) or LC Issuer determines that any Change in Law affecting such Lender or LC Issuer or any lending office of such Lender or LC Issuer or such Lender's or LC Issuer's holding company, if any, regarding capital or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's or LC Issuer's capital or on the capital of such Lender's or LC Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender hereunder or the Loans made by, or participations in Letters of Credit and Swing Line Loans held by, such Lender, or the Letters of Credit issued by such LC

Issuer, to a level below that which such Lender or LC Issuer or such Lender's or LC Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or LC Issuer's policies and the policies of such Lender's or LC Issuer's holding company with respect to capital adequacy and liquidity), then from time to time Credit Parties will pay to such Lender or LC Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or LC Issuer or such Lender's or LC Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or LC Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or LC Issuer or its holding company, as the case may be, as specified in subsections (a) or (b) of this **Section 14.2** and the circumstances giving rise thereto shall be delivered to Borrower Representative and shall be conclusive absent manifest error. In the absence of any such manifest error, Credit Parties shall pay such Lender or LC Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or LC Issuer to demand compensation pursuant to this **Section 14.2** shall not constitute a waiver of such Lender's or LC Issuer's right to demand such compensation, provided that Credit Parties shall not be required to compensate a Lender or LC Issuer pursuant to this **Section 14.2** for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or LC Issuer, as the case may be, delivers to Borrowers the certificate referenced in **Section 14.2(c)** and notifies Borrower Representative of such Lender's or LC Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

14.3 Taxes.

(a) Certain Terms. For purposes of this **Section 14.3**, and without limitation, the term "Lender" shall include LC Issuer and the term "Applicable Law" shall include FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Loan Document shall be made free and clear of, without any deduction or withholding for, any Taxes, except as otherwise may be required by Applicable Law. If any Applicable Law (as determined in the discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then, the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then, the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 14.3**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnification. (i) The Credit Parties shall jointly and severally indemnify each Recipient and shall make payment in respect thereof within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 14.3**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to Borrower Representative by a Recipient (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Lender Indemnity. Each Lender shall severally indemnify Administrative Agent and make payment to Administrative Agent within ten (10) Business Days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 13.1(d)** relating to the maintenance of a participant register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any expenses arising therefrom or with respect thereto, whether or not such 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 any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this subsection (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this **Section 14.3**, such Credit Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of a return reporting such payment or other evidence of such payment satisfactory to Administrative Agent.

(g) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower Representative and Administrative Agent, at the time or times reasonably requested by Borrower Representative or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative or Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower Representative or Administrative Agent as will enable Borrower Representative or Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material

unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower Representative and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in form and content satisfactory to Administrative Agent to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable); or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the

portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower Representative or Administrative Agent to determine the withholding or deduction required to be made; and

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

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

(h) Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its 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 14.3** (including by the payment of additional amounts pursuant to this **Section 14.3**), 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 14.3** 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 the indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (h) (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 clause (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (h) 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 Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection 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.

(i) Survival. Each party's obligations under this **Section 14.3** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

14.4 Mitigation Obligations; Designation of a Different Lending Office.

(a) Designation of a Different Lending Office. If any Lender requests compensation under **Section 14.2**, or requires Borrowers to pay any Indemnified Taxes or additional amounts to such Lender or any Governmental Authority for the account of such Lender pursuant to **Section 14.3**, then such Lender shall (at the request of Borrowers) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 14.2** or **Section 14.3**, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment **ON DEMAND**.

(b) Replacement of Lenders. If any Lender requests compensation under **Section 14.2**, or if a Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 14.3** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 14.4(a)**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then, Borrowers may, at their sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 15.2**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 14.2** or **Section 14.3**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if such other Lender accepts such assignment); provided that: (i) Borrowers shall have paid to Administrative Agent the assignment fee specified in **Section 13.1**; (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 14.1**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrowers (in the case of all other amounts); (iii) in the case of any such assignment resulting from a claim for compensation under **Section 14.2** or payments required to be made pursuant to **Section 14.3**, such assignment will result in a reduction in such compensation or payments thereafter; (iv) such assignment does not conflict with Applicable Law; and (v) in the case of any

assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Non-Consenting Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply. Except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 15.

MISCELLANEOUS

15.1 Notices.

(a) Notices Generally. Except as provided in subsection (b) of this **Section 15**, all notices and other communications provided for herein or in any other Loan Document shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, as follows:

(i) if to Administrative Agent, Borrowers, Borrower Representative or any other Credit Party, to the address, telecopier number or electronic mail address specified in **Appendix B**:

(ii) if to any Lender, the LC Issuer or Swing Line Lender, to the address, telecopier number or electronic mail address in its Administrative Questionnaire on file with Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) of this **Section 15**, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to Administrative Agent, the Lenders and the LC Issuer hereunder or under any other Loan Document may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures adopted or approved by Administrative Agent from time to time, provided that the foregoing shall not apply to notices to any Lender or the LC Issuer if such Lender or the LC Issuer, as applicable, has notified Administrative Agent and Borrower Representative that it is incapable of receiving such notices and other communications by electronic communication. Administrative Agent may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures adopted or approved by it, provided that adoption or 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 acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), 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, provided that, with respect to clauses (i) and (ii) above, 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.

(c) Change of Address, Etc. Any party hereto may change its address, telecopier number or e-mail address for notices and other communications hereunder and under any other Loan Documents by written notice to the other parties hereto in the manner prescribed in subsection (a) above.

(d) Platform.

(i) Each Credit Party agrees that Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the LC Issuer and the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”), at Borrowers’ expense. “Communications” (as used in this subsection (d)) means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Credit Party pursuant to any Loan Document or the transactions contemplated therein that is distributed to Administrative Agent or any of its Related Parties, including Administrative Agent Professionals (individually, an “Agent Party,” and, collectively, the “Agent Parties”), any Lender or the LC Issuer by means of electronic communications pursuant to this **Section 15.1**, including through the Platform.

(ii) The Platform is provided “as is” and “as available.” The Agent Parties do not warrant the adequacy of the Platform and expressly disclaim any liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall any Agent Party have any liability to Borrowers or the other Credit Parties, any Lender or any other Person for damages of any kind, including, without limitation, direct or indirect, special, punitive, incidental, exemplary or consequential damages, losses or expenses (whether in tort, contract or otherwise) or lost profits arising out of any Borrower’s, any other Credit Party’s or Administrative Agent’s transmission of Communications through the Platform.

(iii) Each Credit Party further agrees that certain of the Lenders may not wish to receive material non-public information with respect to the Credit Parties or their securities (each, to such extent, a “Public Lender”). The Credit Parties shall be deemed to have authorized the Agent Parties and the Lenders to treat any Communications marked “PUBLIC” as not containing any material non- public information with respect to the Credit Parties or their securities for purposes of United States federal and state securities laws. All Communications marked “PUBLIC” are permitted to be made available through a portion of the Platform designated as “Public Investor” (or another similar term). The Agent Parties, the Credit Parties and the Lenders shall treat any Communication that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor” (or such other similar term).

(iv) Each Public Lender agrees to cause at least one delegate 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 Communications that are not made available through the “Public Side” portion of the Platform and that may contain material non-public information with respect to any Credit Party or its securities for purposes of United States Federal or state securities laws.

15.2 **Amendments.**

(a) ~~Consent; Amendment; Waiver.~~ None of this Agreement, any other Loan Document or any term hereof or thereof may be amended orally, but only by an instrument in writing signed by the Required Lenders, or in the case of Loan Documents executed by Administrative Agent (and not the other Lenders), signed by Administrative Agent and approved by the Required Lenders and, in the case of an amendment, also by Credit Parties (or Borrower Representative acting on their behalf); provided, however, that:

(i) without the prior written consent of Administrative Agent, no modification shall be effective with respect to any provision in a Loan Document that relates to any rights, duties, or discretion of Administrative Agent; and without the prior written consent of Swing Line Lender and Administrative Agent, no amendment or waiver with respect to the provisions of **Section 2.3** shall be effective;

(ii) without the prior written consent of LC Issuer and Administrative Agent, no modification shall be effective with respect to any LC Obligations, the definitions of “LC Conditions” or “Defaulting Lender” (except to be more inclusive of the facts and circumstances that would cause a Lender to become a Defaulting Lender) or the terms of **Sections 2.4** and **6.2(e)** or that constitutes a waiver of any LC Condition or the condition precedent set forth in **Section 6.2(e)** (to the extent it relates to the issuance of or any amendment or other modification of or to a Letter of Credit);

(iii) without the prior written consent of each Lender directly affected thereby including a Defaulting Lender no modification shall be effective that would (A) increase the Commitment of such Lender (or reinstate any Commitment terminated pursuant to **Section 2.1(c)**); (B) reduce the amount of, or waive, delay or extend the payment of, or forgive the payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); provided that only the consent of the Required Lenders shall be necessary to waive any obligation of Borrowers to pay interest at the Default Rate during the existence of a Specified Event of Default; (C) extend the Stated Revolving Commitment Termination Date; (D) make (or permit the payment of) any Loan, interest, fee or other amount payable hereunder or under any other Loan Document in any currency other than a currency expressly provided herein or in any other Loan Document for such payment; or (E) amend or otherwise modify this clause (iii);

(iv) without the prior written consent of all Lenders (except, subject to clause (iii) above, a Defaulting Lender), no modification shall be effective that would (A) amend, waive, or alter the application of payments or obligations of Administrative Agent, LC Issuer or any Lender under **Section 5.5** or **Section 5.6** (except to the extent

provided in **Section 4.2**); (B) amend or waive the provisions of this **Section 15.2(a)**; (C) amend the definitions of “Pro Rata,” “Pro Rata Share” or “Required Lenders” or “Super-Majority Lenders” (and any defined terms used in each such definition) or any other provision of this Agreement or any other Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; (D) release all or substantially all of the Collateral, except to the extent expressly permitted by the terms hereof or of any Security Document relative thereto; (E) release any Credit Party from liability for any Obligations, except to the extent expressly permitted by the terms hereof or of any Loan Document evidencing such liability; (F) contractually subordinate any of Administrative Agent’s Liens in and to the Collateral, except to the extent expressly permitted by the terms hereof or as contemplated by the Approved Intercreditor Agreement (including pursuant to the Term Cap as defined in the Approved Intercreditor Agreement); or (G) contractually subordinate the payment of any Obligations to any other Debt; or

(v) without the prior written consent of the Super-Majority Lenders (except a Defaulting Lender), increase the advance rates or amend the definition of “Borrowing Base” (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability; provided that the foregoing shall not impair the ability of Administrative Agent to add, remove, reduce or increase any Reserves.

The foregoing notwithstanding (1) this Agreement or any other Loan Document may be amended to increase the interest rate or any fees hereunder with the consent of Administrative Agent and Credit Parties (or Borrower Representative, acting on their behalf) only; (2) this Agreement and the other Loan Documents may be amended to reflect definitional, technical, and conforming modifications to the extent necessary to effectuate any increase in the Revolving Commitments (including any increase to be used solely for the issuance of Letters of Credit hereunder) pursuant to **Section 2.1(f)** with the prior written consent of Administrative Agent, Borrowers (or Borrower Representative, acting on their behalf) and each Lender, Eligible Assignee or LC Issuer participating in such increase pursuant to documentation satisfactory to Administrative Agent and Borrowers (or Borrower Representative, acting on their behalf) without the consent of any other Lender or other LC Issuer; (3) subject to **Section 8.3(b)** with respect to a security interest on any Real Estate, modifications to the Loan Documents may be made to the extent necessary to grant a security interest in additional Collateral to Administrative Agent for the benefit of the Secured Parties with the prior written consent of Administrative Agent and affected Credit Parties (or Borrower Representative, acting on their behalf) only pursuant to documentation satisfactory to Administrative Agent and such Credit Parties (or Borrower Representative, acting on their behalf) without the consent of any Lender or LC Issuer; (4) only the consent of Administrative Agent shall be required to amend **Appendix A** to reflect assignments of the Revolving Commitment and Loans in accordance with this Agreement; (5) modifications of a Loan Document that deal solely with the rights and duties of Lenders, Administrative Agent, and/or LC Issuer as among themselves shall not require the consent of any Credit Party; (6) modifications of a Loan Document to cure or correct administrative errors or omissions, or any ambiguity, omission, defect or inconsistency, or to effect or reflect administrative changes may be made by Administrative Agent and Credit Parties (or Borrower Representative, acting on their behalf) without the consent of any other party to the Loan Documents, so long as (A) such modification does not adversely affect the rights of any Lender in any material respect and (B) all Lenders shall have received at least five (5) Business Days’ prior written notice thereof and Administrative Agent shall not have received within five (5) Business Days after the date of receipt of such notice to the Lenders a written notice from the Required Lenders stating that the Required Lenders object to such modification, (7) if this Agreement or any Loan Document contains any blank spaces, such as for dates or amounts, Credit Parties and Lenders hereby authorize and direct Administrative Agent to

complete such blank spaces according to the terms upon which the transactions contemplated hereby or thereby were contemplated, and (8) only the consent of the parties to the Auto Borrow Agreement, the Fee Letter or any agreement relating to a Bank Product shall be required for any modification of such agreement, and any non-Lender that is party to any agreement relating to a Bank Product shall have no right to participate in any manner in modification of any other Loan Document.

(b) Amendment and Restatement. Notwithstanding anything contained herein to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of Credit Parties (or Borrower Representative, acting on their behalf) and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall be entitled to the benefit of **Sections 14, 15.3, and 15.4**), such Lender shall have no other Commitment or other obligation hereunder and shall have been Paid in Full all Obligations owing to it or accrued for its account under this Agreement. Any waiver or consent granted by Administrative Agent, LC Issuer or Lender shall not constitute a modification of this Agreement, except to the extent expressly provided in such waiver or consent, or constitute a course of dealing by such Persons at variance with the terms of the Agreement such as to require further notice by such Persons of such their intent to require strict adherence to the terms of the Agreement in the future.

(c) Strict Compliance. Administrative Agent, LC Issuer; and the Lenders expressly reserve the right to require strict compliance with the terms of this Agreement and each other Loan Document. No waiver or course of dealing shall be established by (i) the failure or delay of Administrative Agent, LC Issuer or any Lender to require strict performance of any Credit Party to this Agreement or any other Loan Document or to exercise any rights or remedies with respect to Collateral or otherwise; (ii) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (iii) acceptance by Administrative Agent, LC Issuer or any Lender of performance by any Credit Party under this Agreement or any other Loan Document in a manner other than that specified herein or therein.

(d) Payment for Consents. No Credit Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee, or otherwise, to any Lender in its capacity as a Lender hereunder as consideration for any consent by such Lender with respect to any amendment, waiver of other modification of or to any Loan Document, unless such remuneration or thing of value is concurrently paid, on substantially the same terms, on a Pro Rata basis, to all Lenders providing their consent. For avoidance of doubt, the foregoing limitation shall not apply to any fees paid to Administrative Agent in its capacity as Administrative Agent in such regard.

(e) Non-Consenting Lender.

(i) Each Borrower, LC Issuer and each Lender (including any Non-Consenting Lender) grants to Administrative Agent the option (without any obligation, however), in its capacity as a Lender, to purchase all (but not less than all) of a Non-Consenting Lender's portion of the Commitments, the Loans, and LC Obligations owing to it and any Notes held by it and all of its rights and obligations hereunder and under the other Loan Documents at a price equal to the outstanding principal amount of the Loans and LC Obligations for unreimbursed draws payable to such Non-Consenting Lender plus any accrued but unpaid interest on such Loans and any accrued but unpaid commitment fee arising under **Section 3.2(b)** and Letter of Credit Fees arising under **Section 3.2(c)** owing to such Non-Consenting Lender plus the amount necessary to Cash

Collateralize any Letters of Credit issued by such Non-Consenting Lender (if any). If Administrative Agent exercises its option under this **Section 15.2**, the Non-Consenting Lender shall promptly execute and deliver to Administrative Agent any Assignment Agreement and other agreements and documentation that Administrative Agent shall determine are necessary to effect such assignment and that are provided to such Non-Consenting Lender. If the Non-Consenting Lender fails for whatever reason to execute and delivery such Assignment Agreement, other agreements or other documentation within three (3) Business Days after the date of its receipt thereof, then, Administrative Agent shall have the power (at its election, but without obligation) to do so as attorney-in-fact for such Non-Consenting Lender, and any execution and delivery of such Assignment Agreement, such other agreements and such other documentation by Administrative Agent under such power of attorney shall binding upon such Non-Consenting Lender. Administrative Agent may assign its purchase option and powers under this **Section 15.2** to any Eligible Assignee if such assignment otherwise complies with the requirements of **Section 13.1**.

(ii) Borrowers may, at their sole expense and effort, replace such Non-Consenting Lender in accordance with **Section 14.4**.

15.3 Indemnity; Expenses. EACH CREDIT PARTY SHALL INDEMNIFY, DEFEND, SAVE, PROTECT, AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY “CLAIMS” AND “EXTRAORDINARY EXPENSES” (AS SUCH TERMS ARE DEFINED IN **SECTION 1.1**) OR OTHER LOSSES, COSTS, FEES OR EXPENSES THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE; provided, however, that in no event shall any Credit Party have any obligation thereunder to indemnify, defend or hold harmless an Indemnatee with respect to any Claim, Extraordinary Expense or other loss, cost, fee or expense that is determined in a final, non-appealable judgment by a court of competent jurisdiction by final and non-appealable judgment binding on such Indemnatee to have resulted solely from the gross negligence, bad faith or willful misconduct or a material breach of its obligations under the Loan Documents of such Indemnatee. In addition to all other Obligations, the obligations and liabilities described in this **Section 15.3** shall (a) constitute Obligations; (b) be in addition to, and cumulative with, any other indemnification provisions set forth elsewhere in this Agreement or any other Loan Document; (c) be secured by the Collateral; (d) be due and payable by Credit Parties **ON DEMAND**; (e) be chargeable against Borrowers’ in the manner set forth in **Section 4.1(b)** (provided, however, that Administrative Agent shall have no obligation to charge such amounts in such manner); and (f) survive termination of this Agreement and the other Loan Documents. In addition to the foregoing, Administrative Agent shall have the right at any time or from time to time while any Event of Default is continuing, to require that the obligations and liabilities described in this **Section 15.3** be Cash Collateralized. This **Section 15.3** shall not apply with respect to Taxes other than any Taxes that represent claims, damages or losses arising from any non-Tax claim.

15.4 Reimbursement Obligations. Without limiting the terms of **Section 15.3**, Credit Parties shall reimburse Administrative Agent for all Extraordinary Expenses and for all reasonable and documented legal, accounting, appraisal, consulting, and other fees and costs and expenses incurred by it in connection with (a) negotiation and preparation of this Agreement and the other Loan Documents, including any amendment, forbearance, waiver, restatement, supplement, waiver, consent or other modification thereof; (b) administration of and actions relating to any Collateral, this Agreement, any Loan Document, and the transactions contemplated hereby and thereby (including any actions taken to establish, perfect or maintain priority of Administrative Agent’s Liens in and to any Collateral, to maintain any insurance required hereunder, or to verify (or preserve) the existence or value of Collateral); (c) use of any Platform or Register; (d) credit investigations and background checks; and (e) subject to the limits of **Section 8.4(b)**, each inspection, field audit, field examination, or appraisal with

respect to any Credit Party, Subsidiary, or Collateral, whether prepared by Administrative Agent's personnel or a third party. Credit Parties also shall pay all Extraordinary Expenses of Administrative Agent and all reasonable and documented legal, accounting, appraisal, consulting, and other fees and costs and expenses incurred by Administrative Agent (and, subject to the limitations set forth below in this sentence, legal fees and expenses incurred by one primary counsel to the Lenders) in connection with the enforcement of, or any "workout," "restructuring," or an Insolvency Proceeding concerning any Credit Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents, or defending any of the Loan Documents, irrespective of whether a lawsuit or other Adverse Proceeding is brought, or in taking any enforcement action or any remedial action with respect to any Collateral (provided, that, the fees and expenses of counsel that are reimbursable pursuant hereto shall in any event be limited to one primary counsel to Administrative Agent and one primary counsel to the Lenders, one local counsel to Administrative Agent in each jurisdiction, that it determines to be necessary, one specialty counsel to Administrative Agent in each specialty area that it determines to be necessary (including insolvency law), and one or more additional counsel to Lenders in the case of an actual or potential conflict of interest). The parties agree that the costs and expenses indemnified by the Credit Parties hereunder shall not include expenses relating to disputes solely between or among the Lenders, in their respective capacities as such, or any dispute solely between or among a Lender, in its capacity as such, and its Affiliates (excluding, for the avoidance of doubt, expenses arising (i) in connection with disputes involving Administrative Agent (in its capacity as such) or the LC Issuer (in its capacity as such) on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand) or (ii) from acts or omissions of any Credit Parties or their Subsidiaries.

15.5 Performance of Credit Parties' Obligations. Administrative Agent may, in its discretion at any time and from time to time, at Credit Parties' expense, pay any amount or do any act required of a Credit Party under any Loan Document or otherwise requested by Administrative Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Administrative Agent's Liens in any Collateral, including any payment of any claim by any Third Party Claimant (including any judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim), or any discharge of a Lien. All payments, costs, and expenses (including Extraordinary Expenses) of Administrative Agent under this **Section 15.5** shall be reimbursed to Administrative Agent by Credit Parties, **ON DEMAND**, with interest from the date incurred to the date of payment thereof at the Default Rate. Any payment made or action taken by Administrative Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

15.6 Setoff. From and after the occurrence of any Event of Default and during the continuance thereof, in addition to (and not in limitation of) any rights now or hereafter granted under Applicable Law to Administrative Agent, LC Issuer, any Lender, or, subject to the provisions of **Section 13.1(d)**, any Participant, each subsequent holder of any of the Obligations, and each of their respective Affiliates (collectively, for purposes of this **Section 15.6**, the "Setoff Parties" and, individually, a "Setoff Party"), is hereby authorized by each Credit Party to setoff and to appropriate and apply any and all deposits (general or special, time or demand, including Debt evidenced by certificates of deposit, in each case, whether matured or un-matured, but excluding (x) any amounts held by any Setoff Party in any escrow payroll, trust, tax or fiduciary account and (y) without the prior consent of Administrative Agent, any Collection Account, and any other Debt at any time held or owing by any Setoff Party to or for the credit or the account of any Credit Party) against the Obligations as provided in this Agreement, irrespective of whether (a) any demand for such Obligations has been made; or (b) the Obligations have been accelerated as contemplated in **Section 11.2**; or (c) such Obligations are contingent or un-matured. Any sums obtained by any Setoff Party shall be subject to the requirements for application of payments to the Obligations as set forth in this Agreement. The rights granted to each Setoff Party under this

Section 15.6 may be exercised at any time or from time to time, without notice to any Credit Party or any other Person, except that each Setoff Party shall notify Administrative Agent promptly (but in any event within one (1) Business Day) after exercising such right of setoff, specifying the amount thereof. Each Credit Party hereby waives any right that it may have as a matter of Applicable Law to any such notice. In addition to the foregoing, and notwithstanding any provision hereof to the contrary, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of **Section 4.2** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, LC Issuer, Swing Line Lender and the other Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

15.7 Independence of Covenants; Severability. All covenants hereunder and under any other Loan Document shall be given independent effect so that if any particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise would 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. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. To the extent any such provision is found to be invalid or unenforceable under Applicable Law in a given jurisdiction, then (a) such provision shall be ineffective only to such extent; (b) the remainder of such provision and the other provisions of this Agreement and the other Loan Documents shall remain in full force and effect in such jurisdiction; and (c) such provision shall remain in full force and effect in any other jurisdiction. The foregoing shall be subject to **Section 3.2(g)**.

15.8 Cumulative Effect; Conflict of Terms. The parties to this Agreement and each other Loan Document acknowledge that different provisions of this Agreement and the other Loan Documents may contain requirements, limitations, restrictions, or permissions relating to the same subject matter and, in such case, all of such provisions shall be deemed to be cumulative (rather than instead of one another) and must be satisfied or performed, as applicable. Except as otherwise provided herein or in another Loan Document (by specific reference to the applicable provision of this Agreement), to the extent any provision contained in this Agreement conflicts directly with any provision in another Loan Document, then, the provision in this Agreement shall control.

15.9 Counterparts. This Agreement, the other Loan Documents and any amendments, waivers, or consents relating hereto or thereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which when taken together, shall constitute one and the same instrument.

15.10 Fax or Other Transmission. Subject to compliance with **Section 15.1** and in accordance therewith, delivery by one or more parties hereto of an executed counterpart of this Agreement and any other Loan Document via facsimile, telecopy or other electronic method of transmission pursuant to which the signature of such party can be seen or presumed sent (including Adobe Corporation's Portable Document Format or PDF) shall have the same force and effect as the delivery of an original manually executed counterpart of this Agreement and such other Loan Document 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. Any party delivering an executed counterpart of this Agreement or any other Loan Document to any other party pursuant hereto or to any other Loan Document by facsimile

or other electronic method of transmission in accordance with **Section 15.1**, shall also deliver an original executed counterpart thereof to such party, but the failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement or such other Loan Document. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or in any other Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form.

15.11 **Entire Agreement.** This Agreement and the other Loan Documents, together with all other instruments, agreements, supplements, and certificates executed by the parties in connection therewith or with reference thereto, embody the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof, and supersede all prior agreements, understandings negotiations, discussions, representations, warranties, commitments, proposals, offers, contracts and inducements, whether express or implied, oral or written, shall be deemed merged hereunto. There are no unwritten oral agreements between the parties to this Agreement and any other Loan Document.

15.12 **Relationship with Lenders.** The Debts, obligations and Commitments of each Lender hereunder and under each other Loan Document are several, and not joint, and no Lender shall be responsible for any Debts, obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of Entity. Amounts payable hereunder by Administrative Agent, LC Issuer or any Lender, on the one hand, to any other of such Persons, on the other hand, shall be separate and independent Debts and obligations, and claims by one of such Persons against any other of such Persons may proceed between such Persons without requiring the joinder of Administrative Agent, LC Issuer or any Lender as an additional party. Nothing in this Agreement and no action of Administrative Agent, LC Issuer or Lenders pursuant to the Loan Documents shall cause Administrative Agent, LC Issuer and the Lenders, or any of them, to be deemed a partnership, association, joint venture, or any other kind of Entity with each other or with any Credit Party, or to have any Control of each other or any Credit Party.

15.13 **No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Credit Parties acknowledge and agree that: (a) (i) the credit facility(ies) evidenced by this Agreement and each other Loan Document and any related arranging or other services by Administrative Agent, any Lender, any of their Affiliates or any Arranger are arm’s-length commercial transactions between Credit Parties and such Persons; (ii) Credit Parties have consulted their own legal, accounting, regulatory, and tax advisors to the extent they have deemed appropriate, in regard thereto; and (iii) Credit Parties are capable of evaluating and understanding, and do understand and accept, the terms, risks, and conditions of the transactions contemplated by this Agreement and the other Loan Documents; (b) each of Administrative Agent, LC Issuer, Lenders, their Affiliates and any Arranger is and has been acting solely as a principal in connection with the credit facility(ies) evidenced by this Agreement and each other Loan Document, is not the financial advisor, agent, or fiduciary of, to, or for any Credit Party or any of their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by this Agreement and the other Loan Documents, except as may be expressly set forth herein or therein; and (c) Administrative Agent, LC Issuer, Lenders, their Affiliates and any Arranger now or hereafter may be engaged in a broad range of transactions that involve interests that differ from the Credit Parties and their Affiliates and have no obligation to disclose any of such interests to any Credit Party or any such Affiliate at any time. To the fullest extent permitted by Applicable Law, each Credit Party hereby waives and releases any claims that it may have against Administrative Agent, LC Issuer, Lenders, their Affiliates and any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Agreement or any other Loan Document.

15.14 Confidentiality; Credit Inquiries. Each of Administrative Agent, LC Issuer and the Lenders agrees to maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective Related Parties (provided such Persons are informed of the confidential nature of the Information and instructed to keep the Information confidential); (b) to the extent requested by any Governmental Authority purporting to have jurisdiction over it; (c) to the extent required by Applicable Law or by any subpoena or similar legal process; (d) to the extent requested or required by any state, federal, or foreign authority or examiner regulating banks or banking or the making of loans and financial accommodations to others; (e) to any other party hereto or, as contemplated by **Section 13.1**, to any actual or prospective Transferee, and then only on a confidential basis consistent herewith and in no event to a Disqualified Institution; (f) in connection with the exercise of any remedies, the enforcement of any rights, or any action or proceeding relating to any Loan Documents; (g) subject to an agreement containing provisions substantially the same as this **Section 15.14**, to any actual or prospective Bank Product Provider (or its advisors); (h) with the consent of Borrower Representative (which consent shall not be unreasonably withheld, conditioned or delayed); (i) to the extent such Information (A) becomes publicly available other than as a result of a breach of this **Section 15.14**, or (B) is available to Administrative Agent, LC Issuer or any Lender or any of their respective Affiliates on a non-confidential basis from a source other than Credit Parties; (j) to any rating agency when required by it, provided, that before any such disclosure, such rating agency shall be advised of the confidential nature of such Information; (k) for purposes of establishing a "due diligence" defense; (l) in response to credit inquiries from third Persons concerning any Credit Party or any of its Subsidiaries (although none of Administrative Agent, any Lender or LC Issuer shall be required to respond thereto); and (m) to Gold Sheets and other similar bank trade publications (such information to consist of deal terms and other information customarily found in such publications). Notwithstanding the foregoing, Administrative Agent, LC Issuer and the Lenders may publish or disseminate general information describing the credit facility evidenced hereby, including the names and addresses of Credit Parties and their Subsidiaries and a general description of Credit Parties' and the Subsidiaries' businesses, and may use Credit Parties' logos, trademarks, insignia, or product photographs in any "tombstone" or comparable advertising materials on its website or in other of Administrative Agent, LC Issuer, or such Lender's marketing materials. As used in this **Section 15.14**, "Information" means all information received (whether before or after the Closing Date) from a Credit Party relating to it or its business. Any Person required to maintain the confidentiality of Information pursuant to this **Section 15.14** shall be deemed to have complied therewith if it exercises the same degree of care in regard thereto that it accords its own confidential information. Each of Administrative Agent, LC Issuer, and the Lenders acknowledges that (A) Information may include material non-public information concerning a Credit Party or Subsidiary; (B) it has developed compliance procedures regarding the use of material non-public information; and (C) it will handle such material non-public information in accordance with Applicable Law, including federal and state securities laws. Any of the foregoing to the contrary notwithstanding, (i) each Credit Party hereby authorizes each of Administrative Agent, LC Issuer and the Lenders (each, at its discretion and without any obligation to do so) to respond to usual and customary credit inquiries from third parties concerning any Credit Party, and (ii) Administrative Agent, LC Issuer and the Lenders shall not be obliged to return to any Credit Party any Information received from it, but may do so, subject to compliance with any regulatory and internal recordkeeping requirements then applicable thereto.

15.15 Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS OTHERWISE SPECIFIED BY THE TERMS HEREOF OR THEREOF OR UNLESS THE LAWS OF ANOTHER JURISDICTION MAY, BY REASON OF MANDATORY PROVISIONS OF SUCH LAW, GOVERN THE PERFECTION, PRIORITY, OR ENFORCEMENT OF SECURITY INTERESTS IN ANY COLLATERAL, SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION STATE, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES OR OTHER RULE OF LAW THAT WOULD CAUSE THE APPLICATION OF THE LAW OF ANY

JURISDICTION OTHER THAN THE LAW OF THE JURISDICTION STATE (BUT GIVING EFFECT TO FEDERAL LAWS RELATING TO NATIONAL BANKS).

15.16 Submission to Jurisdiction. EACH CREDIT PARTY HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE JURISDICTION STATE AND THE UNITED STATES DISTRICT COURT FOR EACH DISTRICT OF THE JURISDICTION STATE, IN RESPECT OF ANY PROCEEDING, DISPUTE, OR ADVERSE PROCEEDING BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO, AND EACH CREDIT PARTY AGREES THAT ANY SUCH PROCEEDING, DISPUTE, OR ADVERSE PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN SUCH COURTS. WITH RESPECT TO SUCH COURTS, EACH CREDIT PARTY IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS, AND DEFENSES THAT IT MAY HAVE REGARDING PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE, OR INCONVENIENT FORUM. EACH PARTY HERETO WAIVES PERSONAL SERVICE OF PROCESS OF ANY AND ALL PROCESS SERVED UPON IT AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES GENERALLY IN **SECTION 15.1**, SUCH SERVICE TO BE EFFECTIVE AT THE TIME SUCH NOTICE WOULD BE DEEMED DELIVERED UNDER **SECTION 15.1**. NOTHING HEREIN SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT, OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN ANY OTHER COURT OR JURISDICTION, NOR LIMIT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE ENFORCEMENT BY ADMINISTRATIVE AGENT OF ANY JUDGMENT OR ORDER OBTAINED IN ANY FORUM OR JURISDICTION. NOTHING CONTAINED HEREIN SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS (INCLUDING ENFORCEMENT OF ANY JUDGMENT OR ORDER) AGAINST ANY CREDIT PARTY IN ANY OTHER JURISDICTION OR LIMIT THE RIGHT OF ANY SUCH PERSON TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

15.17 Waivers; Limitation on Damages; Limitation on Liability.

(a) WAIVER OF JURY TRIAL. TO THE EXTENT FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH CREDIT PARTY, BY EXECUTION HEREOF, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ADVERSE PROCEEDING BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT, LC ISSUER, AND THE LENDERS TO ENTER INTO AND ACCEPT THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT. EACH CREDIT PARTY CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. EACH OF THE PARTIES HERETO AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH,

RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

(b) WAIVER OF CERTAIN DAMAGES. NO PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY SUCCESSOR OR ASSIGNEE OF SUCH PERSON, OR ANY THIRD PARTY BENEFICIARY, OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH ANY SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS AS A RESULT OF ANY TRANSACTION CONTEMPLATED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, IN THE CASE OF ADMINISTRATIVE AGENT, THE TAKING OF ANY ENFORCEMENT ACTION, PROVIDED THAT THE FOREGOING SHALL NOT OPERATE TO LIMIT THE CREDIT PARTIES' INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN RESPECT OF ANY DAMAGES PAID BY ANY INDEMNITEE TO ANY THIRD PARTY.

(c) OTHER WAIVERS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH CREDIT PARTY WAIVES (I) PRESENTMENT, DEMAND, PROTEST, NOTICE OF PRESENTMENT, NOTICE OF DISHONOR, DEFAULT, NON-PAYMENT, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION, OR RENEWAL OF ANY COMMERCIAL PAPER, ACCOUNTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER, AND GUARANTIES AT ANY TIME HELD BY ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER ON WHICH A CREDIT PARTY MAY IN ANY WAY BE LIABLE; (II) NOTICE BEFORE TAKING POSSESSION OR ARTICLE 9 CONTROL OF ANY COLLATERAL; (III) ANY BOND OR SECURITY THAT MIGHT BE REQUIRED BY A COURT BEFORE ALLOWING ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER TO EXERCISE ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS; (IV) NOTICE OF ACCEPTANCE HEREOF OR OF ANY OTHER LOAN DOCUMENT; (V) ALL RIGHTS TO INTERPOSE ANY CLAIMS, DEDUCTIONS, RIGHTS OF SETOFF, DISCOUNTS, CHARGE BACKS OR COUNTERCLAIMS OF ANY NATURE (OTHER THAN COMPULSORY COUNTERCLAIMS) IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL, OR ANY MATTER ARISING THEREFROM OR RELATING HERETO OR THERETO; AND (VI) ANY CLAIM UNDER ANY APPLICABLE LAW OR EQUITABLE PRINCIPLE REQUIRING ADMINISTRATIVE AGENT, LC ISSUER OR ANY LENDER TO MARSHAL ANY ASSETS IN FAVOR OF ANY CREDIT PARTY OR AGAINST ANY OBLIGATIONS OR OTHERWISE ATTEMPT TO REALIZE UPON ANY COLLATERAL OR ANY CLAIM AGAINST, OR COLLATERAL, OF ANY CREDIT PARTY, OR ANY APPRAISEMENT, EVALUATION, STAY, EXTENSION, HOMESTEAD, REDEMPTION, OR EXEMPTION LAWS NOW OR HEREAFTER IN FORCE TO PREVENT OR HINDER THE ENFORCEMENT OF THIS AGREEMENT. EACH CREDIT PARTY ACKNOWLEDGES THAT THE FOREGOING WAIVERS ARE A MATERIAL INDUCEMENT TO ADMINISTRATIVE AGENT, LC ISSUER AND THE LENDERS' ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THAT ADMINISTRATIVE AGENT, LC ISSUER AND THE LENDERS ARE RELYING UPON THE FOREGOING IN THEIR DEALINGS WITH CREDIT PARTIES.

(d) ACKNOWLEDGEMENT OF WAIVERS. EACH CREDIT PARTY HAS REVIEWED THE FOREGOING WAIVERS WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL AND OTHER RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF ANY ADVERSE PROCEEDING, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

15.18 **Limitation on Liability; Presumptions.** None of Administrative Agent, LC Issuer or any Lender shall have any liability to any Credit Party (whether in tort, contract, equity, or otherwise) for losses suffered by such Person in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement or any other Loan Document, or any act, omission, or event occurring in connection herewith or therewith, unless as determined by a court of competent jurisdiction by a final and non-appealable judgment binding on Administrative Agent, LC Issuer or any Lender that the losses were the result of acts or omissions constituting gross negligence, bad faith or willful misconduct or a material breach of its obligations under the Loan Documents on the part of Administrative Agent, LC Issuer or any Lender. In any such litigation, each of Administrative Agent, LC Issuer and each Lender shall be entitled to the benefit of the rebuttable presumption that each acted in Good Faith and with the exercise of ordinary and reasonable care in the performance by it of the terms of this Agreement and the other Loan Documents.

15.19 **PATRIOT Act Notice, etc.** Administrative Agent, LC Issuer and the Lenders hereby notify Credit Parties that pursuant to the requirements of the PATRIOT Act and other Applicable Law, including the Beneficial Ownership Regulation, Administrative Agent, LC Issuer and the Lenders are required to obtain, verify, and record information that identifies each Credit Party, including its legal name, address, tax ID number, and other information that will allow Administrative Agent, LC Issuer and the Lenders to identify it properly in accordance with the PATRIOT Act, the Beneficial Ownership Regulation and such other Applicable Law. Administrative Agent, LC Issuer and the Lenders may also require information, documents and certifications regarding each Credit Party, if any, and may require information, documents and certifications regarding each Credit Party's management and owners, such as legal names, addresses, social security numbers, and dates of birth. in accordance with the PATRIOT Act, the Beneficial Ownership Regulation and such other Applicable Law.

15.20 **Powers.** All powers of attorney granted to Administrative Agent, LC Issuer or any Lender herein or in any other Loan Document shall be deemed to be coupled with an interest and are irrevocable.

15.21 **No Tax Advice.** Each Credit Party acknowledges and agrees that, with respect to all tax and accounting matters relating to this Agreement, the other Loan Documents, or the transactions contemplated herein and therein, it has not relied on any representations made, consultation provided by, or advice given or rendered by Administrative Agent, LC Issuer, or any Lender, or any of their representatives, agents, or employees; and, instead, such Credit Party has sought, and relied upon, the advice of its own tax and accounting professionals with respect to all such matters.

15.22 **Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used to do so shall be that at which, in accordance with normal banking procedures Administrative Agent could purchase the first currency with such other currency on the Business Day preceding the date on which final judgment is given, as determined by Administrative Agent in its discretion. The obligation of each Credit Party in respect of any such sum due from it to Administrative Agent, LC Issuer or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which

such sum is denominated in accordance with the applicable provisions of this Agreement or any other Loan Document (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by Administrative Agent (for itself or on behalf of LC Issuer or a Lender) of any sum adjudged to be so due in the Judgment Currency, Administrative Agent may, in accordance with normal banking procedures, purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Administrative Agent, LC Issuer, or a Lender from any Credit Party in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Administrative Agent, LC Issuer, and each Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Administrative Agent, LC Issuer, or a Lender in such currency, Administrative Agent, LC Issuer, or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under Applicable Law).

15.23 Survival of Representations and Warranties, etc. (a) All representations and warranties made by any Credit Party under this Agreement and the other Loan Documents shall survive, and not be waived by, the execution of this Agreement or any other Loan Document by Administrative Agent, LC Issuer or any Lender, any investigation or inquiry by Administrative Agent, LC Issuer or any Lender or the making of any Loan or the issuance of any Letter of Credit. Without limiting the generality of the foregoing clause (a), all of the representations, warranties, covenants, and indemnities of **Section 7.23** and **Section 8.9** shall survive the termination of this Agreement, Payment in Full of the Obligations, and the release of Administrative Agent's Lien on any Borrowers or Subsidiaries' Properties, if any, and shall survive the transfer of any or all right, title, and interest in and to such Properties by such Persons, whether or not the transferee thereof is an Affiliate of such Persons.

15.24 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by or on behalf of any Credit Party or the transfer to Administrative Agent, LC Issuer, or any Lender of any Property (including through setoff) should for any reason subsequently be declared to be void or voidable under any Debtor Relief Law, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of Property (collectively, a “Voidable Transfer”), and if Administrative Agent, LC Issuer or any Lender, or any of them, is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that such Persons, or any of them, is required or elects to repay or restore, and as to all costs, expenses, and attorneys’ fees of such Persons related thereto, the liability of all affected Credit Parties automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

15.25 Acknowledgement of and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any Lender that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to

any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any applicable Resolution Authority.

15.26 **Certain ERISA Matters.**

(a) Status. Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and any Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR §2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with such Lender’s entrance into, participation in, administration of and performance in respect of any Loans, Letters of Credit or Commitments; or

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance in respect of any Loans, Letters of Credit or Commitments and this Agreement; or

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform in respect of any Loans, Letters of Credit or Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance in respect of any Loans, Letters of Credit or Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of any Loans, Letters of Credit, Commitments or this Agreement.

(b) No Fiduciary. In addition, unless clause (i) in the immediately preceding subsection (a) is true with respect to a Lender, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, any Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that none of Administrative Agent, any Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation

or exercise of any rights by Administrative Agent under this Agreement, any other Loan Document or any documents related to hereto or thereto).

15.27 **Time of Essence.** Time is of the essence in this Agreement and the other Loan Documents.

15.28 **Section Headings.** Section headings used herein and in the other Loan Documents are included herein for convenience of reference only and shall not constitute a part hereof or thereof for any other purpose or be given any substantive effect.

15.29 **Qualified Financial Contracts.** As used in this Section, the following terms have the following meanings: (i) "BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party; (ii) "Covered Entity" means any of the following: (A) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b); (B) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (C) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b); (iii) "Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (iv) "QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D). To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support," and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the United States or any other State or other jurisdiction of the United States): In the event that a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in Property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in Property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Remainder of page intentionally left blank; signatures appear on the following pages]

[SIGNATURE PAGES INTENTIONALLY OMITTED FROM THIS EXHIBIT A
TO FIRST AMENDMENT TO CREDIT AGREEMENT]

APPENDIX A

Lenders, Commitments, and Pro Rata Shares

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Pro Rata Share</u>
Regions Bank		
ServisFirst Bank		
Texas Capital Bank		
Webster Business Credit, a Division of Webster Bank, N.A.		
FirstBank		
Goldman Sachs Lending Partners LLC		
TOTAL:	\$225,000,000.00	100%

EXHIBIT I

Form of Intercreditor Agreement

(See attached.)

INTERCREDITOR AGREEMENT

dated as of _____, _____

among

**REGIONS BANK,
as Initial ABL Agent,**

**[•],
as Initial Term Agent,**

**[•],
as Initial Term Representative,**

and

**EACH ADDITIONAL TERM AGENT AND ADDITIONAL TERM REPRESENTATIVE FROM
TIME TO TIME PARTY HERETO**

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Exhibits:

- Exhibit A – Form of Additional Joinder Agreement
- Exhibit B – Form of Grantor Joinder Agreement

Schedules:

- Schedule 1 – Notice Provisions

INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (this “**Agreement**”) is dated as of [_____] [____], [____], and entered into by and between REGIONS BANK, in its capacities as administrative agent for the lenders and collateral agent for the secured parties under the ABL Documents, including its successors and assigns in such capacities from time to time (the “**Initial ABL Agent**”), [●], not in its individual capacity, but solely in its capacity as (i) trustee under the Indenture, including its successors and assigns in such capacity from time to time (in such capacity, the “**Initial Term Representative**”), and (ii) priority lien collateral agent under the Term Intercreditor Agreement, including its successors and assigns from time to time (in such capacity, the “**Initial Term Agent**”), and following the execution of an Additional Joinder Agreement, each Additional Term Agent and Additional Term Representative. Capitalized terms used in this Agreement not defined in this Preamble or in the Recitals below have the meanings assigned to them in Section 1 below.

RECITALS

ALPHA METALLURGICAL RESOURCES, INC., a Delaware corporation (the “**Company**”), the Subsidiaries of the Company party to the Acknowledgement to this Agreement as “**Borrowers**” and any other Subsidiaries of the Company that may become Borrowers under the Credit Agreement after the date hereof (the “**ABL Borrowers**”), each guarantor party thereto, each lender from time to time party thereto, the Initial ABL Agent, REGIONS BANK, as Swingline Lender, and REGIONS BANK and each other lender party thereto that has agreed in writing to act as an LC Issuer thereunder, as LC Issuers, have entered into that certain Credit Agreement dated as of October 27, 2023 (as amended, restated, supplemented or modified from time to time, the “**Initial ABL Credit Agreement**”) providing for a secured revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to the ABL Borrowers, including, but not limited to, issuing letters of credit. The obligation of the ABL Borrowers to repay such loans and other financial accommodations under the Initial ABL Credit Agreement is guaranteed by certain Subsidiaries of the Company identified as guarantors from time to time under the Initial ABL Credit Agreement (each, an “**ABL Guarantor**” and, collectively, the “**ABL Guarantors**”).

The Company has issued the [____]% Senior Secured Notes due [●] in an initial aggregate principal amount of [●] (the “**Initial Notes**”) under the Indenture dated as of [_____] [____], 20[____] (as amended, restated, supplemented, modified, replaced or refinanced from time to time, the “**Indenture**”), among the Company, certain Subsidiaries of the Company, the Initial Term Representative and the Initial Term Agent. The Initial Notes are guaranteed by each of the Subsidiaries of the Company party to the Acknowledgment to this Agreement and each other wholly owned domestic Subsidiary of the Company that becomes a borrower or guarantor under the ABL Credit Agreement (each, a “**Notes Guarantor**” and, collectively, the “**Notes Guarantors**”, and, together with the ABL Guarantors, the “**Guarantors**”, and together with the Company, the other ABL Borrowers and the ABL Guarantors, collectively, the “**Loan Parties**”).

The obligations of the ABL Borrowers and the ABL Guarantors under the ABL Documents and the Bank Product Obligations are to be secured (i) on a first priority basis by Liens on the ABL Priority Collateral and (ii) on a second priority basis by Liens on the Term Priority Collateral.

The obligations of the Company and the Notes Guarantors under the Term Documents are to be secured (i) on a first priority basis by Liens on the Term Priority Collateral and (ii) on a second priority basis by Liens on the ABL Priority Collateral.

The Initial ABL Agent, for itself and on behalf of the Initial ABL Claimholders, and the Initial Term Agent, for itself and on behalf of the Initial Term Claimholders it represents, desire to enter into this Agreement (i) to confirm the relative priority of their respective security interests in the assets of the Loan Parties, (ii) to provide for the application, in accordance with such priorities, of proceeds of such assets and properties, and (iii) to address certain other matters.

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION.

1.1. Defined Terms. Any terms (whether capitalized or lower case) used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; *provided* that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern. As used in this Agreement, the following terms shall have the following meanings:

“**ABL Agent**” means, collectively, (i) the Initial ABL Agent and (ii) any Person (including for purposes related to the administration of the ABL Collateral Documents) designated as an agent, administrative agent, trustee, representative, collateral agent or like title or role under any documents Refinancing any ABL Debt.

“**ABL Borrower Representative**” means the “Borrower Representative,” as that term is defined in the Initial ABL Credit Agreement, as in effect on the date hereof.

“**ABL Cap**” means, as of any date of determination, the greater of (i) up to \$360,000,000¹ outstanding under the ABL Credit Agreement or any other ABL Documents (with Letters of Credit and bankers’ acceptances issued thereunder being deemed to have a principal amount equal to the face amount thereof) and (ii) the sum of (A) 85% of the book value (calculated in accordance with GAAP) of the Inventory of the Company and any Restricted Subsidiaries (excluding LIFO reserves), (B) 90% of the book value of accounts receivable of the Company and any Restricted Subsidiaries, and (C) Qualified Cash; *provided* that (I) in each case under clauses (A) and (B), calculated on a pro forma basis by the greater of (x) the book value thereof set forth on the consolidated balance sheet of the Company as of the most recently ended fiscal quarter for which financial statements are available on the date of the incurrence of the applicable ABL Debt and (y) the book value thereof set forth on the consolidated balance sheet of the Company as of the most recently ended fiscal quarter for which financial statements were available on the effective date of the ABL Documents governing such ABL Debt, and (II) in the case of clause (C), calculated on a pro forma basis to be deemed to be the greater of the amount of Qualified Cash on each of the applicable dates specified in clause (I) of this proviso. Accruals in respect of ABL Debt (other than those described in clause (ii) of the definition of Excess ABL Debt), Indemnity Amounts in respect of ABL Debt, and Bank Product Obligations, in each case, shall not be subject to the ABL Cap and shall be ABL Priority Debt.

“**ABL Cash Collateral**” has the meaning set forth in Section 6.2(a).

¹ NTD: Amount calculated based on \$225 million ABL credit facility with \$75 million accordion.

“ABL Claimholders” means, as of any date of determination, the holders of the ABL Debt at that time, including (i) the ABL Agent, (ii) the ABL Lenders, and (iii) the Bank Product Providers in respect of Bank Product Obligations.

“ABL Collateral” means all of the assets of each and every Grantor, whether real, personal or mixed, with respect to which a Lien is granted (or purported to be granted) as security for any ABL Debt, including all proceeds and products thereof, and which, for the avoidance of doubt, shall not include any Excluded Property.

“ABL Collateral Documents” means the ABL Security Agreement, the ABL Mortgages and any other agreement, document or instrument pursuant to which a Lien is granted (or purported to be granted) securing any ABL Debt or under which rights or remedies with respect to such Liens are governed.

“ABL Credit Agreement” means, collectively, (i) the Initial ABL Credit Agreement and (ii) any other asset-based revolving credit facilities with banks or other institutional or other lenders providing for asset-based revolving credit loans or letters of credit, as such credit facility under clause (i) or (ii) of this definition, in whole or in part, in one or more instances, may be amended, restated, modified, supplemented, extended, renewed, refunded, restructured, Refinanced or replaced or otherwise modified from time to time and whether by the same or any other agent, lender or group of lenders or other party, so long as the agents or representatives of the holders of such indebtedness execute and deliver a joinder to this Agreement reasonably acceptable to the other parties hereto.

“ABL Debt” means all Obligations (as that term is defined in the Initial ABL Credit Agreement or any other ABL Credit Agreement) and all other amounts owing, due or secured under the terms of the ABL Credit Agreement or any other ABL Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys’ fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, Letters of Credit, Bank Product Obligations, obligations to provide cash collateral in respect of Letters of Credit or Bank Product Obligations or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts payable under or secured by any ABL Document (including, in each case, all interest, fees and other amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the ABL Documents but for the effect of the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such interest, fees or other amounts is allowable or allowed in such Insolvency Proceeding), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

“ABL Declined Lien” has the meaning set forth in Section 2.3(a).

“ABL Default” means any “Event of Default”, as that term is defined in the ABL Credit Agreement.

“ABL Default Disposition” has the meaning set forth in Section 5.1(h).

“ABL Deficiency Claim” means any portion of the ABL Debt consisting of an allowed unsecured claim under Section 506(a) of the Bankruptcy Code (or any similar provision under any other Bankruptcy Law).

“ABL DIP Financing” has the meaning set forth in Section 6.2(a).

“ABL DIP Financing Conditions” means that:

(i) (A) the Term Agent retains its valid and perfected Liens (that have not been avoided as of the date the relevant ABL DIP Financing initially becomes effective) with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (B) as to the Term Priority Collateral that existed as of the date of the commencement of such Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), the Term Agent's valid and perfected Liens (that have not been avoided as of the date the relevant ABL DIP Financing initially becomes effective) with respect to such Term Priority Collateral remain senior and prior to the Liens (inclusive of any Liens securing the ABL DIP Financing) of the ABL Agent or any other provider of ABL DIP Financing with respect to such Term Priority Collateral, and (C) as to Term Priority Collateral acquired by the applicable Grantor after the commencement of such Insolvency Proceeding (excluding proceeds of Term Priority Collateral existing prior to the commencement of such Insolvency Proceeding), either (x) neither the ABL Claimholders nor the Term Claimholders obtain a Lien with respect to such Term Priority Collateral or (y) if a Lien with respect to such Term Priority Collateral is granted to secure the ABL DIP Financing, then the Term Agent obtains a Lien with respect to such Term Priority Collateral and the Liens with respect to such Term Priority Collateral securing the ABL DIP Financing are junior and subordinate to the Liens of the Term Agent with respect to such Term Priority Collateral;

(ii) all Liens on ABL Priority Collateral securing any such ABL DIP Financing shall be senior to or on a parity with the Liens of the ABL Agent securing the ABL Debt on ABL Priority Collateral;

(iii) the proposed ABL Cash Collateral use or ABL DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the ABL Cash Collateral order or ABL DIP Financing documentation, as applicable (it being understood that the ABL DIP Financing documentation may require that the plan of reorganization provides for repayment of the ABL DIP Financing upon the effective date of such plan of reorganization);

(iv) the proposed ABL Cash Collateral order or ABL DIP Financing documentation does not expressly require the sale of all or substantially all of the Term Priority Collateral prior to a default under the ABL Cash Collateral order or ABL DIP Financing documentation;

(v) the ABL DIP Financing documentation provides that the loans and letters of credit (or banker's acceptances) outstanding thereunder on any date, when added to the outstanding principal balance of loans and letters of credit (or banker's acceptances) constituting pre-petition ABL Debt on such date, may not exceed the ABL Debt Cap on such date (with such letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof); and

(vi) any of the ABL Claimholders may seek adequate protection, to the extent, but only to the extent, expressly permitted under this Agreement;

provided, that the ABL Agent may seek, and the Term Agent may object to, any other ABL DIP Financing that does not meet all of the conditions set forth above so long as such ABL DIP Financing is not secured by Liens on the Term Priority Collateral that are senior to or *pari passu* with the valid Liens of the Term Agent securing the Term Debt in an amount up to the Term Priority Debt.

“**ABL Documents**” means the ABL Credit Agreement, the ABL Collateral Documents, each of the other “Loan Documents” (as that term is defined in the ABL Credit Agreement) and each of the other agreements, documents and instruments executed pursuant thereto or in connection therewith.

“**ABL Lenders**” means, as of any date of determination, the holders of the ABL Debt at that time, including the Initial ABL Lenders.

“**ABL Mortgages**” means each Mortgage under which any Lien on Real Property or Fixtures owned or leased by any Grantor is granted to secure any ABL Debt or under which rights or remedies with respect to any such Liens are governed.

“**ABL Priority Collateral**” means all rights, title and interests of each Grantor in the following Collateral, in each case, whether now owned or existing or hereafter acquired or arising and wherever located, including, without duplication, (a) all rights of each Grantor to receive moneys due and to become due under or pursuant to, or arising from the sale, lease or other disposition, the following, (b) all rights of each Grantor to receive return of any premiums for or Proceeds of any insurance, indemnity, warranty or guaranty with respect to the following or to receive condemnation Proceeds with respect to the following, (c) all claims of each Grantor for damages arising out of or for breach of or default under any of the following and (d) all rights of each Grantor to terminate, amend, supplement, modify or waive performance under any of the following, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder:

(i) all Accounts, but solely for purposes of this clause (i), excluding rights to payment for any property which specifically constitutes Term Priority Collateral that has been sold, leased, licensed, assigned or otherwise disposed of; *provided, however*, that, for the avoidance of doubt, all rights to payment arising from any sale, lease, license, assignment or other disposition of Inventory or Goods (other than Fixtures or Equipment) or the provision of services shall constitute ABL Priority Collateral;

(ii) all Chattel Paper, all tax refunds, all intercompany debt and all business interruption insurance;

(iii) all Deposit Accounts, Securities Accounts and all other demand, deposit, time, savings, cash management, passbook and similar accounts maintained with any bank or other financial institution (other than to the extent any such Deposit Accounts, Securities Accounts or other accounts solely contain identifiable Proceeds of any Term Priority Collateral) and all cash, money, securities, Instruments and other investments deposited or required to be deposited in any of the foregoing;

(iv) (A) all As-Extracted Collateral, (B) without limiting clause (A), all Inventory (including, without limitation, all minerals (including coal and coal products) that have been extracted from real property, but excluding, for the avoidance of doubt, any minerals (including coal and coal products) that have not yet been extracted from real property), and (C) all rights to receive payments, indebtedness and other obligations which arise as a result of the sale, lease or other disposition of As-Extracted Collateral, Inventory or other Goods (other than Fixtures and Equipment) or provision of services, including the right to payment of interest or finance charges;

(v) all cash, Money and Cash Equivalents (other than (1) identifiable Proceeds of any Term Priority Collateral and (2) cash solely for so long as it is pledged to third parties to the extent permitted under Sections Section 9.2(e), (m), (p) or (q) of the Initial ABL Credit Agreement or any equivalent provisions in any successor ABL Credit Agreement);

(vi) to the extent evidencing, governing or arising from the sale or lease of any of the items referred to in the preceding clauses (i) through (v), all General Intangibles (excluding Equity Interests and any Intellectual Property to the extent such Intellectual Property is not attached to or necessary to sell any item of Inventory), letters of credit (whether or not the respective letter of credit is evidenced by a writing), Letter-of-Credit Rights, Instruments and Documents; *provided* that to the extent any of the foregoing also relates to any Term Priority Collateral, only that portion related to or arising from the sale or lease of any of the items referred to in the preceding clauses (i) through (v) as being included in the ABL Priority Collateral shall be included in the ABL Priority Collateral;

(vii) to the extent relating to or arising from the disposition or loss of any of the items referred to in the preceding clauses (i) through (vi), all insurance; *provided* that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to or arising from the items referred to in the preceding clauses (i) through (vi) as being included in the ABL Priority Collateral shall be included in the ABL Priority Collateral;

(viii) to the extent relating to or arising from any of the items referred to in the preceding clauses (i) through (vii), all Supporting Obligations; *provided* that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to or arising from the items referred to in the preceding clauses (i) through (vii) as being included in the ABL Priority Collateral shall be included in the ABL Priority Collateral;

(ix) to the extent relating to or arising from any of the items referred to in the preceding clauses (i) through (viii), all Commercial Tort Claims; *provided* that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion related to or arising from the items referred to in the preceding clauses (i) through (viii) as being included in the ABL Priority Collateral shall be included in the ABL Priority Collateral;

(x) all Books and records, including all books, databases, customer lists and records related thereto and any General Intangibles at any time evidencing, relating to or arising from any of the foregoing; and

(xi) all cash Proceeds and, solely to the extent not constituting Term Priority Collateral, non-cash Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (including all insurance Proceeds) and all collateral security, guarantees and other collateral support given by any Person with respect to any of the foregoing;

provided, however, that (x) if Collateral of any type is received in exchange for ABL Priority Collateral pursuant to an Enforcement Action or during an Insolvency Proceeding, such Collateral will be treated as ABL Priority Collateral and (y) if Collateral of any type is received in exchange for Term Priority Collateral pursuant to an Enforcement Action or during an Insolvency Proceeding, such Collateral will be treated as Term Priority Collateral. For the avoidance of doubt, subject to the last sentence of Section 2.4(b), no Excluded Property shall constitute ABL Priority Collateral.

“ABL Priority Debt” means all ABL Debt excluding Excess ABL Debt and including any ABL DIP Financing.

“ABL Priority Standstill Period” has the meaning set forth in Section 3.1.

“ABL Purchase Notice” has the meaning set forth in Section 10.1(a).

“ABL Purchase Option Period” has the meaning set forth in Section 10.1(a).

“ABL Purchase Option Trigger” means any of the following events: (i) the acceleration of the maturity date of all or a portion of the Term Debt pursuant to the Term Documents; (ii) the commencement of Enforcement Action against the Term Priority Collateral by the Term Agent; or (iii) the commencement of an Insolvency Proceeding with respect to any Grantor.

“ABL Required Lenders” means “Required Lenders” (as defined in the ABL Credit Agreement).

“ABL Secured Claim” means any portion of the ABL Debt not constituting an ABL Deficiency Claim.

“ABL Security Agreement” means the “Security Agreement”, as that term is defined in the Initial ABL Credit Agreement as in effect on the date hereof.

“Accruals” means, on any date of determination thereof, all accrued but unpaid interest, fees, and other charges (including Enforcement Expenses) owing by any Loan Party to any applicable Claimholder under any of the applicable Loan Documents on such date, including any advances made by any Claimholder to pay such amounts and interest accrued upon any such advances. **“Accruals”** shall expressly include any and all interest, fees, costs and expenses (including Enforcement Expenses) incurred after the commencement of any Insolvency Proceeding, regardless of whether any Claimholder’s claim therefor is allowed or allowable in such Insolvency Proceeding.

“Act of Required Secured Parties” shall have the meaning ascribed to such term in the Term Intercreditor Agreement.

“Additional Joinder Agreement” shall mean a joinder agreement in the form of Exhibit A hereto.

“Additional Term Agent” means each Person appointed to act as trustee, agent or representative for the holders of Additional Term Debt pursuant to any Additional Term Debt Agreement for the purpose of receiving a lien on the collateral pledged as security for such Additional Term Debt.

“Additional Term Debt” means indebtedness and other obligations (including, for the avoidance of doubt, Term Hedging Obligations) of the Grantors issued or incurred following the date of this Agreement to the extent (i) such indebtedness is, or other obligations are, designated in writing to each Agent as “Additional Term Debt” by the Company, (ii) such indebtedness or other obligation is not prohibited by the terms of the ABL Credit Agreement, the Indenture, any other Term Credit Facility Agreement or any other Additional Term Debt Agreement from being secured by Liens on the Collateral, (iii) if applicable, the Grantors have granted new Liens, on or about the closing date of such indebtedness or other obligations, on the Collateral to secure the obligations in respect of such indebtedness or other obligations and (iv) the Additional Term Agent (to the extent not already a party to this Agreement) and the Additional Term Representative, in each case, for the holders of such indebtedness or obligations, has entered into an Additional Joinder Agreement on behalf of the Term Claimholders under such agreement acknowledging that such holders shall be bound by the terms hereof applicable to Term Claimholders.

“Additional Term Debt Agreement” means the indenture, credit agreement, ISDA agreement (including any Term Hedge Agreement) or other agreement under or by which any Additional Term Debt is incurred.

“Additional Term Representative” means (i) each Person appointed to act as trustee, agent or representative for the holders of Additional Term Debt, and/or (ii) each Term Hedge Provider, in each case, pursuant to any Additional Term Debt Agreement for purposes other than receiving a lien on the collateral pledged as security for such Additional Term Debt.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Agent” means the ABL Agent or the Term Agent, or both, as the context requires.

“Agreement” has the meaning set forth in the preamble hereto.

“Bank Product Obligations” means any obligations constituting “Bank Product Obligations” (or similar term) (as defined in the ABL Credit Agreement) that are owed to a Bank Product Provider.

“Bank Product Provider” means a “Bank Product Provider” (or similar term) (as defined in the ABL Credit Agreement).

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Law” means the Bankruptcy Code and any other federal, state or foreign law for relief of debtors.

“Books” means books, records, ledger cards, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer software and related documentation, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence, indicate, summarize or contain information relating to any assets (including the Collateral) or liabilities of any Grantor or any Grantor’s business operations or financial condition.

“Business Day” means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York City or the place of payment.

“Capital Stock” means: (i) in the case of a corporation, corporate stock or shares; (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Casualty Receipt” means any cash received by or paid to any Person as a result of proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) and condemnation awards (and payments in lieu thereof); *provided, however*, that a Casualty Receipt shall not include cash receipts from proceeds of insurance or condemnation awards (or payments in lieu thereof) or indemnity payments to the extent that such proceeds or awards (i) are received by such Person in respect of loss or damage to Inventory, equipment, fixed assets or real property and are applied (or in respect of which expenditures were previously incurred) to replace

or repair the Inventory, equipment, fixed assets or real property in respect of which such proceeds were received or to acquire or construct other assets useful in the business of the Person and/or its Subsidiaries in accordance with the applicable Loan Documents or (ii) are received by such Person in respect of any third party claim against, or liability of, such Person and are applied to pay (or to reimburse such Person for its prior payment of) such claim or liability and the costs and expenses of such Person with respect thereto.

“Claimholders” means the ABL Claimholders and the Term Claimholders, or any one of them.

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

“Collateral” means all of the assets of each and every Grantor, whether real, personal or mixed, constituting ABL Collateral or Term Collateral.

“Collateral Documents” means the ABL Collateral Documents or the Term Collateral Documents, as the context requires.

“Collateral Proceeds” means proceeds received by any Grantor or any Subsidiary of a Grantor or any Claimholder in respect of any Casualty Receipt or Disposition or series of related Dispositions (whether as a result of an Enforcement Action, a Disposition or series of related Dispositions by one or more of the Grantors, or otherwise).

“Company” has the meaning set forth in the recitals to this Agreement.

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

“Debt” means the ABL Debt or the Term Debt, as the context requires.

“Declined Lien” has the meaning set forth in Section 2.3.

“Disposition”, **“Dispose”** or **“Disposing”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other similar right), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable, or any rights and claims associated therewith or entering into an agreement to do the same.

“Enforcement Action” means any of the following taken after the occurrence of an ABL Default or a Term Default, as applicable:

- (i) the taking of any action to enforce any Lien in respect of the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC or other applicable law, or the taking of any action in an attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition;

(ii) the exercise of any right or remedy *provided* to a secured creditor under the ABL Documents or the Term Documents (including, in either case, any delivery of any notice to seek to obtain payment directly from any account debtor of any Grantor or any depository bank, securities intermediary or other person obligated on any Collateral of any Grantor, the taking of any action or the exercise of any right or remedy in respect of the Collateral, or the exercise of any right of setoff or recoupment with respect to obligations owed to any Grantor), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of an obligation;

(iii) the Disposition by a Claimholder of all or any portion of the Collateral, by private or public sale or any other means;

(iv) the solicitation of bids from third parties to conduct the Disposition by a Claimholder of all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition by a Claimholder of such Collateral within a commercially reasonable time;

(v) the engagement or retention by a Claimholder of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers or other third parties for the purpose of valuing, marketing or Disposing by a Claimholder of all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition by a Claimholder of such Collateral within a commercially reasonable time;

(vi) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any Equity Interests composing a portion of the Collateral) whether under the ABL Documents, the Term Documents, under applicable law of any jurisdiction, in equity, in an Insolvency Proceeding or otherwise (including the commencement of applicable legal proceedings or other actions with respect to all or a material portion of the Collateral to facilitate the actions described in the preceding clauses); and

(vii) the pursuit of ABL Default Dispositions or Term Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time.

For the avoidance of doubt, the following shall not constitute an Enforcement Action: (a) the imposition of a default rate or a late fee, (b) the suspension or termination of the commitments to lend under the ABL Documents or under the Term Documents, (c) the consent by the ABL Agent or the requisite ABL Lenders to the disposition by any Grantor of any of the ABL Priority Collateral (other than an ABL Default Disposition with respect to a material portion of the ABL Priority Collateral), (d) the consent by the Term Agent or the requisite Term Lenders to the disposition by any Grantor of any of the Term Priority Collateral (other than a Term Default Disposition with respect to a material portion of the Term Priority Collateral), (e) the filing of a proof of claim in any Insolvency Proceeding or the seeking of adequate protection in accordance with the terms of this Agreement, (f) the acceleration of the Term Debt or the ABL Debt, (g) the exercise of cash dominion with respect to any deposit account based on the amount of Liquidity (as that term is defined in the ABL Credit Agreement), (h) the implementation of reserves against borrowing availability under the ABL Credit Agreement, (i) the reduction of advance rates under the ABL Credit Agreement, and (j) the exercise by any Bank Product Provider of any right of offset with respect to Bank Product Obligations.

“Enforcement Expenses” means all costs, expenses, fees and advances that any Claimholder may make, suffer or incur, in each case after the occurrence of any ABL Default or Term Default on account of or in connection with (i) the repossession, storage, repair, appraisal, insuring, completion of the manufacture, preparing for sale, advertising for sale, selling, collecting, or otherwise preserving of, or realizing upon, any Collateral; (ii) the settlement or satisfaction of any prior Lien or other encumbrance upon any of the Collateral; (iii) the retention by a Claimholder of consultants, including turnaround management consultants, accountants, attorneys, appraisers, auctioneers and environmental engineers; or (iv) the enforcement of any of the ABL Documents or Term Documents, as applicable, the collection of any of the ABL Debt or Term Debt, as applicable, or any other Enforcement Action. Such costs, expenses, fees and advances may include, without limitation, storage fees, legal fees, court costs, appraisal fees, brokers’ fees and commissions, auctioneers’ fees and commissions, environmental assessment fees, and wages and salaries paid to employees of any Loan Party or any independent contractors in liquidating or collecting any Collateral.

“Enforcement Notice” means a written notice delivered by either the ABL Agent or the Term Agent to the other stating (i) that an ABL Default or a Term Default, as applicable, has occurred and is continuing under any ABL Credit Agreement or any Term Credit Facility Agreement, as applicable, and specifying the nature of the relevant event of default, and (ii) that an Enforcement Period has commenced with respect to the applicable Priority Collateral.

“Enforcement Period” means the period of time following the receipt by either the ABL Agent or the Term Agent of an Enforcement Notice from the other and continuing until the earliest of (i) in case of an Enforcement Period commenced by the Term Agent, the Payment in Full of Term Priority Debt, (ii) in the case of an Enforcement Period commenced by the ABL Agent, the Payment in Full of ABL Priority Debt and (iii) the ABL Agent or the Term Agent (as applicable) terminates the Enforcement Period (including in connection with a waiver or cure of each event of default that gave rise to such Enforcement Notice) by written notice delivered to the other.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Excess ABL Debt” means the sum of (i) the amount by which the principal amount of the loans and (to the extent not constituting loans under the ABL Credit Agreement) reimbursement obligations with respect to drawn Letters of Credit outstanding under the ABL Documents and the undrawn amount of Letters of Credit outstanding under the ABL Documents (other than any ABL DIP Financing) exceeds the ABL Cap, plus (ii) the portion of Accruals that accrue or are charged with respect to that portion of the principal amount of the loans, reimbursement obligations and Letters of Credit described in clause (i) of this definition.

“Excess Term Debt” means the sum of (i) the amount by which the principal amount of the notes or loans outstanding under the Term Documents (other than any Term DIP Financing) exceeds the Term Cap, plus (ii) the portion of Accruals that accrue or are charged with respect to that portion of the principal amount of the notes and loans in clause (i) of this definition.

“Excluded Property” means (i) any assets described as “Excluded Collateral” in the ABL Security Agreement or “Excluded Assets” in the Term Credit Facility Agreement or (ii) any other assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is not granted (and not purported to be granted) as security for the ABL Debt and the Term Debt (excluding, for the avoidance of doubt, any asset that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute Collateral).

“Exigent Circumstances” means the occurrence or existence of any one or more of the following events or conditions: (a) an Insolvency Proceeding is commenced by or against any Grantor, (b) a fraud, concealment of assets, or material misrepresentation has been made or committed by any Grantor, (c) any Grantor withholds from the applicable Agent any proceeds of its Priority Collateral in violation of any applicable Loan Document, (d) a Person (other than the applicable Agent) holding a Lien upon any of the applicable Agent’s Priority Collateral shall commence any action, suit, proceeding or self-help remedy to enforce such Lien (but, in such case, **“Exigent Circumstances”** shall only be deemed to exist as to such Priority Collateral that is the subject of such action, suit, proceeding or self-help remedy), or (e) any event or circumstance occurs or exists that materially and imminently threatens the ABL Agent’s ability promptly to realize upon all or any material part of the ABL Priority Collateral or the Term Agent’s ability promptly to realize upon all or any material part of the Term Priority Collateral, as the case may be, such as, without limitation, fraudulent removal, concealment or abscondment, destruction (to the extent not covered by insurance) or material waste thereof.

“Final Order” means an order of a court of competent jurisdiction as to which the time to appeal, petition for certiorari or move for re-argument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for re-argument or rehearing shall then be pending or, in the event that an appeal, writ of certiorari or re-argument or rehearing thereof has been filed or sought, such order shall have been affirmed or confirmed by the highest court to which such order was appealed, or from which certiorari, re-argument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for re-argument or rehearing shall have expired; *provided* that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Federal Rules of Bankruptcy Procedure or applicable state court rules of civil procedure may be filed with respect to such order shall not cause such order not to be a Final Order.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession), which are in effect on the date hereof.

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

“Grantors” means the Loan Parties and each other person that may, from time to time, execute and deliver an ABL Collateral Document or a Term Collateral Document as a “debtor,” “grantor,” “obligor” or “pledgor” (or the equivalent thereof) or that may, from time to time, be (or whose assets may be) subject to a judgment lien in favor of any of the ABL Claimholders or any of the Term Claimholders in respect of the ABL Debt or the Term Debt, as applicable, and “Grantor” means any one of them.

“Guarantors” has the meaning set forth in the recitals to this Agreement and “Guarantor” means any one of them.

“Indemnity Amounts” means, on any date, the amount required to be paid by any Loan Party to any ABL Claimholder or Term Claimholder, as applicable, on such date pursuant to any indemnity provisions contained in any of the ABL Documents (excluding any obligation to pay any Loans or LC Obligations (in each case as defined in the ABL Credit Agreement) or Accruals) or Term Documents (excluding any obligation to pay any loans made pursuant to the Term Documents or Accruals).

“Indenture” has the meaning set forth in the recitals to this Agreement.

“Inalienable Interests” has the meaning set forth in Section 4.4.

“Initial ABL Agent” has the meaning set forth in the preamble to this Agreement.

“Initial ABL Claimholders” means, as of any date of determination, the holders of the “Obligations”, as that term is defined in the Initial ABL Credit Agreement, at that time, including (i) the Initial ABL Agent, (ii) the Initial ABL Lenders, and (iii) the Bank Product Providers.

“Initial ABL Credit Agreement” has the meaning set forth in the recitals to this Agreement.

“Initial ABL Lenders” means the “Lenders”, as that term is defined in the Initial ABL Credit Agreement (including each L/C Issuer and the Swingline Lender (as those terms are defined in the Initial ABL Credit Agreement)).

“Initial Noteholders” means the holders from time to time of the Initial Notes.

“Initial Notes” has the meaning set forth in the recitals to this Agreement.

“Initial Term Agent” has the meaning set forth in the preamble to this Agreement.

“Initial Term Claimholders” means, as of any date of determination, the holders of the “Obligations”, as that term is defined in the Term Credit Facility Agreement, at that time, including (i) the Initial Term Agent, (ii) the Initial Term Representative and (iii) the Initial Noteholders.

“Initial Term Representative” has the meaning set forth in the preamble to this Agreement.

“Insolvency Proceeding” means:

- (i) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor;
- (ii) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership, liquidation or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;
- (iii) any liquidation, dissolution or winding up of any Grantor (other than any of the foregoing permitted under the ABL Documents and the Term Documents) whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or
- (iv) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any Grantor.

“Intellectual Property” means all intellectual property of every kind and nature and any other similar intangible rights throughout the world, including inventions, designs, patents, copyrights, licenses, trademarks and service marks (including the goodwill connected with the use thereof and symbolized thereby), domain names, trade secrets, confidential or proprietary technical and business information, know-how or other confidential or proprietary data or information, technology, processes, software and databases, together with any and all (i) rights and privileges arising under applicable law with

respect to the foregoing, (ii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iii) rights to sue for past, present or future infringements thereof and (iv) rights corresponding thereto throughout the world.

“Junior 507(b) Claims” has the meaning set forth in Section 6.5(a)(vi).

“Junior Agent” means, with respect to the ABL Priority Collateral, the Term Agent, and with respect to the Term Priority Collateral, the ABL Agent.

“Junior Claimholders” means, with respect to the ABL Priority Collateral, the Term Claimholders, and with respect to the Term Priority Collateral, the ABL Claimholders.

“Junior Collateral” means, with respect to the ABL Debt, all Term Priority Collateral, and with respect to the Term Debt, all ABL Priority Collateral.

“Junior Debt” means, with respect to the ABL Priority Collateral, the Term Debt, and with respect to the Term Priority Collateral, the ABL Debt.

“Letters of Credit” means the **“Letters of Credit”**, as that term is defined in the ABL Credit Agreement.

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

“Loan Documents” means ABL Documents or Term Documents, as the context requires.

“Loan Parties” has the meaning specified in the recitals to this Agreement.

“Material Owned Real Property” means (i) as of the date of this Agreement, all Real Property consisting of a fee estate, excluding any fixtures or improvements located on leased land, located in Virginia, West Virginia or Pennsylvania owned by the Company or any other Grantor that is essential to the Company’ mine plan or surface operations (including the transportation and/or shipping of coal, support for mining activities and maintenance of underground and surface equipment) for the period from the date hereof to [_____] [____], 20[●], as determined by the Company on the date hereof in its reasonable judgment (which, for the avoidance of doubt, includes the Real Property set forth on Schedule 4 to the ABL Security Agreement), and (ii) any other Real Property consisting of contiguous fee estates, excluding any fixtures or improvements located on leased land, that the Company or any other Grantor acquires an ownership interest in after the date hereof for the purpose of mining or conducting mining operations on such Real Property (including, without limitation, extraction of coal and other minerals and the processing and transport thereof) the fair value of which, as of the date of acquisition thereof, is equal to or greater than \$10,000,000 of contiguous fee estates as determined by the applicable tax assessor.

“Mine” means any excavation or opening into the earth in the United States now and hereafter made from which coal or other minerals are or can be extracted on or from any of the real properties in which any Person holds an ownership, leasehold or other interest.

“Mortgaged Property” means all Real Property and Fixtures subject to the Mortgages.

“Mortgages” means each deed of trust, trust deed, deed to secure debt, and mortgage on Real Property or Fixtures owned by any Grantor that is granted to secure any ABL Debt or Term Debt or under which rights or remedies with respect to any such Liens are governed, in each case as amended, restated, supplemented or otherwise modified from time to time.

“Noteholders” means the Initial Noteholders and all other “holders” from time to time under the Indenture.

“Ordinary Course Collections” has the meaning set forth in Section 4.1(b).

“Payment in Full of ABL Priority Debt” means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8, the indefeasible payment in full in cash of the ABL Priority Debt (other than Bank Product Obligations, indemnity and other contingent obligations, in each case, as to which no claim has been asserted), the cancellation or expiration of all Letters of Credit issued under the ABL Credit Agreement (unless cash collateralized, otherwise collateralized with “back to back” letters of credit issued by a bank acceptable to the applicable Letter of Credit issuer or otherwise supported on terms reasonably acceptable to the applicable Letter of Credit issuer and in the amount required by the ABL Credit Agreement, but in any event not to exceed 103% of the face amount of the applicable Letter of Credit), and the termination of all commitments thereunder.

“Payment in Full of Priority Debt” means, (i) if the Term Debt constitutes the Priority Debt, the Payment in Full of Term Priority Debt, and (ii) if the ABL Debt constitutes the Priority Debt, the Payment in Full of ABL Priority Debt.

“Payment in Full of Term Priority Debt” means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8, the indefeasible payment in full in cash of the Term Priority Debt (other than indemnity and other contingent obligations as to which no claim has been asserted), and the termination of all commitments thereunder.

“Permitted ABL Priority Collateral Subordination” has the meaning set forth in Section 2.1(b).

“Permitted Term Priority Collateral Subordination” has the meaning set forth in Section 2.1(c).

“Person” or **“person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Pledged Collateral” has the meaning set forth in Section 5.4(a).

“Post-Petition Interest” means interest, fees, expenses and other charges that, pursuant to the Term Documents or the ABL Documents, continue to accrue (or which would, absent commencement of an Insolvency Proceeding, accrue) after the commencement of any Insolvency Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under Bankruptcy Law or in any such Insolvency Proceeding.

“Priority Agent” means, with respect to the ABL Priority Collateral, the ABL Agent, and with respect to the Term Priority Collateral, the Term Agent.

“Priority Claimholders” means, with respect to the ABL Priority Collateral, the ABL Claimholders, and with respect to the Term Priority Collateral, the Term Claimholders.

“Priority Collateral” means, with respect to the ABL Debt, all ABL Priority Collateral, and with respect to the Term Debt, all Term Priority Collateral.

“Priority Debt” means, with respect to the ABL Priority Collateral, the ABL Debt, and with respect to the Term Priority Collateral, the Term Debt.

“Qualified Cash” means unrestricted cash of each Grantor that is free and clear of all Liens other than the ABL Agent’s valid, perfected and first-priority Lien and any Lien in favor of the Initial Term Agent (or any then controlling Term Agent), and which cash is maintained in U.S. deposit accounts with (i) the ABL Agent and subject to a control agreement in favor of the ABL Agent, or (ii) other ABL Lenders, subject to a “blocked” control agreement in favor of the ABL Agent.

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

“Receivables” means all of the following now owned or hereafter arising or acquired assets of any Grantor: (i) all Accounts constituting ABL Priority Collateral pursuant to clause (i) of the definition of ABL Priority Collateral; (ii) all amounts at any time payable to any Grantor in respect of the sale or other Disposition of any such Accounts; (iii) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any such Accounts; (iv) all payment intangibles other than payment intangibles that constitute the identifiable proceeds of Term Priority Collateral or are otherwise excluded from being ABL Priority Collateral pursuant to clause (i) of the definition thereof; (v) all other contract rights, chattel paper, instruments or other forms of rights to payment, in each case arising from the sale, lease or other Disposition of As-Extracted Collateral, Inventory, the licensing of Inventory and the rendition of services or otherwise related to any Accounts described in clause (i) above or As-Extracted Collateral or Inventory of a Grantor (including, choses in action, causes of action or other rights and claims against carriers or shippers, rights to indemnification and identifiable proceeds thereof, and casualty or similar types of insurance, in each case relating to ABL Priority Collateral, and identifiable proceeds thereof); and (vi) all other rights to payment in which any Grantor has an interest, whether evidenced by promissory notes or otherwise, and whether consisting of Accounts, instruments, general intangibles or other rights to payment, in each case in this clause (vi) arising out of, relating to, derivative of or constituting proceeds of the assets included in the definition of ABL Priority Collateral or in the preceding clauses (i) through (v) of this definition.

“Recovery” has the meaning set forth in Section 6.8.

“Refinance” means, in respect of any indebtedness or any commitment to extend credit (and the documents governing such indebtedness or commitment to extend credit), to refinance, amend and restate, extend, renew, supplement, restructure, replace, refund or repay, or to issue other indebtedness or commitment to extend credit in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers, or agents. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

“Related Mining Assets” means (i) Coal washing and processing facilities, (ii) Coal loading and shipping facilities, including without limitation, if owned, barges and railcars, and (iii) computer and control systems utilized for operation or management of any of the foregoing.

“**Reserve Area**” means any real property constituting coal reserves or access to coal reserves that is not an active Mine in which any Person holds an ownership, leasehold or other interest.

“**Restricted Subsidiaries**” means the Loan Parties and all other Subsidiaries of the Company that are “Restricted Subsidiaries” under the Term Documents.

“**Senior 507(b) Claims**” has the meaning set forth in Section 6.5(a)(v).

“**Subsidiary**” means, with respect to any Person, (i) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (ii) any partnership, joint venture or limited liability company of which (A) more than 50% of the capital Accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (B) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“**Term Agent**” means, collectively, (i) the Initial Term Agent, (ii) any Additional Term Agent, and (iii) any Person (including for purposes related to the administration of the Term Collateral Documents) designated as an agent, administrative agent, trustee, representative, collateral agent or like title or role under any documents Refinancing any Term Debt for the purpose of receiving a lien on the collateral pledged as security for such Refinancing Term Debt; *provided* that, notwithstanding anything to the contrary, any reference to the Term Agent in any provision of this Agreement requiring the consent, waiver or exercise of any right, power or discretion on the part of the Term Agent shall mean, at any time that there is more than one the Term Agent, the Initial Term Agent acting in its own capacity and as controlling agent for any other Term Agent in accordance with and subject to the terms of the Term Intercreditor Agreement, unless the ABL Agent receives (a) written notification signed by all Term Agents indicating that pursuant to the Term Intercreditor Agreement the Term Agent specified in such notice shall be deemed the controlling Term Agent hereunder and (b) written notification signed by the Initial Term Agent (or the then controlling Term Agent hereunder) indicating that pursuant to the Term Intercreditor Agreement it shall no longer be deemed the controlling Term Agent hereunder.

“**Term Cap**” means, as of any date of determination, \$[_____] ,² plus (ii) to the extent then permitted under the ABL Credit Agreement, the sum of (A) \$[_____] , plus (B) the amount of Term Debt such that, after giving pro forma effect to such incurrence and the application of the net proceeds therefrom, the Priority Secured Leverage Ratio (as defined in the Indenture as of the date hereof) would not exceed [●] to 1.00, plus (C) the amount of Term Debt such that, after giving pro forma effect to such incurrence and the application of the net proceeds therefrom, the Secured Leverage Ratio (as defined in the Indenture as of the date hereof) would not exceed [●] to 1.00, plus (D) without duplication, the aggregate principal amount of any interest accruing from the principal amount of indebtedness as set forth in clauses (A), (B) and (C) herein that has been capitalized under the Term Facility Credit Agreement. Accruals in respect of Term Debt (other than those described in clause (ii) of the definition of Excess Term Debt),

² NTD: Amount of bonds to be inserted.

Indemnity Amounts constituting Term Debt and Term Hedging Obligations, in each case, shall not be subject to the Term Cap and shall be Term Priority Debt.³

“Term Cash Collateral” has the meaning set forth in Section 6.2(b).

“Term Claimholders” means, as of any date of determination, the holders of the Term Debt at that time, including (A) the Term Agent, (B) any Term Representative, (C) the Noteholders, (D) Term Hedge Providers in respect of Term Hedging Obligations, and (E) any holders of Additional Term Debt (other than Term Hedging Obligations).

“Term Collateral” means all of the assets of each and every Grantor, whether real, personal or mixed, with respect to which a Lien is granted (or purported to be granted) as security for any Term Debt, including all proceeds and products thereof, and which, for the avoidance of doubt, shall not include any Excluded Property.

“Term Collateral Documents” means the Term Security Agreement, the Term Mortgages and any other agreement, document or instrument pursuant to which a Lien is granted (or purported to be granted) securing the Notes or any other Term Debt or under which rights or remedies with respect to such Liens are governed.

“Term Credit Facility Agreement” means, collectively, (i) the Indenture, (ii) any Additional Term Debt Agreement and (iii) any other credit agreement or debt facility that is secured by the Collateral, as such credit agreement or debt facility, in whole or in part, in one or more instances, may be amended, restated, modified, supplemented, extended, renewed, refunded, restructured, Refinanced or replaced or otherwise modified from time to time and whether by the same or any other agent, lender or group of lenders or other party, so long as the agents or representatives of the holders of such indebtedness execute and deliver (i) a joinder to this Agreement reasonably acceptable to the other parties hereto and (ii) if after such Refinancing there are multiple Term Credit Facility Agreements, the Term Intercreditor Agreement. Any reference to the Term Credit Facility Agreement hereunder shall be deemed a collective reference to all Term Credit Facility Agreements then in existence.

“Term Debt” means all Secured Obligations (as that term is defined in the Indenture or any other Term Credit Facility Agreement) and all other amounts owing, due or secured under the terms of the Indenture, any other Term Credit Facility Agreement or any other Term Document, including Additional Term Debt, whether now existing or arising hereafter, including all principal, premium, interest, fees, attorneys’ fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, Term Hedging Obligations, any indemnities or guarantees, and all other amounts payable under or secured by any Term Credit Facility Agreement (including, in each case, all interest, fees and other amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Term Documents but for the effect of the Insolvency Proceeding and irrespective of whether a claim for all or any portion of such interest, fees or other amounts is allowable or allowed in such Insolvency Proceeding), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

“Term Declined Lien” has the meaning set forth in Section 2.3.

³ **NTD:** Amounts in clauses (A), (B), and (C) to align with Indenture. Note that the incurrence of this debt shall be subject to further approval of Required Lenders at the time of such incurrence and will require execution of an amendment to Section 9.1 of the ABL Credit Agreement in connection therewith.

“**Term Default**” means any “**Event of Default**”, as that term is defined in any Term Credit Facility Agreement or any “Event of Default” or “Termination Event”, as those terms are defined in any Term Hedge Agreement.

“**Term Default Disposition**” has the meaning set forth in Section 5.1(i).

“**Term Deficiency Claim**” means any portion of the Term Debt consisting of an allowed unsecured claim under Section 506(a) of the Bankruptcy Code (or any similar provision under any other Bankruptcy Law).

“**Term DIP Financing**” has the meaning set forth in Section 6.2(b).

“**Term DIP Financing Conditions**” means that:

(i) (A) the ABL Agent retains its valid and perfected Liens (that have not been avoided as of the date the relevant Term DIP Financing initially becomes effective) with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (B) as to the ABL Priority Collateral that existed as of the date of the commencement of such Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), the ABL Agent’s valid and perfected Liens (that have not been avoided as of the date the relevant Term DIP Financing initially becomes effective) with respect to such ABL Priority Collateral remain senior and prior to the Liens (inclusive of any Liens securing the Term DIP Financing) of the Term Agent or any other provider of Term DIP Financing with respect to such ABL Priority Collateral, and (C) as to ABL Priority Collateral acquired by the applicable Grantor after the commencement of such Insolvency Proceeding (excluding proceeds of ABL Priority Collateral existing prior to the commencement of such Insolvency Proceeding), either (x) neither the ABL Claimholders nor the Term Claimholders obtain a Lien with respect to such ABL Priority Collateral or (y) if a Lien with respect to such ABL Priority Collateral is granted to secure the Term DIP Financing, then the ABL Agent obtains a Lien with respect to such ABL Priority Collateral and the Liens with respect to such ABL Priority Collateral securing the Term DIP Financing are junior and subordinate to the Liens of the ABL Agent with respect to such ABL Priority Collateral;

(ii) all Liens on Term Priority Collateral securing any such Term DIP Financing shall be senior to or on a parity with the Liens of the Term Agent securing the Term Debt on the Term Priority Collateral;

(iii) the proposed Term Cash Collateral use or Term DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the Term Cash Collateral order or Term DIP Financing documentation, as applicable (it being understood that the Term DIP Financing documentation may require that the plan or reorganization provides for repayment of the Term DIP Financing upon the effective date of such plan of reorganization);

(iv) the proposed Term Cash Collateral order or Term DIP Financing documentation does not expressly require the sale of all or substantially all of the ABL Priority Collateral prior to a default under the Term Cash Collateral order or Term DIP Financing documentation;

(v) the Term DIP Financing documentation provides that the loans and letters of credit (or banker’s acceptances) outstanding thereunder on any date, when added to the outstanding

principal balance of loans and letters of credit (or banker's acceptances) constituting pre-petition Term Debt on such date, may not exceed the Term Debt Cap on such date (with such letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof); and

(vi) any of the Term Claimholders may seek adequate protection to the extent, but only to the extent, expressly permitted under this Agreement;

provided, that the Term Agent may seek, and the ABL Agent may object to, any other Term DIP Financing that does not meet all of the conditions set forth above so long as such Term DIP Financing is not secured by Liens on the ABL Priority Collateral that are senior to or *pari passu* with the valid Liens of the ABL Agent securing the ABL Debt in an amount up to the ABL Priority Debt.

"Term Documents" means the Indenture, each other Term Credit Facility Agreement, the Term Collateral Documents, each of the other "Priority Lien Documents" or "Loan Documents" (in each case, as that term is defined in the Term Credit Facility Agreement) and each of the other agreements, documents and instruments executed pursuant thereto or in connection therewith and the Term Intercreditor Agreement to the extent effective at the relevant time.

"Term Hedge Agreement" means an ISDA or similar agreement governing a Term Hedging Obligation.

"Term Hedge Provider" means a "hedge bank" (or similar term) as defined in the Term Credit Facility Agreement.

"Term Hedging Obligations" means any obligations arising under a "Swap Contract" (or similar term) (as defined in the Term Credit Facility Agreement) that are owed to a Term Hedge Provider.

"Term Intercreditor Agreement" means, the collateral agency agreement, dated as of [_____] [____], [____], by and among the Company, the Notes Guarantors, the Initial Term Agent and the Initial Term Representative and, if applicable, any Additional Term Agent and Additional Term Representative that delivers a joinder thereto from time to time, as the same may be amended, restated, supplemented, modified or replaced from time to time, which authorizes and directs the Initial Term Agent (or such other Person as may be designated in the Term Intercreditor Agreement) to act as controlling Term Agent for all purposes required by this Agreement.

"Term Lenders" means, as of any date of determination, the holders of the Term Debt at that time, including without limitation, the Initial Noteholders.

"Term Mortgages" means each Mortgage under which any Lien on Real Property or Fixtures owned or leased by any Grantor is granted to secure any Term Debt or under which rights or remedies with respect to any such Liens are governed.

"Term Priority Collateral" means all rights, title and interests of each Grantor in the following Collateral, in each case, whether now owned or existing or hereafter acquired or arising and wherever located, including, without duplication, (a) all rights of each Grantor to receive moneys due and to become due under or pursuant to the following to the extent not constituting ABL Priority Collateral, (b) all rights of each Grantor to receive return of any premiums for or Proceeds of any insurance, indemnity, warranty or guaranty with respect to the following or to receive condemnation Proceeds with respect to the following, (c) all claims of each Grantor for damages arising out of or for breach of or default under any of the following and (d) all rights of each Grantor to terminate, amend, supplement, modify or waive

performance under any of the following, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder:

- (i) all machinery and Equipment;
- (ii) all Material Owned Real Property;
- (iii) all Intellectual Property;
- (iv) all Equity Interests in all direct Subsidiaries of any Loan Party;
- (v) [reserved];
- (vi) [reserved];
- (vii) all Fixtures;
- (viii) all Related Mining Assets;
- (ix) all other assets of any Grantor, whether real, personal or mixed, in each case, not constituting ABL Priority Collateral;
- (x) to the extent evidencing or governing any of the items referred to in the preceding clauses (i) through (ix), all General Intangibles, letters of credit (whether or not the respective letter of credit is evidenced by a writing), Letter-of-Credit Rights, Instruments and Documents; *provided* that to the extent any of the foregoing also relates to any ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (i) through (ix) as being included in the Term Priority Collateral shall be included in the Term Priority Collateral;
- (xi) to the extent relating to any of the items referred to in the preceding clauses (i) through (x), all insurance; *provided* that to the extent any of the foregoing also relates to ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (i) through (x) as being included in the Term Priority Collateral shall be included in the Term Priority Collateral;
- (xii) to the extent relating to any of the items referred to in the preceding clauses (i) through (xi), all Supporting Obligations; *provided* that to the extent any of the foregoing also relates to ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (i) through (xi) as being included in the Term Priority Collateral shall be included in the Term Priority Collateral;
- (xiii) to the extent relating to any of the items referred to in the preceding clauses (i) through (xii), all Commercial Tort Claims; *provided* that to the extent any of the foregoing also relates to ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (i) through (xii) as being included in the Term Priority Collateral shall be included in the Term Priority Collateral;
- (xiv) all Books and records, including all books, databases, customer lists and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing; and

(xv) to the extent not constituting ABL Priority Collateral, all cash Proceeds and non-cash Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (including all insurance Proceeds) and all collateral security, guarantees and other collateral support given by any Person with respect to any of the foregoing;

provided, however, that (x) if Collateral of any type is received in exchange for Term Priority Collateral pursuant to an Enforcement Action or during an Insolvency Proceeding, such Collateral will be treated as Term Priority Collateral and (y) if Collateral of any type is received in exchange for ABL Priority Collateral pursuant to an Enforcement Action or during an Insolvency Proceeding, such Collateral will be treated as ABL Priority Collateral. For the avoidance of doubt, subject to the last sentence of Section 2.4(b), no Excluded Property shall constitute Term Priority Collateral.

“Term Priority Debt” means all Term Debt excluding Excess Term Debt and including any Term DIP Financing.

“Term Priority Standstill Period” has the meaning set forth in Section 3.2.

“Term Purchase Notice” has the meaning set forth in Section 9.1(a).

“Term Purchase Option Period” has the meaning set forth in Section 9.1(a).

“Term Purchase Option Trigger” means any of the following events: (i) the acceleration of the maturity date of all or a portion of the ABL Debt pursuant to the ABL Documents; (ii) the occurrence of an “Event of Default” under the ABL Documents that constitutes a Term Default, if the commitments of the ABL Claimholders to make Loans under and as defined in the ABL Credit Agreement or to issue Letters of Credit are terminated or are suspended as a result thereof for a period of 90 consecutive days or more; (iii) the commencement of Enforcement Action against the ABL Priority Collateral by the ABL Agent; or (iv) the commencement of an Insolvency Proceeding with respect to any Grantor.

“Term Representative” means, collectively, the Initial Term Representative and each Additional Term Representative.

“Term Secured Claim” means any portion of the Term Debt not constituting a Term Deficiency Claim.

“Term Security Agreement” means the “Security Agreement”, as that term is defined in the Indenture as in effect on the date hereof.

“Trustee” has the meaning set forth in the preamble to this Agreement.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York, or if the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the Uniform Commercial Code as in effect from time to time in such other jurisdiction.

“Use Period” means the period, with respect to any Term Priority Collateral, which begins on the earlier of (i) the day on which the ABL Agent provides the Term Agent with written notice that it intends to exercise its rights under Section 3.9 with respect to such Term Priority Collateral and (ii) the fifth Business Day after the Term Agent provides the ABL Agent with written notice that the Term Agent (or its agent) has obtained possession or control, as applicable, of such Term Priority Collateral and ends on the earlier of (x) the 180th day after the date on which the ABL Agent initially obtains the right and ability

to obtain possession or control, as applicable, of such Term Priority Collateral and (y) the date on which Payment in Full of ABL Priority Debt occurs; *provided* that if any stay or other order has occurred by operation of law or has been entered by a court of competent jurisdiction that prohibits or limits any of the ABL Claimholders from commencing and continuing to undertake Enforcement Actions or to Dispose of the ABL Priority Collateral, such 180-day period shall be tolled during the pendency of such stay or other order and the Use Period shall be so extended and upon the expiration or lifting of such stay or order, if there are fewer than 45 days remaining in such 180-day period, then such 45 day period shall be extended so that the ABL Claimholders have a Use Period of 45 days remaining upon the expiration or lifting of such stay or order.

1.2. Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” The term “or” shall be construed to have, except as the context may otherwise require, the inclusive meaning represented by the phrase “and/or.” Any term used in this Agreement and not defined in this Agreement shall have the meaning set forth in the Initial ABL Credit Agreement or the Indenture, as context may require. Unless the context requires otherwise:

(i) except as otherwise *provided* herein, any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded or replaced (subject to any restrictions or qualifications on such amendments, restatements, supplements, modifications, renewals, extensions, Refinancings, refunds or replacements set forth herein);

(ii) any reference to a definition in an ABL Document shall be construed to also refer to any comparable term in any agreement, instrument or other document the debt under which Refinances the ABL Debt; *provided* that any comparable term resulting from such Refinancing would be permitted hereunder if such term had resulted from the amendment or modification of the ABL Debt that is the subject of such Refinancing;

(iii) any reference to a definition in a Term Credit Facility Agreement shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the Term Debt; *provided* that any comparable term resulting from such Refinancing would be permitted hereunder if such term had resulted from the amendment or modification of the Term Debt that is the subject of such Refinancing;

(iv) any reference to any agreement, instrument or other document herein “as in effect on the date hereof” or words of similar import shall be construed as referring to such agreement, instrument or other document without giving effect to any amendment, restatement, supplement, modification, or Refinancing thereto or thereof occurring after the date hereof;

(v) any definition of, or reference to, the ABL Debt or the Term Debt herein shall be construed as referring to the ABL Debt or the Term Debt (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded or replaced (subject to any restrictions or qualifications on such amendments, restatements, supplements, modifications, renewals, extensions, Refinancings, refunds or replacements set forth herein);

(vi) any definition of, or reference to, ABL Collateral or Term Collateral herein shall not be construed as referring to any amounts recovered by a Grantor, as a debtor in possession, or a trustee for the estate of a Grantor, under Section 506(c) of the Bankruptcy Code (or by comparable Persons under any other Bankruptcy Law);

(vii) any reference herein to any person shall be construed to include such person's successors and assigns and as to any Grantor shall be deemed to include a receiver, trustee or debtor-in-possession on behalf of any of such person or on behalf of any such successor or assignee of such person;

(viii) except as otherwise expressly *provided* herein, any reference to the ABL Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the ABL Claimholders, any reference to the ABL Agent shall be construed as referring to the ABL Agent, for itself and on behalf of the other ABL Claimholders, any reference to the Term Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the Term Claimholders for which such the Term Agent serves as agent, any reference to the Term Agent shall be construed as referring to the Term Agent, for itself and on behalf of the other Term Claimholders for which such the Term Agent serves as agent, any reference to the ABL Claimholders shall be construed as including the ABL Agent, and any reference to the Term Claimholders shall be construed as referring to the Term Agent;

(ix) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(x) all references herein to Sections shall be construed to refer to Sections of this Agreement unless otherwise specified; and

(xi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, Accounts and contract rights.

SECTION 2. LIEN PRIORITIES.

2.1. Relative Priorities.

(a) Notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens in the Collateral securing the Term Debt or of any Liens in the Collateral securing the ABL Debt (including, in each case, notwithstanding whether any such Lien is granted (or secures Debt relating to the period) before or after the commencement of any Insolvency Proceeding) and notwithstanding any contrary provision of the UCC or any other applicable law or the Term Documents or the ABL Documents or any defect or deficiencies in, or failure to attach or perfect, the Liens securing or purporting to secure the ABL Debt or the Term Debt, the possession or control of the Collateral by any Claimholder, or any other circumstance whatsoever, the ABL Agent and the Term Agent hereby agree that:

(i) any Lien with respect to the ABL Priority Collateral securing any ABL Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing (A) any Term Debt or (B) any Excess ABL Debt;

(ii) any Lien with respect to the ABL Priority Collateral securing any Term Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt, and (B) senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing (1) any Excess ABL Debt and (2) any Excess Term Debt;

(iii) any Lien with respect to the Term Priority Collateral securing any Term Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien with respect to the Term Priority Collateral securing (A) any ABL Debt or (B) any Excess Term Debt;

(iv) any Lien with respect to the Term Priority Collateral securing any ABL Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the Term Priority Collateral securing any Term Priority Debt, and (B) senior in all respects and prior to any Lien with respect to the Term Priority Collateral securing (1) any Excess Term Debt and (2) any Excess ABL Debt;

(v) any Lien with respect to the ABL Priority Collateral securing any Excess ABL Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation, or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt and any Term Priority Debt, and (B) senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing any Excess Term Debt;

(vi) any Lien with respect to the ABL Priority Collateral securing any Excess Term Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Debt and any Term Priority Debt;

(vii) any Lien with respect to the Term Priority Collateral securing any Excess Term Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the Term Priority Collateral securing any ABL Priority Debt and any Term Priority Debt, and (B) senior in all respects and prior to any Lien with respect to the Term Priority Collateral securing any Excess ABL Debt; and

(viii) any Lien with respect to the Term Priority Collateral securing any Excess ABL Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior

and subordinate in all respects to all Liens with respect to the Term Priority Collateral securing any Term Debt and any ABL Priority Debt.

(b) If at any time the ABL Agent shall make a Permitted ABL Priority Collateral Subordination (as defined below), with respect to any ABL Priority Collateral, to or in favor of any Person, then the Term Agent's Liens in the same ABL Priority Collateral shall likewise be deemed to have been subordinated to or in favor of such Person and the priority of the ABL Agent's Liens vis-à-vis the Liens of the Term Agent in such ABL Priority Collateral shall not be affected thereby and the ABL Agent's Liens shall continue to be senior to the Term Agent's Liens in the affected Collateral as and to the extent provided in this Section 2. As used herein, the term "**Permitted ABL Priority Collateral Subordination**" shall mean a voluntary subordination by the ABL Agent of its Liens with respect to any ABL Priority Collateral in favor of depository banks, securities or commodities intermediaries, landlords, mortgagees, custom brokers, freight forwarders, carriers, warehousemen, factors, Persons who provide debtor-in-possession financing and other Persons who provide goods or services to a Grantor in the ordinary course of business, but only to the extent that the Liens to which the ABL Agent's Liens are subordinated are not prohibited from being prior to the ABL Agent's Liens on the ABL Priority Collateral under the ABL Credit Agreement or the other ABL Documents and not prohibited from being prior to the Term Agent's Liens on the ABL Priority Collateral under the Term Documents, or such Liens secure a debtor-in-possession financing that is judicially approved in an Insolvency Proceeding.

(c) If at any time the Term Agent shall make a Permitted Term Priority Collateral Subordination (as defined below), with respect to any Term Priority Collateral, to or in favor of any Person, then the ABL Agent's Liens in the same Term Priority Collateral shall likewise be deemed to have been subordinated to or in favor of such Person and the priority of the Term Agent's Liens vis-à-vis the Liens of the ABL Agent in such Term Priority Collateral shall not be affected thereby and the Term Agent's Liens shall continue to be senior to the ABL Agent's Liens in the affected Collateral as and to the extent provided in this Section 2. As used herein, the term "**Permitted Term Priority Collateral Subordination**" shall mean a voluntary subordination by the Term Agent of its Liens with respect to any Term Priority Collateral in favor of depository banks, securities or commodities intermediaries, landlords, mortgagees, custom brokers, freight forwarders, carriers, warehousemen, factors, lenders who hold purchase money security interests or capitalized lease obligations with respect to Term Priority Collateral, Persons who provide debtor-in-possession financing and other Persons who provide goods or services to a Grantor in the ordinary course of business, but only to the extent that the Liens to which the Term Agent's Liens are subordinated are not prohibited from being prior to the Term Agent's Liens on the Term Priority Collateral under the Term Documents and not prohibited from being prior to the ABL Agent's Liens on the Term Priority Collateral under the ABL Credit Agreement or the other ABL Documents, or such Liens secure a debtor-in-possession financing that is judicially approved in an Insolvency Proceeding.

2.2. Prohibition on Contesting Liens or Claims. Each of the Term Agent and the ABL Agent agrees that it will not (and hereby waives any right to), directly or indirectly, contest, or support any other person in contesting, in any proceeding (including any Insolvency Proceeding), the extent, validity, attachment, perfection, priority or enforceability of a Lien held by or on behalf of any of the ABL Claimholders in the Collateral (or the extent, validity, allowability or enforceability of any ABL Collateral Document or any ABL Debt secured thereby or purported to be secured thereby) or by or on behalf of any of the Term Claimholders in the Collateral (or the extent, validity, allowability or enforceability of any Term Collateral Document or the Term Debt secured thereby or purported to be secured thereby), as the case may be, or the validity or enforceability of any of the provisions of this Agreement; *provided* that nothing in this Agreement shall be construed to prevent or impair the rights of the ABL Agent or the Term Agent to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the ABL Debt and the Term Debt as provided in Sections 2.1 and 3.

2.3. New Liens.

(a) Except as contemplated by Section 6 hereof, no Grantor shall:

(i) grant or permit any additional Liens on any of its assets not subject to a Lien in favor of the ABL Agent to secure any Term Debt unless such Grantor offers to grant a Lien on such asset, subject in all respects to this Agreement, to secure the ABL Debt concurrently with the grant of a Lien thereon in favor of the Term Agent; *provided* that this provision will not be violated with respect to any Lien securing any Term Debt if such Lien is on Excluded Property or the ABL Agent is given a reasonable opportunity to accept a Lien on any asset or property and the ABL Agent expressly declines to accept a Lien on such asset or property (any such declined Lien, an “**ABL Declined Lien**”); or

(ii) grant or permit any additional Liens on any of its assets not subject to a Lien in favor of the Term Agent to secure any ABL Debt unless such Grantor offers to grant a Lien on such asset, subject in all respects to this Agreement, to secure the Term Debt concurrently with the grant of a Lien thereon in favor of the ABL Agent; *provided* that this provision will not be violated with respect to any Lien securing any ABL Debt if such Lien is on Excluded Property or the Term Agent is given a reasonable opportunity to accept a Lien on any asset or property and such the Term Agent expressly declines to accept a Lien on such asset or property (any such declined Lien, a “**Term Declined Lien**” and, together with the ABL Declined Liens, the “**Declined Liens**”);

provided, however, that this Section 2.3(a) shall not apply with respect to cash and cash equivalents, and deposit accounts and securities accounts containing solely such cash and cash equivalents, that (i) cash collateralize (A) Letters of Credit issued under the applicable ABL Documents, (B) defaulting lender participations in Letters of Credit, swingline loans or protective advances under the ABL Documents or (C) returned or charged-back items under the ABL Documents, or (ii) constitute “Qualified Cash” (as defined in the ABL Credit Agreement).

(b) To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Claimholders, each Agent agrees that any amounts received by or distributed to any of the Claimholders pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4. Similar Liens and Agreements.

(a) Subject to Section 2.3 and Section 2.4(b), the parties hereto agree that it is their intention that the ABL Collateral and the Term Collateral be identical except as provided in Section 6 hereof. In furtherance of the foregoing and of Section 8.8, the parties hereto agree, subject to the other provisions of this Agreement:

(i) upon request by the ABL Agent or by the Term Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Collateral and in the Term Collateral and the steps taken or to be taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Documents and under the Term Documents; and

(ii) that the ABL Collateral Documents and the Term Collateral Documents and guarantees for the ABL Debt and the Term Debt, shall be, in all material respects, the same forms of documents other than with respect to the priorities of the Liens granted thereunder.

(b) The foregoing to the contrary notwithstanding, each of the parties agrees that to the extent that the ABL Agent or the Term Agent obtains a Lien in an asset (of a type that is not included in the types of assets included in the Collateral as of the date hereof or which would not constitute Collateral without a grant of a security interest or lien separate from the ABL Documents or the Term Documents, as applicable, as in effect immediately prior to obtaining such Lien on such asset) which the other party to this Agreement elects not to obtain after receiving prior written notice thereof in accordance with the provisions of Section 2.3 the Collateral securing the ABL Debt and the Term Debt will not be identical with respect to such assets (including the assets described in the provisos in Section 2.3(a)), and any such difference in the scope or extent of perfection with respect to the Collateral resulting therefrom are hereby expressly permitted by this Agreement. For the avoidance of doubt, each of the ABL Agent and the Term Agent acknowledge and agree that the definition of “Excluded Property” may be subject to differences as between ABL Claimholders and Term Claimholders arising because of (i) Declined Liens by the applicable Agent for such respective Claimholders, (ii) any amendments after the date hereof to the definition of “Excluded Collateral” (or any similar defined term) in any ABL Documents, which ABL Agent and Term Agent agree shall not affect the Liens of Term Agent and (iii) any amendments after the date hereof to the definition of “Excluded Assets” (or similar defined term) in any Term Documents, which ABL Agent and Term Agent agree shall not affect the Liens of ABL Agent.

SECTION 3. EXERCISE OF REMEDIES.

3.1. Exercise of Remedies with respect to the ABL Priority Collateral. Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the Term Claimholders will not:

- (i) exercise or seek to exercise (and instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived, but solely to the extent necessary to further the purpose of this Section) any rights, powers or remedies with respect to any ABL Priority Collateral (including taking any Enforcement Action with respect to any ABL Priority Collateral);
- (ii) commence or join with any person (in each case other than with the ABL Agent) in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor; or
- (iii) object to (or join any party objecting to) the forbearance by the ABL Agent or the ABL Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the ABL Priority Collateral;

provided, however, that (w) if a Term Default has occurred and for so long as such Term Default is continuing, subject at all times to the provisions of Sections 2.1(a) and 4, after the expiration of a 180-day period (the “**ABL Priority Standstill Period**”) which shall commence on the date of receipt by the ABL Agent of written notification from the Term Agent (based on notification received from the Initial Term Representative or any Additional Term Representative pursuant to the Term Intercreditor Agreement) of (i) the occurrence of a Term Default, and (ii) the Company having been notified of the acceleration of payment of some or all of the Term Debt and the termination of all related commitments under the applicable Term Credit Facility Agreement (subject to the tolling of such period to the extent, and for the duration of, any period for which a stay of enforcement rights may be in effect), the Term Agent may (acting pursuant to an Act of Required Secured Parties) take action to enforce its second-priority Liens on the ABL Priority Collateral upon 30 days’ prior written notice to the ABL Agent (which notice may be given prior to the completion of such 180-day period, but not prior to the 150th day of such period); (x) if any of the ABL Agent or the ABL Claimholders are stayed or otherwise prohibited from commencing and continuing to exercise any Enforcement Action or to liquidate or sell any ABL Priority Collateral by operation of law, court order or otherwise, then the 180-day period shall be tolled during the pendency of such stay or other

prohibition, plus an additional number of days such that the ABL Priority Standstill Period extends at least 45 days after the applicable stay or other prohibition on enforcement are no longer in effect; (y) notwithstanding the foregoing, in no event shall the Term Agent or any Term Claimholder take any Enforcement Action or exercise or continue to exercise any rights or remedies with respect to ABL Priority Collateral if, notwithstanding the expiration of the ABL Priority Standstill Period, any ABL Claimholder shall have commenced and be pursuing the exercise of any of its rights and remedies with respect to all or any material portion of the ABL Priority Collateral (subject to Section 3.8(c), prompt notice of such exercise to be given to the Term Agent); and (z) nothing in this Section 3.1 shall limit the right of the Term Agent to enforce this Agreement.

3.2. Exercise of Remedies with respect to the Term Priority Collateral. Until the Payment in Full of Term Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the ABL Claimholders will not:

- (i) exercise or seek to exercise (and instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived, but solely to the extent necessary to further the purpose of this Section) any rights, powers or remedies with respect to any Term Priority Collateral (including taking any Enforcement Action with respect to any Term Priority Collateral);
- (ii) commence or join with any person (in each case other than with the Term Agent) in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor; or
- (iii) object to (or join any party objecting to) the forbearance by the Term Agent or the Term Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Term Priority Collateral;

provided, however, that (w) if an ABL Default has occurred and for so long as such ABL Default is continuing, subject at all times to the provisions of Sections 2.1(a) and 4, after the expiration of a 180-day period (the “**Term Priority Standstill Period**”) which shall commence on the date of receipt by the Term Agent of the written declaration of the ABL Agent of such ABL Default and written demand by the ABL Agent to the ABL Borrower Representative for the accelerated payment of all ABL Debt and the termination of all related commitments under the ABL Credit Agreement (subject to the tolling of such period to the extent, and for the duration of, any period for which a stay of enforcement rights may be in effect), the ABL Agent may take action to enforce its second-priority Liens on the Term Priority Collateral upon 30 days’ prior written notice to the Term Agent (which notice may be given prior to the completion of such 180-day period, but not prior to the 150th day of such period); (x) if any of the Term Agent or the Term Claimholders are stayed or otherwise prohibited from commencing and continuing to exercise any Enforcement Action or to liquidate or sell any Term Priority Collateral by operation of law, court order or otherwise, then the 180-day period shall be tolled during the pendency of such stay or other prohibition, plus an additional number of days such that the Term Priority Standstill Period extends at least 45 days after the applicable stay or other prohibition on enforcement are no longer in effect; (y) notwithstanding the foregoing, in no event shall the ABL Agent or any ABL Claimholder take any Enforcement Action or exercise or continue to exercise any rights or remedies with respect to Term Priority Collateral if, notwithstanding the expiration of the Term Priority Standstill Period, any Term Claimholder shall have commenced and be pursuing the exercise of any of its rights and remedies with respect to all or any material portion of the Term Priority Collateral (subject to Section 3.8(c), prompt notice of such exercise to be given to the ABL Agent); and (z) nothing in this Section 3.2 shall limit the right of the ABL Agent to enforce this Agreement.

3.3. Exclusive Enforcement Rights.

(a) Except as expressly provided in the proviso to Section 3.1, until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the ABL Claimholders shall have the exclusive right to take Enforcement Actions (including set-off and applicable credit bid rights) with respect to the ABL Priority Collateral without any consultation with or the consent of any of the Term Claimholders. Except as expressly provided in the proviso to Section 3.2, until the Payment in Full of Term Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the Term Claimholders shall have the exclusive right to take Enforcement Actions (including set-off and applicable credit bid rights) with respect to the Term Priority Collateral (and in connection therewith, subject to Section 3.9, make determinations regarding the release or Disposition thereof or any restrictions with respect thereto) without any consultation with or the consent of any of the ABL Claimholders.

(b) In connection with (i) any Enforcement Action with respect to the ABL Priority Collateral, the ABL Claimholders may enforce the provisions of the ABL Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion, or (ii) any Enforcement Action with respect to the Term Priority Collateral, the Term Claimholders may enforce the provisions of the Term Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under applicable law.

3.4. Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, any Claimholder may:

(a) if an Insolvency Proceeding has been commenced by or against any Grantor, file a claim, proof of claim or statement of interest with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Claimholder, the Term Debt, and in each case, subject in all respects to this Agreement, the Collateral securing such Debt;

(b) take any action (not adverse to the priority status of the Liens on the Priority Collateral held by the Priority Agent with respect thereto, or the rights of the Priority Agent or any other Priority Claimholder to undertake Enforcement Actions with respect thereto) in order to create or perfect its Lien in and to the Collateral;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of (i) in the case of a claim of an ABL Claimholder in respect of the ABL Debt, the ABL Claimholders, or (ii) in the case of a claim of a Term Claimholder in respect of the Term Debt, the Term Claimholders, in each case including any claims secured by the Collateral, if any, in each case, in accordance with the express provisions of this Agreement;

(d) vote on any plan of reorganization and make any filings and motions that are, in each case, not in contravention of the express provisions of this Agreement, with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Claimholder, the Term Debt, and (in each case) the Collateral;

(e) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Priority Collateral of the Priority Agent initiated by such Priority Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise

interfere with an Enforcement Action by such Priority Agent (it being understood that neither the Junior Agent nor any Junior Claimholder shall be entitled to receive any proceeds from the Priority Collateral unless otherwise expressly permitted herein);

(f) any Agent, on behalf of the applicable Claimholders for whom it represents, otherwise having authority under applicable law to do so, may bid for and purchase, for cash, any Collateral at any private, public or judicial foreclosure or other sale initiated by the other Agent or any other Claimholder; *provided* that any Priority Agent or any other Priority Claimholder may make a credit bid with respect to the Priority Collateral of such Priority Agent or other Priority Claimholder; *provided, further*, that any Junior Agent or any other Junior Claimholder may make a credit bid with respect to the Priority Collateral of the other Agent so long as any such bid for such Priority Collateral by such Junior Agent or other Junior Claimholder provides for payment in cash of the full amount necessary to cause the Payment in Full of Priority Debt of the Priority Agent and Priority Claimholders and such cash is used to cause the Payment in Full of Priority Debt at closing;

(g) the Term Agent or any Term Claimholder may exercise any of its rights or remedies with respect to the ABL Priority Collateral in accordance with the Term Documents after the termination of the ABL Priority Standstill Period to the extent permitted by Section 3.1 above; and

(h) the ABL Agent or any ABL Claimholder may exercise any of its rights or remedies with respect to the Term Priority Collateral in accordance with the ABL Documents after the termination of the Term Priority Standstill Period to the extent permitted by Section 3.2 above.

3.5. Retention of Proceeds.

(a) Prior to the Payment in Full of ABL Priority Debt, the Term Claimholders will not receive or retain any proceeds of ABL Priority Collateral in connection with any Enforcement Action or ABL Default Disposition, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

(b) Prior to the Payment in Full of Term Priority Debt, the ABL Claimholders will not receive or retain any proceeds of Term Priority Collateral in connection with any Enforcement Action or Term Default Disposition, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

3.6. Non-Interference. Subject to any specific provision of this Agreement to the contrary, including Sections 3.1, 3.2, 3.3 and 6, each of the Term Agent and the ABL Agent hereby:

(i) agrees that the Junior Claimholders will not take any action that would restrain, hinder, limit, delay or otherwise interfere with any Enforcement Action (or other action not prohibited hereunder) by the Priority Agent with respect to its Priority Collateral, including any Disposition of such Priority Collateral, whether by foreclosure or otherwise;

(ii) waives any and all rights that any Junior Claimholder may have as a junior lien creditor or otherwise to object to the manner in which the Priority Agent or the Priority Claimholders seek to enforce or collect their Debt or the Liens securing such Debt granted in any of the Priority Collateral, regardless of whether any action or failure to act by or on behalf of such Priority Agent or the Priority Claimholders is adverse to the interest of the Junior Agent or the Junior Claimholders;

(iii) waives any and all rights that any Claimholder may have to oppose, object to, or seek to restrict the Priority Agent or any Priority Claimholder from exercising their rights to set off or credit bid its Debt; and

(iv) acknowledges and agrees that no covenant, agreement, or restriction contained in the applicable Collateral Documents or any other of the applicable Loan Documents (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Priority Agent or the Priority Claimholders with respect to their Priority Collateral as set forth in this Agreement and such Priority Agent's Loan Documents.

3.7. Unsecured Creditor Remedies. Except as set forth in Sections 2.2, 3.1, 3.2, 3.3, 3.6, 3.8 and 6, the Agents and the other Claimholders may exercise rights and remedies as unsecured creditors generally against any Grantor in accordance with the terms of the applicable Loan Documents and applicable law so long as doing so is not inconsistent with the terms of this Agreement; *provided* that in the event that any Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to its Debt, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing such Debt.

3.8. Commercially Reasonable Dispositions; Notice of Exercise.

(a) The Term Agent hereby irrevocably, absolutely, and unconditionally waives any right to object (and seek or be awarded any relief of any nature whatsoever based on any such objection), at any time prior to or subsequent to any Disposition of any of the ABL Priority Collateral, on the ground(s) that any such Disposition of ABL Priority Collateral (i) would not be or was not "commercially reasonable" within the meaning of any applicable UCC or (ii) would not or did not comply with any other requirement under any applicable UCC or under any other applicable law governing the manner in which a secured creditor (including one with a Lien on Real Property) is to realize on its collateral.

(b) The ABL Agent hereby irrevocably, absolutely and unconditionally waives any right to object (and seek or be awarded any relief of any nature whatsoever based on any such objection), at any time prior to or subsequent to any Disposition of any of the Term Priority Collateral, on the ground(s) that any such Disposition of Term Priority Collateral (i) would not be or was not "commercially reasonable" within the meaning of any applicable UCC or (ii) would not or did not comply with any other requirement under any applicable UCC or under any other applicable law governing the manner in which a secured creditor (including one with a Lien on Real Property) is to realize on its collateral.

(c) The ABL Agent shall use commercially reasonable efforts to provide prior notice to the Term Agent of its initial Enforcement Action, unless Exigent Circumstances exist; *provided* that in the event Exigent Circumstances exist, the ABL Agent shall use commercially reasonable efforts to provide concurrent notice to the Term Agent of its initial Enforcement Action. the Term Agent shall use commercially reasonable efforts to provide prior notice to the ABL Agent of its initial Enforcement Action, unless Exigent Circumstances exist; *provided* that in the event Exigent Circumstances exist, the Term Agent shall use commercially reasonable efforts to provide concurrent notice to the ABL Agent of its initial Enforcement Action. Any failure by any Agent to provide the foregoing notices shall in no way affect any of the rights or privileges of such Agent or the other applicable Claimholders under this Agreement or give rise to any liability on such Agent's or any other applicable Claimholder's part for a breach of contract or other claim.

3.9. Inspection and Access Rights.

(a) If the Term Agent, or any agent, representative or Affiliate of any of the Term Claimholders, or any receiver, shall, after any Term Default, obtain possession or physical control of any Mortgaged Property, or any material portion of the tangible Term Priority Collateral located on any premises other than Mortgaged Property or control over any material intangible Term Priority Collateral, the Term Agent shall promptly notify the ABL Agent in writing of that fact, and the ABL Agent may at any time thereafter notify the Term Agent in writing if and when the ABL Agent desires to exercise its access rights under this Section 3.9. In addition, if the ABL Agent, or any agent, representative or Affiliate of the ABL Agent, or any receiver, shall obtain possession or physical control of any of the Mortgaged Property, or any material portion of the tangible Term Priority Collateral located on any premises other than Mortgaged Property or control over any material intangible Term Priority Collateral, following the delivery to the Term Agent of an Enforcement Notice, then the ABL Agent may at any time thereafter, without qualifying, limiting or waiving the provisions of Sections 4.2 and 5.4 hereof, notify the Term Agent in writing that the ABL Agent is exercising its access rights under this Agreement under either circumstance. Upon delivery of such notice by the ABL Agent to the Term Agent, the parties shall confer in good faith to coordinate with respect to the ABL Agent's exercise of such access rights. Consistent with the definition of "Use Period," access rights may apply to differing parcels of Mortgaged Property and if located at different parcels of Mortgaged Property, to different assets that constitute a portion of the Term Priority Collateral, in each case at differing times, in which case, a differing Use Period will apply to each such property and to each such portion of the Term Priority Collateral located at different parcels of Mortgaged Property. For the avoidance of doubt, different Use Periods shall not apply with regard to Term Priority Collateral located at the same parcel of Mortgaged Property.

(b) Without limiting any rights any of the ABL Claimholders may otherwise have under applicable law or by agreement and whether or not any of the Term Claimholders has commenced and is continuing to undertake any Enforcement Action, the Term Agent hereby grants to the ABL Agent an irrevocable, non-exclusive right to have access to, and a royalty-free and rent-free license (subject, however, to the payment of any royalties to third parties that are not Grantors or Affiliates thereof that are due as a result of the exploitation of any licensed Intellectual Property) and right to use the Term Priority Collateral, including, without limitation, Intellectual Property, general intangibles and Real Property and equipment, processors, computers and other machinery related to the storage or processing of records, documents or files (and in the case of Term Priority Collateral that constitutes Intellectual Property, the Term Agent hereby grants to the ABL Agent a non-exclusive, irrevocable, fully-paid and royalty-free license to use such Intellectual Property) during the Use Period to the maximum extent permitted by applicable law and to the extent of the Term Agent's interest therein (subject to, for the avoidance of doubt, any third party licenses (i) to access the ABL Priority Collateral and (ii) to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, process raw materials or work-in-process into finished Inventory, take possession of, move, package, prepare and advertise for sale or disposition, sell (by public auction, private sale or a "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in the Grantors' business), store, collect, take reasonable actions to protect, secure and otherwise enforce the rights of the ABL Agent in and to the ABL Priority Collateral, or otherwise deal with the ABL Priority Collateral, in each case without the involvement of or interference by any of the Term Claimholders or liability to any of the Term Claimholders; *provided that* (A) no ABL Claimholder shall have any right to mine or extract any Coal or other minerals located at, on, under or within any Mortgaged Property or part thereof subject to a Mortgage in favor of the Term Claimholders until after the Payment in Full of Term Priority Debt, (B) any such license shall terminate upon the sale or other Disposition of all the applicable ABL Priority Collateral and shall not extend or transfer to the purchaser of such ABL Priority Collateral, (C) the ABL Agent's use of such Intellectual Property shall be reasonable and lawful and (D) any such license granted is on an "AS IS" basis, without any representation or warranty whatsoever. This Agreement will not restrict the rights of the Term Agent to sell, assign or otherwise transfer the related Term Priority

Collateral prior to the expiration of the Use Period if (but only if) the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.9.

(c) During the period of actual occupation, use or control by the ABL Agent (or its respective employees, agents, advisers and representatives) of any Term Priority Collateral, the ABL Agent shall be obligated to repair at its expense any physical damage (ordinary wear and tear excepted) to such Term Priority Collateral caused by such occupancy, use or control (including the removal of any Collateral from the premises) by the ABL Agent or its agents, representatives or designees; *provided* that neither the ABL Agent nor the ABL Claimholders will be liable for any diminution in the value of the Term Priority Collateral caused by the absence of the ABL Priority Collateral therefrom. Notwithstanding the foregoing, in no event shall the ABL Agent have any liability to any of the Term Claimholders pursuant to this Section 3.9 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Priority Collateral existing prior to the date of the exercise by the ABL Agent of its rights under this Section 3.9, and the ABL Agent shall have no duty or liability to maintain the Term Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Agent, or for any diminution in the value of the Term Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Term Priority Collateral by the ABL Agent in the manner and for the time periods specified under this Section 3.9 and subject to the terms hereof. Without limiting the rights granted in this Section 3.9, the ABL Agent shall use commercially reasonable efforts to cooperate with the Term Agent in connection with any efforts made by the Term Claimholders to sell the Term Priority Collateral, subject to the ABL Agent's rights hereunder.

(d) Consistent with the definition of the term "Use Period," if any order or injunction is issued or stay is granted or is otherwise effective by operation of law that prohibits the ABL Agent from exercising any of its rights hereunder, then the Use Period granted to the ABL Agent under this Section 3.9 shall be stayed during the period of such prohibition and shall continue thereafter for the number of days remaining under this Section 3.9. The Term Agent agrees, for the benefit of the ABL Agent, that it shall not be permitted to sell or dispose of any of the Term Priority Collateral during the Use Period unless the buyer agrees in writing to acquire the Term Priority Collateral subject to the terms of Section 3.9 of this Agreement and agrees therein to comply with the terms of this Section 3.9. The rights of the ABL Agent under this Section 3.9 during the Use Period shall continue notwithstanding such foreclosure, sale or other disposition by the Term Agent.

(e) Except as expressly *provided* herein, the ABL Agent shall not be obligated to pay any amounts to the Term Claimholders (or any Person claiming by, through or under the Term Claimholders, including any purchaser of the Term Priority Collateral) or to any Grantor, for or in respect of the use by the ABL Agent of the Term Priority Collateral. In each case, all amounts paid by the ABL Agent hereunder shall be added to the outstanding principal balance of the ABL Debt.

(f) The ABL Agent shall use the Term Priority Collateral in accordance with applicable law.

(g) The Term Agent (i) will not hinder or restrict in any respect the ABL Agent from enforcing its security interest in the ABL Priority Collateral, or from finishing any work-in-process with respect to the ABL Priority Collateral or assembling the ABL Priority Collateral pursuant to Section 3.9(b), and (ii) will permit the ABL Agent, its employees, agents, advisers and representatives to exercise the rights described in Section 3.9(b), subject to the terms and conditions thereof.

(h) Subject to the terms hereof, the Term Agent may advertise and conduct public auctions or private sales of the Term Priority Collateral, without the involvement of, or interference by, any of the ABL Claimholders or liability to any of the ABL Claimholders as long as, in the case of an actual

sale, the respective purchaser assumes and agrees in advance in writing to the obligations of the Term Agent under this Section 3.9. If the ABL Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the Real Property included within the Term Priority Collateral, the ABL Agent shall provide the Term Agent with reasonable prior notice of such sale and shall use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt or interfere with the Term Agent's use of such real property.

(i) For the avoidance of doubt, and without limiting the generality of the other provisions of this Agreement, it is hereby acknowledged and agreed that the ABL Agent shall have the right to bring an action to enforce its rights under this Section 3.9 and Section 3.10, including an action seeking possession of the applicable Collateral or specific performance of this Section 3.9 and Section 3.10.

3.10. Sharing of Information and Access. If the ABL Agent shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any Books of any Grantor which contain information identifying or pertaining to any of the Term Priority Collateral, the ABL Agent shall, upon request from the Term Agent and as promptly as practicable thereafter, either make available to the Term Agent such Books for inspection and duplication or provide to the Term Agent copies thereof. In the event that the Term Agent shall, in the exercise of its rights under the Term Documents or otherwise, receive possession or control of any Books of any Grantor which contain information identifying or pertaining to any of the ABL Priority Collateral, the Term Agent shall, upon request from the ABL Agent and as promptly as practicable thereafter, either make available to the ABL Agent such Books for inspection and duplication or provide to the ABL Agent copies thereof.

3.11. Tracing of and Priorities in Proceeds. Prior to an issuance of any Enforcement Notice by a Claimholder (unless a bankruptcy or insolvency ABL Default or Term Default then exists), any Proceeds of Collateral obtained in accordance with the terms of the ABL Documents and the Term Documents, whether or not deposited under control agreements, which are used by any Grantor to acquire other property which is Collateral shall not (solely as between the Claimholders) be treated as Proceeds of Collateral for purposes of determining the relative priorities in the Collateral which was so acquired. In addition, unless and until the Payment in Full of the ABL Priority Debt occurs, the Term Agent hereby consents to the application, prior to the receipt by the ABL Agent of an Enforcement Notice issued by the Term Agent, of cash or other Proceeds of Collateral, deposited under deposit account control agreements to the repayment of ABL Debt pursuant to the ABL Documents.

SECTION 4. PROCEEDS.

4.1. Application of Proceeds.

(a) Regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, (1) any ABL Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action, or any action by the ABL Agent that would have otherwise constituted an Enforcement Action but for the fact that the Collateral that is the subject thereof is not material, (2) any net cash proceeds of asset sales and casualty or condemnation events with respect to ABL Priority Collateral required to be applied to the payment of the loans and other ABL Debt under the ABL Credit Agreement in accordance with the ABL Documents, and (3) except as otherwise provided in Sections 6.5 and 6.9(c), any ABL Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien on the ABL Priority Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such ABL Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) *first*, to the payment in full in cash of fees, costs, expenses and indemnification amounts of the ABL Agent in connection with such Enforcement Action or other similar action described above in accordance with the ABL Documents or in connection with such Insolvency Proceeding;

(ii) *second*, to the payment in full in cash or cash collateralization of the ABL Priority Debt in accordance with the ABL Documents;

(iii) *third*, to the payment in full in cash of fees, costs, expenses and indemnification amounts of the Term Agent in connection with such Enforcement Action or other similar action described above in accordance with the Term Documents or in connection with such Insolvency Proceeding;

(iv) *fourth*, to the payment in full in cash of the Term Priority Debt in accordance with the Term Documents;

(v) *fifth*, to the payment in full in cash or cash collateralization of the Excess ABL Debt in accordance with the ABL Documents;

(vi) *sixth*, to the payment in full in cash of the Excess Term Debt in accordance with the Term Documents; and

(vii) *seventh*, to the extent of any surplus remaining after payment in full in cash of the amounts described in the foregoing clauses, to the relevant Grantor or its successors or assigns or as a court of competent jurisdiction may direct.

(b) Notwithstanding the foregoing, if any Enforcement Action with respect to the ABL Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by the ABL Agent as additional Collateral (subject to Section 5.4) and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. Notwithstanding the foregoing, in no event shall the ABL Agent shall have any duty or obligation to take title, to, have any ownership interest in, or to otherwise possess or Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; *provided* that any non-cash proceeds received by the ABL Agent (other than any non-cash proceeds received on account of any Term Secured Claim) may be distributed by the ABL Agent to the ABL Claimholders in full or partial satisfaction of ABL Debt in an amount determined by the ABL Agent acting at the direction of the requisite ABL Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding. No receipt and application of any Collateral, or proceeds thereof, received in the ordinary course of business and absent any affirmative enforcement action or remedies (other than, for the avoidance of doubt, the exercise of control with respect to any deposit account or securities account collateral and any notification to account debtors) by the ABL Agent to collect or otherwise realize upon such Collateral (such Collateral, and the proceeds thereof, “Ordinary Course Collections”) shall constitute an Enforcement Action for purposes of this Agreement and all Ordinary Course Collections received by the ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, pursuant to the ABL Credit Agreement.

(c) Regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, (1) any Term Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action, or any action by the Term Agent that would have otherwise constituted an Enforcement Action but for the fact that the Collateral that is the subject thereof is not material, (2) any net cash proceeds of asset sales and casualty or condemnation events with respect to Term Priority Collateral

required to be applied to the payment of the loans and other Term Debt under the Term Credit Facility Agreement in accordance with the Term Documents, and (3) except as otherwise provided in Sections 6.5 and 6.9(d), any Term Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien on the Term Priority Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such Term Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) *first*, to the payment in full in cash of fees, costs, expenses and indemnification amounts of the Term Agent in connection with such Enforcement Action or other similar action described above in accordance with the Term Documents or in connection with such Insolvency Proceeding;

(ii) *second*, to the payment in full in cash of the Term Priority Debt in accordance with the Term Documents;

(iii) *third*, to the payment in full in cash of fees, costs, expenses and indemnification amounts of the ABL Agent in connection with such Enforcement Action or other similar action described above in accordance with the ABL Documents or in connection with such Insolvency Proceeding;

(iv) *fourth*, to the payment in full in cash or cash collateralization of the ABL Priority Debt in accordance with the ABL Documents;

(v) *fifth*, to the payment in full in cash of the Excess Term Debt in accordance with the Term Documents;

(vi) *sixth*, to the payment in full in cash or cash collateralization of the Excess ABL Debt in accordance with the ABL Documents; and

(vii) *seventh*, to the extent of any surplus remaining after payment in full in cash of the amounts described in the foregoing clauses, to the relevant Grantor or its successors or assigns or as a court of competent jurisdiction may direct.

(d) Notwithstanding the foregoing, if any Enforcement Action with respect to the Term Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by the Term Agent as additional Collateral (subject to Section 5.4) and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. Notwithstanding the foregoing, in no event shall the Term Agent have any duty or obligation to take title to, have any ownership interest in, or to otherwise possess or Dispose of such non-cash proceeds, but to the extent it agrees to take title to, has an ownership interest in or otherwise takes possession of such non-cash proceeds it may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in accordance with the Term Documents; *provided* that any non-cash proceeds received by the Term Agent (other than any non-cash proceeds received on account of any ABL Secured Claim) may be distributed by the Term Agent to the Term Claimholders in full or partial satisfaction of Term Debt (applied in the order of application set forth above) in an amount determined by the Term Agent (acting in accordance with an Act of Required Secured Parties) or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding.

(e) Notwithstanding anything contained in this Agreement to the contrary, in the event that any proceeds of Collateral (or amounts distributed on account of a Lien on the Collateral or the proceeds thereof) received in connection with any Enforcement Action or Disposition involving a Grantor involves

a combination of ABL Priority Collateral and Term Priority Collateral then, solely for the purposes of this Agreement, and unless otherwise agreed to by the ABL Agent and the Term Agent in writing with respect to the applicable Enforcement Action or Disposition, the portion of such proceeds that shall be allocated to the ABL Priority Collateral in an amount equal to the sum of (A) the greater of the book value and the fair market value, each as determined in accordance with GAAP, (but not less than cost) of any ABL Priority Collateral consisting of Inventory or As-Extracted Collateral (not comprised of Accounts) that is the subject of such Enforcement Action or Disposition, determined as of the date of such Enforcement Action or Disposition, (B) the book value, as determined in accordance with GAAP, of any ABL Priority Collateral consisting of Accounts or other Receivables that are the subject of the Enforcement Action or Disposition, determined as of the date of such Enforcement Action or Disposition, (C) the outstanding balance on deposit in each deposit account, securities account, trust account or other account under clause (iii) of the definition of ABL Priority Collateral of Grantors that are subject to such Enforcement Action or Disposition (other than deposit accounts, if any, used exclusively for identifiable proceeds of Term Priority Collateral) at the time of such Enforcement Action or Disposition, and (D) the fair market value, as determined in accordance with GAAP, of all other ABL Priority Collateral that is the subject of such Enforcement Action or Disposition, determined as of the date of such Enforcement Action or Disposition. The ABL Agent may, in its sole discretion, perform the foregoing valuations or hire a non-affiliated, nationally recognized valuation agent to perform the foregoing valuations, which shall be conclusive and binding. Any proceeds not so allocated to the ABL Priority Collateral shall be allocated to the Term Priority Collateral.

4.2. Turnover.

(a) Unless and until the Payment in Full of ABL Priority Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), any ABL Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in Section 2.3(b) or the proviso in Section 3.7) or any insurance proceeds described in Section 5.2(a), received by any of the Term Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the Term Claimholders or (ii) otherwise in violation of this Agreement, shall be held in trust and forthwith paid over to the ABL Agent for the benefit of the ABL Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

(b) Unless and until the Payment in Full of ABL Priority Debt has occurred and except as otherwise expressly provided in Section 6.5 or Section 6.9, if a Grantor (or any of its assets) is the subject of an Insolvency Proceeding and if any distribution is received by the Term Claimholders (or any of them) on account of their Term Secured Claims in respect of their interest in the ABL Priority Collateral in connection with such Insolvency Proceeding (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders or otherwise provides for the Payment in Full of ABL Priority Debt), then such distribution shall be held in trust and forthwith paid over to the ABL Agent for the benefit of the ABL Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. For the avoidance of doubt, unless and until the Payment in Full of ABL Priority Debt has occurred, the Term Agent shall be required to turn over to the ABL Agent and the ABL Agent shall be entitled to apply (or, in the case of non-cash proceeds, hold) in accordance with Section 4.1(a) and (b) any cash or non-cash distribution received by the Term Claimholders on account of their Term Secured Claims in respect of their interest in the ABL Priority Collateral pursuant to a confirmed plan of reorganization of a Grantor (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders or otherwise provides for the Payment in Full of ABL Priority Debt) irrespective of whether such plan of reorganization (or any Final Order in respect thereof) purports to find that the distribution to the ABL Claimholders pays the ABL Debt in full. The ABL Agent is hereby

authorized to make any such endorsements as agent for the Term Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of ABL Priority Debt.

(c) Unless and until the Payment in Full of Term Priority Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), any Term Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in Section 2.3(b) or the proviso in Section 3.7) or any insurance proceeds described in Section 5.2(b), received by any of the ABL Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the ABL Claimholders or (ii) otherwise in violation of this Agreement, shall be held in trust and forthwith paid over to the Term Agent for the benefit of the Term Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

(d) Unless and until the Payment in Full of Term Priority Debt has occurred, except as otherwise expressly provided in Section 6.5 or Section 6.9, if a Grantor (or any of its assets) is the subject of an Insolvency Proceeding and if any distribution is received by the ABL Claimholders (or any of them) on account of their ABL Secured Claims in respect of their interest in the Term Priority Collateral in connection with such Insolvency Proceeding (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Claimholders or otherwise provides for the Payment in Full of Term Priority Debt), then such distribution shall be held in trust and forthwith paid over to the Term Agent for the benefit of the Term Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. For the avoidance of doubt, unless and until the Payment in Full of Term Priority Debt has occurred, the ABL Agent shall be required to turn over to the Term Agent and the Term Agent shall be entitled to apply (or, in the case of non-cash proceeds, hold) in accordance with Section 4.1(c) and (d) any cash or non-cash distribution received by the ABL Claimholders on account of their ABL Secured Claims in respect of their interest in the Term Priority Collateral pursuant to a confirmed plan of reorganization of a Grantor (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Claimholders or otherwise provides for the Payment in Full of Term Priority Debt) irrespective of whether such plan of reorganization (or any Final Order in respect thereof) purports to find that the distribution to the Term Claimholders pays the Term Debt in full. The Term Agent is hereby authorized (without obligation) to make any such endorsements as agent for the ABL Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of Term Priority Debt.

(e) Each Term Claimholder agrees that if, at any time, all or part of any payment with respect to any ABL Debt secured by any ABL Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to the ABL Agent any payment received by it in respect of any such ABL Priority Collateral and shall promptly turn any such ABL Priority Collateral then held by it over to the ABL Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such ABL Debt. In no event shall the ABL Cap be deemed exceeded solely by the occurrence of any such reinstatement; *provided* that any ABL Debt outstanding that does not consist of such reinstated amount shall be included in the calculation of ABL Debt for purposes of determining whether the ABL Cap has been exceeded.

(f) Each ABL Claimholder agrees that if, at any time, all or part of any payment with respect to any Term Debt secured by any Term Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to the Term Agent any payment received by it in respect of any such Term Priority Collateral and shall promptly turn any such Term Priority Collateral then held by it over to the Term Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such Term Debt. In no event shall the Term Cap be deemed exceeded solely by the occurrence of any such reinstatement; *provided*

that any Term Debt outstanding that does not consist of such reinstated amount shall be included in the calculation of Term Debt for purposes of determining whether the Term Cap has been exceeded.

4.3. No Subordination in Right of Payment. Anything to the contrary contained herein notwithstanding, the subordination of the Liens of the Term Claimholders in respect of the ABL Priority Collateral to the Liens of the ABL Claimholders therein and of the Liens of the ABL Claimholders in respect of the Term Priority Collateral to the Liens of the Term Claimholders therein as set forth herein is with respect to the priority of their respective Liens in and to the Collateral held by or on behalf of them only and shall not constitute a subordination in right of payment of the Term Debt to the ABL Debt or a subordination in right of payment of the ABL Debt to the Term Debt.

4.4. Non-Lienable Assets. Notwithstanding anything to the contrary contained herein (including Section 4.3), if any assets, licenses, rights or privileges of any Grantor are incapable of being subject to a Lien in favor of a secured party (including because of restrictions under applicable law, the nature of the rights or interests of such Grantor or the absence of a consent to such Lien by a third party and irrespective of whether the applicable collateral documents attempt (or purport) to encumber such assets, licenses, rights or privileges (the “Inalienable Interests”)), then the ABL Agent and the Term Agent agree that any distribution or recovery that the ABL Claimholders or the Term Claimholders may receive with respect to, or that is allocable to, the value of any such Inalienable Interests, or any proceeds thereof, whether received in their capacity as unsecured creditors or otherwise, shall be turned over and applied in accordance with Sections 4.1 and 4.2 as if such distribution or recovery were, or were on account of, the applicable Priority Collateral or the proceeds of such Collateral. With respect to Inalienable Interests that would be of the same type as the ABL Priority Collateral if such Inalienable Interests were able to be included in the Collateral, until the Payment in Full of ABL Priority Debt occurs, the Term Agent hereby appoints the ABL Agent, and any officer or agent of the ABL Agent, with full power of substitution, as the attorney-in-fact of each of the Term Claimholders for the limited purpose of carrying out the provisions of this Section 4.4 and taking any action and executing any instrument that the ABL Agent may reasonably deem necessary or advisable to accomplish the purposes of this Section 4.4, which appointment is irrevocable and coupled with an interest. With respect to Inalienable Interests that would be of the same type as the Term Priority Collateral if such Inalienable Interests were able to be included in the Collateral, until the Payment in Full of Term Priority Debt occurs, the ABL Agent hereby appoints (without obligation) the Term Agent, and any officer or agent of the Term Agent, with full power of substitution, as the attorney-in-fact of each of the ABL Claimholders for the limited purpose of carrying out the provisions of this Section 4.4 and taking any action and executing any instrument that the Term Agent may reasonably deem necessary or advisable to accomplish the purposes of this Section 4.4, which appointment is irrevocable and coupled with an interest.

4.5. Application of Payments. Subject to the other terms of this Agreement, all payments received (not in violation of this Agreement) by (i) the ABL Claimholders may be applied, reversed and reapplied, in whole or in part, to the ABL Debt to the extent *provided* for in the ABL Documents, and (ii) the Term Claimholders may be applied, reversed and reapplied, in whole or in part, to the Term Debt to the extent *provided* for in the Term Documents.

4.6. Nature of ABL Debt. The Term Agent, on behalf of itself and the other Term Claimholders that it represents, acknowledges and agrees that the ABL Credit Agreement includes a revolving commitment and that the amount of the ABL Debt that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed. The Term Agent acknowledges and agrees that the ABL Debt outstanding at any time or from time to time may be increased by the incurrence of incremental debt or reduced, and that the terms of the ABL Documents may (subject to Section 5.3 below) be modified, extended or amended from time to time and that the aggregate amount of

ABL Debt may be increased, replaced or Refinanced, in each event without affecting the lien priority provided for herein.

4.7. Nature of Term Debt. The ABL Agent acknowledges and agrees that the Term Debt outstanding at any time or from time to time may be increased by the incurrence of incremental debt, the incurrence of Term Hedging Obligations or increases in the amount of Term Hedging Obligations or reduced, and that the terms of the Term Documents (subject to Section 5.3 below) may be modified, extended or amended from time to time and that the aggregate amount of Term Debt may be increased, replaced or Refinanced, in each event without affecting the lien priority provided for herein.

SECTION 5. RELEASES; DISPOSITIONS; OTHER AGREEMENTS.

5.1. Releases.

(a) Subject to Section 3.1, the ABL Agent shall have the exclusive right to make determinations regarding the release or Disposition of any ABL Priority Collateral pursuant to the terms of the ABL Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of or notice to any of the Term Claimholders.

(b) Subject to Section 3.2, the Term Agent shall have the exclusive right to make determinations regarding the release or Disposition of any Term Priority Collateral pursuant to the terms of the Term Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of or notice to any of the ABL Claimholders.

(c) If, in connection with an Enforcement Action by the ABL Agent as *provided* for in Section 3, or any action by the ABL Agent that would have otherwise constituted an Enforcement Action but for the fact that the ABL Priority Collateral that is the subject thereof is not material, the ABL Agent releases any of its Liens on any part of the ABL Priority Collateral (or such Liens are released by operation of law), then the Liens of the Term Agent (in each case, held for itself and on behalf of each Term Claimholder it represents) on such part of the ABL Priority Collateral, shall be automatically, unconditionally and simultaneously released.

(d) If, in connection with an Enforcement Action by the Term Agent as *provided* for in Section 3, or any action by the Term Agent that would have otherwise constituted an Enforcement Action but for the fact that the Term Priority Collateral that is the subject thereof is not material, each Term Agent releases any of its Liens (in each case, held for itself and on behalf of each Term Claimholder it represents) on any part of the Term Priority Collateral (or such Liens are released by operation of law), then the Liens of the ABL Agent on such part of the Term Priority Collateral, shall be automatically, unconditionally and simultaneously released.

(e) If, in connection with any Disposition of any ABL Priority Collateral (other than an ABL Default Disposition) permitted under the terms of the ABL Documents and permitted under the terms of the Term Documents, the ABL Agent releases any of its Liens on the portion of the ABL Priority Collateral that is the subject of such Disposition, then the Liens of each Term Agent (in each case, held for itself and on behalf of each Term Claimholder it represents) on such portion of ABL Priority Collateral shall be automatically, unconditionally and simultaneously released.

(f) If, in connection with any Disposition of any Term Priority Collateral (other than a Term Default Disposition) permitted under the terms of the Term Documents and permitted under the

terms of the ABL Documents, each Term Agent releases any of its Liens (in each case, held for itself and on behalf of each Term Claimholder it represents) on the portion of the Term Priority Collateral that is the subject of such Disposition, then the Liens of the ABL Agent on such portion of Term Priority Collateral shall be automatically, unconditionally and simultaneously released.

(g) In the event of any private or public Disposition of all or any portion of the ABL Priority Collateral by one or more Grantors with the consent of the ABL Agent after the occurrence and during the continuance of an ABL Default (and prior to the Payment in Full of ABL Priority Debt), which Disposition is conducted by such Grantors with the consent of the ABL Agent in connection with good faith efforts by the ABL Agent to collect the ABL Debt through the Disposition of ABL Priority Collateral (any such Disposition, an “**ABL Default Disposition**”), then the Liens of the Term Agent on such ABL Priority Collateral shall be automatically, unconditionally and simultaneously released so long as (i) the ABL Agent also releases its Liens on such ABL Priority Collateral, (ii) the Liens of each Term Agent (in each case, held for itself and on behalf of each Term Claimholder it represents) continue to attach to the proceeds of such ABL Default Disposition to the extent not used to repay ABL Priority Debt (or any obligation secured by a Lien that is senior to the ABL Agent’s Lien pursuant to a Permitted ABL Priority Collateral Subordination), and (iii) the proceeds of any such ABL Default Disposition are applied in accordance with Section 4.1(a) (as if they were proceeds received in connection with an Enforcement Action).

(h) In the event of any private or public Disposition of all or any portion of the Term Priority Collateral by one or more Grantors with the consent of, as applicable, the Initial Term Agent or any other Additional Term Agent after the occurrence and during the continuance of a Term Default (and prior to the Payment in Full of Term Priority Debt), which Disposition is conducted by such Grantors with the consent of the Term Agent in connection with good faith efforts by the Term Agent to collect the Term Debt through the Disposition of Term Priority Collateral (any such Disposition, a “Term Default Disposition”), then the Liens of the ABL Agent on such Term Priority Collateral shall be automatically, unconditionally and simultaneously released so long as (i) each Term Agent also releases its Liens (in each case, held for itself and on behalf of each Term Claimholder it represents) on such Term Priority Collateral, (ii) the ABL Agent’s Lien continues to attach to the proceeds of such Term Default Disposition to the extent not used to repay Term Priority Debt (or any obligation secured by a Lien that is senior to the Term Agent’s Lien pursuant to a Permitted Term Priority Collateral Subordination), and (iii) the proceeds of any such Term Default Disposition are applied in accordance with Section 4.1(c) (as if they were proceeds received in connection with an Enforcement Action).

(i) To the extent that the Liens of the Term Agent in and to any ABL Priority Collateral are to be released as provided in this Section 5.1:

(i) each Term Agent shall promptly, upon the written request of the ABL Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as the ABL Agent may reasonably request in connection with such Disposition to evidence and effectuate such release; *provided* that any such release or UCC amendment by each such Term Agent shall not extend to or otherwise affect any of the rights, if any, of such Term Agent to the proceeds from any such Disposition of any Collateral;

(ii) from and after the time that the Liens of each Term Agent in and to such ABL Priority Collateral are released, each Term Agent shall be automatically and irrevocably deemed to have authorized the Company, the ABL Agent or their respective designees to file UCC amendments releasing the ABL Priority Collateral subject to such Disposition; *provided* that any such release or UCC amendment with respect to the Lien of

the Term Agent shall not extend to or otherwise affect any of the rights, if any, of the Term Agent to the proceeds from any such Disposition of any Collateral;

(iii) the Term Claimholders shall be deemed to have consented under the Term Documents to such Disposition to the same extent as the consent of the ABL Claimholders; and

(iv) in accordance with the provisions of applicable law, the Liens of each Term Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition to the extent not used to repay ABL Debt (or any obligation secured by any Lien that is senior to the ABL Agent's Liens pursuant to a Permitted ABL Priority Collateral Subordination).

(j) To the extent that the Liens of the ABL Agent in and to any Term Priority Collateral are to be released as provided in this Section 5.1:

(i) the ABL Agent shall promptly, upon the written request of the Term Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as the Term Agent may reasonably request in connection with such Disposition to evidence and effectuate such release; *provided* that any such release or UCC amendment by the ABL Agent shall not extend to or otherwise affect any of the rights, if any, of the ABL Agent to the proceeds from any such Disposition of any Collateral;

(ii) from and after the time that the Liens of the ABL Agent in and to such Term Priority Collateral are released, the ABL Agent shall be automatically and irrevocably deemed to have authorized the Company, the Term Agent or their respective designees to file UCC amendments releasing the Collateral subject to such Disposition; *provided* that any such release or UCC amendment with respect to the Lien of the ABL Agent shall not extend to or otherwise affect any of the rights, if any, of the ABL Agent to the proceeds from any such Disposition of any Collateral;

(iii) the ABL Agent shall be deemed to have consented under the ABL Documents to such Disposition to the same extent as the consent of the Term Claimholders; and

(iv) in accordance with the provisions of applicable law, the Liens of the ABL Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition to the extent not used to repay Term Debt (or any obligation secured by any Lien that is senior to the Term Agent's Liens pursuant to a Permitted Term Priority Collateral Subordination).

(k) Until the Payment in Full of ABL Priority Debt occurs, the Term Agent hereby irrevocably constitutes and appoints the ABL Agent and any officer or agent of the ABL Agent, with full power of substitution, as its true and lawful non-fiduciary attorney-in-fact with full irrevocable power and authority in the place and stead of the Term Agent or in the ABL Agent's own name, from time to time in the ABL Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the ABL Priority Collateral and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC-3) or any other endorsements or other instruments of transfer or release with respect to the ABL Priority Collateral.

(l) Until the Payment in Full of Term Priority Debt occurs, the ABL Agent hereby irrevocably constitutes and appoints the Term Agent and any officer or agent of the Term Agent, with full power of substitution, as its true and lawful non-fiduciary attorney-in-fact with full irrevocable power and authority in the place and stead of the ABL Agent or in the Term Agent's own name, from time to time in the Term Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the Term Priority Collateral and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC-3) or any other endorsements or other instruments of transfer or release with respect to the Term Priority Collateral.

(m) Until the Payment in Full of ABL Priority Debt occurs, to the extent that the ABL Claimholders (i) have released any Lien on ABL Priority Collateral or any Grantor with respect to the ABL Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the ABL Debt, then, subject to Section 2.3, each Term Agent shall be entitled to obtain a Lien on any such ABL Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the Term Debt, as the case may be.

(n) Until the Payment in Full of Term Priority Debt occurs, to the extent that the Term Claimholders (i) have released any Lien on Term Priority Collateral or any Grantor with respect to the Term Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the Term Debt, then, subject to Section 2.3, the ABL Agent shall be entitled to obtain a Lien on any such Term Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the ABL Debt, as the case may be.

5.2. Insurance.

(a) Unless and until the Payment in Full of ABL Priority Debt has occurred: (i) the ABL Agent shall, to the extent applicable, practicable and, in any event subject to paragraph (c) below, have the sole and exclusive right, subject to the rights of the Grantors under the ABL Documents, to adjust and settle any claim under any insurance policy in respect of or included in the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the ABL Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the rights of the Grantors under the ABL Documents and the Term Documents, first to the ABL Agent and the Term Agent in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If any of the Term Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(a), it shall pay such proceeds over to the ABL Agent in accordance with the terms of Section 4.2.

(b) Unless and until the Payment in Full of Term Priority Debt has occurred: (i) the Term Agent shall, to the extent applicable, practicable and, in any event subject to paragraph (c) below, have the sole and exclusive right, subject to the rights of the Grantors under the Term Documents, to adjust and settle any claim under any insurance policy in respect of or included in the Term Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Term Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the rights of the Grantors under the Term Documents and the ABL

Documents, first to the Term Agent and the ABL Agent in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If any of the ABL Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(b), it shall pay such proceeds over to the Term Agent in accordance with the terms of Section 4.2.

(c) In the event that any proceeds are derived from any insurance policy that covers both ABL Priority Collateral and Term Priority Collateral, the Term Agent or the ABL Agent, as determined by whichever facility's Priority Collateral bore a materially disproportionately greater covered loss shall, in consultation with the other Agent, have the sole and exclusive authority, subject to the rights of the Grantors, to adjust or settle any claim under the relevant insurance policy; *provided* that if the covered losses (as between the ABL Debt and the Term Debt) are approximately equal or their relative proportion cannot be ascertained with reasonable certainty, then the ABL Agent and the Term Agent (acting at the direction of an Act of Required Secured Parties) will work jointly and in good faith to collect, adjust or settle (subject to the rights of the Grantors under the ABL Documents and the Term Documents) any claim under the relevant insurance policy.

(d) Notwithstanding anything contained in this Agreement to the contrary, in the event that any proceeds are derived from any insurance policy that covers both ABL Priority Collateral and Term Priority Collateral, then, solely for the purposes of this Agreement, a portion of the proceeds of such insurance policy that are attributable to both ABL Priority Collateral and Term Priority Collateral shall be allocated to the ABL Priority Collateral in an amount equal to the sum of (A) the greater of the book value and the fair market value, each as determined in accordance with GAAP (but not less than cost) of any ABL Priority Collateral consisting of Inventory or As-Extracted Collateral (not comprising Accounts) that is the subject of such loss, determined as of the date of the loss to which such proceeds relate, (B) the book value, as determined in accordance with GAAP, of any ABL Priority Collateral consisting of Accounts or other Receivables that are the subject of the Disposition or event giving rise to the Casualty Receipt which results in such Collateral Proceeds and the proceeds of which constitute such Collateral Proceeds, determined as of the date of the loss to which such proceeds relate, and (C) the fair market value, as determined in accordance with GAAP, of all other ABL Priority Collateral that is the subject of such loss, determined as of the date of the loss to which such proceeds relate. The ABL Agent may, in its sole discretion, perform the foregoing valuations or hire a non-affiliated, nationally recognized valuation agent to perform the foregoing valuations, which shall be conclusive and binding. Any proceeds not so allocated to the ABL Priority Collateral shall be allocated to the Term Priority Collateral.

(e) To effectuate the foregoing, the Grantors shall provide the ABL Agent and the Term Agent with separate lender's loss payable endorsements naming the ABL Agent and the Term Agent as loss payee, as their interests may appear, with respect to policies which insure Collateral hereunder.

5.3. Amendments; Refinancings; Legend.

(a) The ABL Documents may be amended, supplemented, waived or otherwise modified in accordance with their terms, and the ABL Debt may be Refinanced, in each case without notice to, or the consent of, the Term Agent or the Term Claimholders, all without affecting the lien subordination or other provisions of this Agreement; *provided* that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to the Term Agent and each other party to this Agreement at such time) to the terms of this Agreement; *provided, further*, that any such amendment, supplement, modification, or Refinancing shall not contravene the provisions of this Agreement without the prior written consent of the Term Agent (*provided* pursuant to an Act of Required Secured Parties in accordance with the terms of the Term Intercreditor Agreement).

(b) The Term Documents may be amended, supplemented, waived or otherwise modified in accordance with their terms, and the Term Debt may be Refinanced, in each case without notice to, or the consent of the ABL Agent or the ABL Claimholders, all without affecting the lien subordination or other provisions of this Agreement; *provided* that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to the ABL Agent) to the terms of this Agreement; *provided, further*, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of the ABL Agent (which it shall be authorized to consent to based upon an affirmative vote of the ABL Required Lenders) contravene the provisions of this Agreement.

(c) In the event that the ABL Agent or the ABL Claimholders and the relevant Grantor enter into any ABL Collateral Document or any amendment, waiver or consent in respect of any of the ABL Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any ABL Collateral Document or changing in any manner the rights of the ABL Agent, such ABL Claimholders, the Company or any other Grantor thereunder, in each case with respect to or relating to the ABL Priority Collateral, then such amendment, waiver or consent shall apply automatically to any comparable provision of the Term Collateral Document without the consent of the Term Agent or the Term Claimholders and without any action by the Term Agent, the Term Claimholders, the Company or any other Grantor, *provided* that (A) no such amendment, waiver or consent shall have the effect of (I) removing assets that constitute ABL Priority Collateral subject to the Lien of the Term Collateral Documents, except to the extent that a release of such Lien is permitted or required by Section 5.1 and *provided* that there is a corresponding release of such Lien securing the ABL Debt, (II) imposing duties on or amending the rights and protections of the Term Agent or the Term Representative without its consent or (III) permitting other liens on the ABL Priority Collateral not permitted under the terms of the Term Documents or Section 6, (B) notice by the ABL Agent of such amendment, waiver or consent shall have been given to the Term Agent within ten Business Days after the effective date of such amendment, waiver or consent, and (C) Grantors shall promptly enter into a comparable written amendment, waiver or consent to such Term Collateral Documents to document such automatic amendment, waiver or consent.

(d) In the event that the Term Agent or the Term Claimholders and the relevant Grantor enter into any Term Collateral Document or any amendment, waiver or consent in respect of any of the Term Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any Term Collateral Document or changing in any manner the rights of the Term Agent, such Term Claimholders, the Company or any other Grantor thereunder, in each case with respect to or relating to the Term Priority Collateral, then such amendment, waiver or consent shall apply automatically to any comparable provision of the ABL Collateral Document without the consent of the ABL Agent or the ABL Claimholders and without any action by the ABL Agent, the ABL Claimholders, the Company or any other Grantor; *provided* that (A) no such amendment, waiver or consent shall have the effect of (I) removing assets that constitute Term Priority Collateral subject to the Lien of the ABL Collateral Documents, except to the extent that a release of such Lien is permitted or required by Section 5.1 and *provided* that there is a corresponding release of such Lien securing the Term Debt, (II) imposing duties on the ABL Agent without its consent or (III) permitting other liens on the Term Priority Collateral not permitted under the terms of the ABL Documents or Section 6, (B) notice by the Term Agent of such amendment, waiver or consent shall have been given to the ABL Agent within ten Business Days after the effective date of such amendment, waiver or consent, and (C) Grantors shall promptly enter into a comparable written amendment, waiver or consent to such ABL Collateral Documents to document such automatic amendment, waiver or consent.

(e) So long as Payment in Full of ABL Priority Debt has not occurred, the Term Claimholders agree and the Grantors will ensure that each applicable Term Collateral Document executed on or after the date hereof that grants a Lien on any material Collateral shall include the following language (or similar language acceptable to the ABL Agent):

“Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this agreement, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of [_____] [____], [_____] (as amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), by and between REGIONS BANK, as Initial ABL Agent, and [●], as Initial Term Representative and Initial Term Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this agreement, the terms of the Intercreditor Agreement shall govern and control.”

(f) So long as Payment in Full of Term Priority Debt has not occurred, the ABL Agent agrees and the Grantors will ensure that each applicable ABL Collateral Document executed on or after the date hereof that grants a Lien on any material Collateral shall include the following language (or similar language acceptable to the Term Agent):

“Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this agreement, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of [_____] [____], [_____] (as amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), by and between REGIONS BANK, as Initial ABL Agent, and [●], as Initial Term Representative, and Initial Term Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this agreement, the terms of the Intercreditor Agreement shall govern and control.”

5.4. Bailee for Perfection.

(a) The ABL Agent and the Term Agent each agree to hold or control that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees), to the extent that possession or control thereof may be taken to perfect a Lien thereon under the UCC or other applicable law, including any account (including deposit accounts) in which Collateral is held and over which the ABL Agent or the Term Agent has control (such Collateral being referred to as the **“Pledged Collateral”**), as gratuitous bailee and as a non-fiduciary representative for the Term Agent or the ABL Agent, as applicable (such bailment and agency being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2), 9-313(c), 9-104, 9-105, 9-106 and 9-107 of the UCC), solely for the purpose of perfecting the security interest granted under the Term Documents or the ABL Documents, as applicable, subject to the terms and conditions of this Section 5.4. Each Term Agent hereby appoints the ABL Agent as its gratuitous bailee and non-fiduciary representative for the purposes of perfecting its security interest in all Pledged Collateral in which the ABL Agent has a perfected security interest under the UCC. The ABL Agent hereby appoints the Term Agent as its gratuitous bailee and non-fiduciary representative for the purposes of perfecting its security interest in all Pledged Collateral in which the Term Agent has a perfected security interest under the UCC. Each of the ABL Agent and the Term Agent hereby accepts such appointment pursuant to this Section 5.4 and acknowledges and agrees that it shall hold possession or have control for the benefit of and on behalf of the other Claimholders with respect to any Pledged Collateral and that any Proceeds received by the ABL Agent or the Term Agent, as the case may be, under any Pledged Collateral shall be applied in accordance with Section 4. Unless and until the Payment in Full of ABL Priority Debt has occurred, the Term Agent agrees to promptly (upon its actual knowledge thereof) notify the ABL Agent of any Pledged Collateral constituting ABL Priority Collateral held by it or by any other Term Claimholder, and, promptly upon the request of the ABL Agent at any time prior to the Payment in Full of ABL Priority Debt, the Term Agent agrees (unless otherwise prohibited by applicable law, unless any other Person has made a demand therefor and is lawfully entitled thereto, or

unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) to deliver to the ABL Agent, upon its request, any such Pledged Collateral held by it or by any other Term Claimholder, together with any necessary endorsements (or otherwise allow the ABL Agent to obtain control of such Pledged Collateral). Unless and until the Payment in Full of Term Priority Debt has occurred, the ABL Agent agrees to promptly (upon its actual knowledge thereof) notify the Term Agent of any Pledged Collateral constituting Term Priority Collateral held by it or by any other ABL Claimholder, and, promptly upon the request of the Term Agent at any time prior to the Payment in Full of Term Priority Debt, the ABL Agent agrees (unless otherwise prohibited by applicable law, unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) to deliver to the Term Agent any such Pledged Collateral held by it or by any other ABL Claimholder, together with any necessary endorsements (or otherwise allow the Term Agent to obtain control of such Pledged Collateral).

(b) The ABL Agent shall have no obligation whatsoever to any of the Term Claimholders to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The Term Agent shall have no obligation whatsoever to any of the ABL Claimholders to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The duties or responsibilities of the ABL Agent under this Section 5.4 shall be limited solely to holding or controlling the Pledged Collateral as gratuitous bailee and non-fiduciary representative in accordance with this Section 5.4 and (unless otherwise prohibited by applicable law, unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) delivering any Pledged Collateral in its possession or control (or in the possession or control of its agents or bailees) upon a Payment in Full of ABL Priority Debt as provided in Section 5.6. The duties or responsibilities of the Term Agent under this Section 5.4 shall be limited solely to holding or controlling the Pledged Collateral as gratuitous bailee and non-fiduciary representative in accordance with this Section 5.4 and (unless otherwise prohibited by applicable law, unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) delivering any Pledged Collateral in its possession or control (or in the possession or control of its agents or bailees) upon a Payment in Full of Term Priority Debt as provided in Section 5.6. Nothing in this Section 5.4 shall limit or qualify the rights of the Priority Claimholders under Section 3.3 hereof.

(c) The ABL Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the Term Claimholders or any other Person. The Term Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the ABL Claimholders or any other Person.

(d) Upon Payment in Full of ABL Priority Debt, the ABL Agent shall (unless otherwise prohibited by applicable law, unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) deliver the remaining tangible Pledged Collateral in its possession or control (or in the possession or control of its agents or bailees), if any, together with any necessary endorsements, first, to the Term Agent, if Term Debt (or commitments to extend Term Debt) remains outstanding as confirmed to the ABL Agent in writing by the Term Agent, and, if (x) the Term Agent confirms that no Term Debt (or commitments to extend Term Debt) is outstanding and (y) the ABL Agent confirms that no ABL Debt (or commitments to extend ABL Debt) is outstanding, second, to the Company. At such time, the ABL Agent further agrees to take all other action reasonably

requested by the Term Agent in writing at the expense of the Grantors (including amending any outstanding control agreements) to enable the Term Agent to obtain a first priority security interest in the Collateral. Without limiting the foregoing, the Term Agent agrees that no ABL Claimholder will have any duty or obligation first to marshal or realize upon the ABL Priority Collateral, or to sell, dispose of or otherwise realize upon all or any portion of the ABL Priority Collateral, in any manner that would maximize the return to the Term Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the Term Claimholders from such realization, sale, disposition or liquidation.

(e) Upon Payment in Full of Term Priority Debt, the Term Agent shall (unless otherwise prohibited by applicable law, unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) deliver the remaining tangible Pledged Collateral in its possession or control (or in the possession or control of its agents or bailees), if any, together with any necessary endorsements, first, to the ABL Agent, if any ABL Debt (or commitments to extend ABL Debt) remains outstanding as confirmed to the Term Agent in writing by the ABL Agent, and, if (x) the ABL Agent confirms that no ABL Debt (or commitments to extend ABL Debt) is outstanding and (y) the Term Agent confirms that no Term Debt (or commitments to extend Term Debt) is outstanding, second, to the Company. At such time, the Term Agent further agrees to take all other action reasonably requested by the ABL Agent in writing at the expense of the Grantors (including amending any outstanding control agreements) to enable the ABL Agent to obtain a first priority security interest in the Collateral. Without limiting the foregoing, the ABL Agent agrees that no Term Claimholder will have any duty or obligation first to marshal or realize upon the Term Priority Collateral, or to sell, dispose of or otherwise realize upon all or any portion of the Term Priority Collateral, in any manner that would maximize the return to the ABL Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the ABL Claimholders from such realization, sale, disposition or liquidation.

(f) Notwithstanding anything to the contrary contained in this Agreement, any obligation of either Agent to make any delivery of Pledged Collateral to the other Agent under this Section 5 is subject to such Agent's compliance with any (i) order of any court of competent jurisdiction with respect to such Pledged Collateral or (ii) automatic stay imposed in connection with any Insolvency Proceeding.

5.5. When Payment in Full of ABL Priority Debt or Payment in Full of Term Priority Debt Deemed to Not Have Occurred.

(a) If any of the ABL Borrowers enter into any Refinancing of the ABL Debt that is intended to be secured by the ABL Priority Collateral on a first priority basis in accordance with the terms of this Agreement and the Indenture (as in effect on the date hereof), then a Payment in Full of ABL Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such ABL Debt shall be treated as ABL Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the ABL Agent under the ABL Documents effecting such Refinancing shall be the ABL Agent for all purposes of this Agreement, so long as the ABL Agent under such ABL Documents agrees (in a writing addressed to the Term Agent) to be bound by the terms of this Agreement.

(b) If the Company enters into any Refinancing of the Term Debt that is intended to be secured by the Term Priority Collateral on a first priority basis in accordance with the terms of this Agreement and the Initial ABL Credit Agreement (as in effect on the date hereof), then a Payment in Full of Term Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the

obligations under such Refinancing of such Term Debt shall be treated as Term Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the Term Agent under the Term Documents effecting such Refinancing shall be the Term Agent for all purposes of this Agreement, so long as the Term Agent under such Term Documents agrees (in a writing addressed to the ABL Agent) to be bound by the terms of this Agreement.

5.6. Transfer of Pledged Collateral.

(a) The ABL Agent hereby agrees that upon the Payment in Full of ABL Priority Debt, to the extent permitted by applicable law (unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) (with all costs and expenses in connection therewith to be paid solely by the Grantors):

(i) the ABL Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession and control of the Pledged Collateral, if any, then in its possession or control, to the Term Agent, except in the event and to the extent (A) such Collateral is sold, liquidated or otherwise disposed of by any of the ABL Claimholders or by a Grantor as *provided* herein in full or partial satisfaction of any of the ABL Debt or (B) any order of any court or other Governmental Authority or applicable law requires otherwise; and

(ii) in connection with the terms of any collateral access or like agreement, whether with a landlord, processor, warehouseman or other third party or any control agreement, with respect to which the Term Agent is also a party, the ABL Agent shall notify the other parties thereto that its rights thereunder have been terminated and shall confirm to such parties that the Term Agent is thereafter the “Controlling Agent” or “Notice Agent” (or other comparable term) as such term is used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement.

(b) The Term Agent hereby agrees that upon the Payment in Full of Term Priority Debt, to the extent permitted by applicable law (unless any other Person has made a demand therefor and is lawfully entitled thereto, or unless a court of competent jurisdiction otherwise directs and subject in all events to the receipt of customary indemnification of all liabilities arising therefrom) (with all costs and expenses in connection therewith to be paid solely by the Grantors):

(i) The Term Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession and control of the Pledged Collateral, if any, then in its possession or control, to the ABL Agent, except in the event and to the extent (A) such Collateral is sold, liquidated or otherwise disposed of by any of the Term Claimholders or by a Grantor as *provided* herein in full or partial satisfaction of any of the Term Debt or (B) any order of any court or other Governmental Authority or applicable law requires otherwise; and

(ii) in connection with the terms of any collateral access or like agreement, whether with a landlord, processor, warehouseman or other third party or any control agreement, with respect to which the ABL Agent is also a party, the Term Agent shall notify the other parties thereto that its rights thereunder have been terminated and shall confirm to such parties that the ABL Agent is thereafter the “Controlling Agent” or “Notice Agent” (or other comparable term) as such term is used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement.

(c) The foregoing provisions shall not impose on any of the ABL Claimholders or any of the Term Claimholders any obligations that would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or other Governmental Authority or any applicable law or give rise to risk of legal liability.

SECTION 6. INSOLVENCY PROCEEDINGS.

6.1. Enforceability and Continuing Priority. This Agreement shall be applicable both before and after the commencement of any Insolvency Proceeding and all converted or succeeding cases in respect thereof. The relative rights of the Claimholders in or to any distributions from or in respect of any Collateral, or proceeds of Collateral, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code.

6.2. Financing.

(a) Until the Payment in Full of ABL Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if the ABL Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code) constituting ABL Priority Collateral (herein, “**ABL Cash Collateral**”), or consents (or chooses to not object) to such Grantor obtaining financing, whether from any of the ABL Claimholders or any other Person, *provided* under Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law secured by a Lien on such ABL Priority Collateral (such financing, an “**ABL DIP Financing**”), and if such ABL Cash Collateral use or ABL DIP Financing, as applicable, meets the applicable ABL DIP Financing Conditions, then, subject to the proviso in the definition of ABL DIP Conditions, the Term Agent will not be permitted to object and each will be deemed to have consented to such ABL Cash Collateral use and will raise no objection to such ABL DIP Financing, as applicable, and, if ABL DIP Financing is involved, the Term Agent will subordinate and will be deemed to have subordinated its Liens in the ABL Priority Collateral to the Liens securing such ABL DIP Financing. If such ABL Cash Collateral use or ABL DIP Financing, as applicable, meets some, but not all, of the applicable ABL DIP Financing Conditions, then the Term Agent unconditionally agrees that it will only withhold its consent to such ABL Cash Collateral use and will only raise an objection to such ABL DIP Financing based upon the ABL DIP Financing Condition(s) which are not met and will not withhold its consent or object on any other basis. If ABL DIP Financing is involved and any permitted objection of the Term Agent is withdrawn, overruled, or otherwise eliminated, each Term Agent will subordinate and will be deemed to have subordinated its Liens in the ABL Priority Collateral to the Liens securing such ABL DIP Financing. The Term Agent agrees that it shall not, nor shall any of the Term Claimholders, directly or indirectly, provide, offer to provide, or support any financing competing with the ABL DIP Financing, that in each case would be secured by a Lien on the ABL Priority Collateral that is senior to or *pari passu* with the Liens securing the ABL Debt. If, in connection with any ABL Cash Collateral use or ABL DIP Financing, any Liens on the ABL Priority Collateral held by the ABL Claimholders to secure the ABL Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee “carve-out,” or fees owed to the United States trustee in such proceeding, then the Liens on the ABL Priority Collateral of the Term Claimholders securing the Term Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the ABL Priority Collateral of the ABL Claimholders consistent with this Agreement.

(b) Until the Payment in Full of Term Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if the Term Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code) constituting Term Priority Collateral (herein, “**Term Cash Collateral**”), or consents (or chooses to not object) to such Grantor obtaining financing, whether from the Term Claimholders or any other Person, *provided* under Section 364 of the Bankruptcy Code or

any similar provision of any other Bankruptcy Law secured by a Lien on such Term Priority Collateral (such financing, a “**Term DIP Financing**”), and if such Term Cash Collateral use or Term DIP Financing, as applicable, meets the applicable Term DIP Financing Conditions, then, subject to the proviso in the definition of Term DIP Conditions, the ABL Agent will not be permitted to object and will be deemed to have consented to such Term Cash Collateral use and will raise no objection to such Term DIP Financing, as applicable, and, if Term DIP Financing is involved, the ABL Agent will subordinate and will be deemed to have subordinated its Liens in the Term Priority Collateral to the Liens securing such Term DIP Financing. If such Term Cash Collateral use or Term DIP Financing, as applicable, meets some, but not all, of the applicable Term DIP Financing Conditions, then the ABL Agent unconditionally agrees that it will only withhold its consent to such Term Cash Collateral use and will only raise an objection to such Term DIP Financing based upon the Term DIP Financing Condition(s) which are not met and will not withhold its consent or object on any other basis. If Term DIP Financing is involved and any permitted objection of the ABL Agent is withdrawn, overruled, or otherwise eliminated, the ABL Agent will subordinate and will be deemed to have subordinated its Liens in the Term Priority Collateral to the Liens securing such Term DIP Financing. The ABL Agent agrees that it shall not, and nor shall any of the ABL Claimholders, directly or indirectly, provide, offer to provide, or support any financing competing with the Term DIP Financing, that in each case would be secured by a Lien on the Term Priority Collateral that is senior to or *pari passu* with the Liens securing the Term Debt. If, in connection with any Term Cash Collateral use or Term DIP Financing, any Liens on the Term Priority Collateral held by the Term Claimholders to secure the Term Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee “carve-out,” or fees owed to the United States trustee in such proceeding, then the Liens on the Term Priority Collateral of the ABL Claimholders securing the ABL Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the Term Priority Collateral of the Term Claimholders consistent with this Agreement.

(c) All Liens granted to the ABL Agent or the Term Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the parties to be and shall be deemed to be subject to the Lien priorities in Section 2.1 and the other terms and conditions of this Agreement. Except as expressly set forth herein, nothing shall prevent the Agents or the Claimholders from objecting to any plan of reorganization under the Bankruptcy Code.

(d) Notwithstanding anything to the contrary herein, including without limitation Sections 2.1 and 6.2(c) hereof, it is understood and agreed that the priority of the Liens securing (x) any ABL DIP Financing with respect to the ABL Priority Collateral shall at all times be senior to any Liens securing the Term Debt and such ABL DIP Financing shall not constitute (or be deemed to constitute) Excess ABL Debt and (y) any Term DIP Financing with respect to the Term Priority Collateral shall at all times be senior to any Liens securing the ABL Debt and such Term DIP Financing shall not constitute (or be deemed to constitute) Excess Term Debt.

6.3. Sales. Each Junior Agent agrees that it will consent to, and will not object to or oppose, or support, directly or indirectly, any other person seeking to object to or oppose, a motion that is supported by the Priority Agent (i) to Dispose of any of its Priority Collateral free and clear of the Liens of the Junior Agent under Section 363 or Section 1129 of the Bankruptcy Code or (ii) to approve any procedures for the sale or disposition of any of its Priority Collateral of any of the Grantors if (a) the Priority Agent has consented to the sale of such Collateral free and clear of the Liens of the Priority Agent, (b) such motion does not impair, subject to the priorities set forth in this Agreement, the rights of the Junior Claimholders under Section 363(k) of the Bankruptcy Code (so long as the right of the Junior Claimholders to offset their claims against the purchase price only arises after the Priority Debt has been paid in full in cash) and (c) either (i) pursuant to court order, the Liens of the Junior Agent attach to the net proceeds of the Disposition with the same priority and validity as the Liens held by such Junior Agent on such Priority Collateral, and the Liens remain subject to the terms of this Agreement, or (ii) the proceeds of the

Disposition are promptly applied in accordance with Section 4.1. The foregoing to the contrary notwithstanding, the Junior Claimholders may oppose or raise any objections to such Disposition of such Priority Collateral that could be raised by an unsecured creditor of a Grantor; *provided* that such opposition or objections are not inconsistent with any other term or provision of this Agreement, do not include an opposition or objection to the proposed bidding procedures, and are not based on their status as secured creditors (without limiting the foregoing, the Junior Claimholders may not oppose or raise any objections based on rights afforded by Sections 363(e) and (f) of the Bankruptcy Code to secured creditors (or any comparable provision of any other Bankruptcy Law) with respect to the Liens granted to the Junior Agent in respect of such assets). Each Junior Agent or the Junior Claimholders (either directly or through one or more acquisition vehicles) may bid for Collateral at any public or private sale thereof, including credit bidding with respect to the Junior Collateral; *provided* that any such bid for the Collateral by the Junior Agent or the Junior Claimholders must provide for payment in cash of the full amount necessary to cause the Payment in Full of Priority Debt and such cash must be used to cause Payment in Full of Priority Debt at closing.

6.4. Relief from the Automatic Stay. Until the Payment in Full of Priority Debt has occurred, the Junior Agent agrees (on behalf of itself and the Junior Claimholders it represents) not to (a) seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency Proceeding or take any action in contravention thereof in respect of any Priority Collateral, without the prior written consent of the Priority Agent; *provided* that the Junior Agent may seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of such Priority Collateral if and to the extent that the Priority Agent has obtained relief from or modification of such stay in respect of the Priority Collateral, or (b) oppose (or support any other Person opposing) any request by the Priority Agent or any Priority Claimholder to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral.

6.5. Adequate Protection.

(a) In any Insolvency Proceeding involving a Grantor:

(i) each Junior Agent, on behalf of itself and each Junior Claimholder that it represents, agrees that it shall not object to or contest, or support any other person objecting to or contesting (and instead shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right to do so):

(A) any request by any Priority Claimholder with respect to any Priority Collateral prior to the applicable Payment in Full of Priority Debt, for adequate protection of its interest in the Priority Collateral, including a request for replacement or additional Liens on post-petition assets of the same type as such Priority Collateral; *provided* that any Junior Claimholder, solely in its capacity as a Priority Claimholder, may object to adequate protection in the form of cash payments to the extent such payment is sought to be paid from such Junior Claimholder's Priority Collateral or the proceeds (or advances in respect) thereof or from any ABL DIP Financing or Term DIP Financing provided by such Junior Claimholder, or

(B) any (x) objection by any Priority Claimholder to any motion, relief, action or proceeding based on such Priority Claimholders claiming a lack of adequate protection with respect to its Liens in their Priority Collateral or (y) request by any Priority Claimholder for relief from the automatic stay with respect to its Priority Collateral;

(ii) if any Priority Claimholder is granted adequate protection with respect to its rights in the Priority Collateral in the form of an additional or replacement Lien with respect to assets of

the type included in such Priority Collateral, then the Priority Agent agrees that the Junior Agent shall also be entitled to seek, without objection from the Priority Claimholders, adequate protection in the form of an additional or replacement Lien with respect to the assets that are the subject of the Priority Claimholder's additional or replacement Lien, which additional or replacement adequate protection Lien of the Junior Agent, if obtained, shall be subordinate to the adequate protection Liens in and to such assets securing the Priority Debt on the same basis as the other Liens securing the Junior Debt on the Junior Collateral are subordinated to the Liens on the Priority Collateral securing the Priority Debt under this Agreement;

(iii) no Junior Claimholder may seek adequate protection with respect to its rights in the Priority Collateral except for adequate protection permitted pursuant to Section 6.5(a)(ii) and Section 6.5(a)(iv) or adequate protection in the form of an additional or replacement Lien in and to existing or future assets of Grantors, and the applicable Priority Agent shall also be entitled to seek, without objection from the Junior Claimholders, a senior adequate protection Lien in and to such existing or future assets of Grantors as security for the Priority Debt and that any adequate protection Lien in and to the Priority Collateral securing the Junior Debt shall be subordinated to such senior adequate protection Lien in and to the Priority Collateral securing the Priority Debt on the same basis as the other Liens securing the Junior Debt are subordinated to the Liens on the Priority Collateral securing the Priority Debt under this Agreement;

(iv) each Claimholder may seek adequate protection with respect to its rights in the Collateral in the form of an additional or replacement Lien in and to existing or future Excluded Property of the type described in clause (ii) of the definition of Excluded Property; *provided that*, if the ABL Claimholders and the Term Claimholders each receive adequate protection in the form of Liens in and to the Excluded Property of the type described in clause (ii) of the definition of Excluded Property, then any such Liens in and to such Excluded Property granted as adequate protection of such Claimholder's interest in and to its Priority Collateral shall be senior in all respects, and prior to, any other Claimholder's Lien in and to such Excluded Property granted as adequate protection of such other Claimholder's interest in and to its Junior Collateral;

(v) any adequate protection granted in favor of any Priority Claimholder in the form of a superpriority or other administrative expense claim and any claim in favor of any Priority Claimholder arising under Section 507(b) of the Bankruptcy Code ("Senior 507(b) Claims"), shall be *pari passu* with the grant of adequate protection in favor of the other Priority Claimholders in the form of a superpriority or other administrative expense claim and any Senior 507(b) Claims in favor of such other Priority Claimholders; and

(vi) any claim arising under Section 507(b) of the Bankruptcy Code in favor of any Junior Claimholder shall be *pari passu* with the claims arising under Section 507(b) of the Bankruptcy Code in favor of the other Junior Claimholders (collectively, "Junior 507(b) Claims"), all Junior 507(b) Claims shall be junior and subordinate in right of payment to the Senior 507(b) Claims, and the holders of the Junior 507(b) Claims agree that, in connection with any plan of reorganization in such Insolvency Proceeding, such Junior 507(b) Claims may be paid in any combination of cash, securities, or other property having a present value equal to the amount of such Junior 507(b) Claims as of the effective date of confirmation of such plan.

(b) No Junior Claimholder shall object to, oppose, or challenge the determination of the extent of any Liens held by any of the Priority Claimholders or the value of any claims of Priority Claimholders under Section 506(a) of the Bankruptcy Code or any claim by any Priority Claimholder for allowance of Priority Debt consisting of post-petition interest, fees, or expenses so long as such post-petition

interest, fees, or expenses are paid either from such Priority Claimholder's Priority Collateral or an ABL DIP Financing or Term DIP Financing provided by such Priority Claimholder.

6.6. Specific Sections of the Bankruptcy Code. The Junior Claimholders shall not object to, oppose, support any objection to, or take any other action to impede, the right of any Priority Claimholder to make an election under Section 1111(b)(2) of the Bankruptcy Code. The Junior Claimholders waive any claim they may hereafter have against any Priority Claimholder arising out of the election by any Priority Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code. The Junior Claimholders agree that they will not, directly or indirectly, assert or support the assertion of, and hereby waive any right that they may have to assert or support the assertion of any claim under Section 506(c) or the "equities of the case" exception of Section 552(b) of the Bankruptcy Code as against any Priority Claimholder or with respect to any of the Priority Collateral to the extent securing the Priority Debt; *provided* that nothing herein shall restrict the holder of any debtor-in-possession financing from having, or seeking to have, such debtor-in-possession financing repaid, in whole or in part, from the proceeds of the assertion of any claim under Section 506(c) of the Bankruptcy Code (or any comparable provision of any other Bankruptcy Law); *provided, further*, that any such action does not violate Section 6.2.

6.7. No Waiver; Limitation. Subject to Sections 3.1, 3.2, 3.3 and the other provisions of this Section 6, nothing contained herein shall prohibit or in any way limit any Agent or any other Claimholder from objecting in any Insolvency Proceeding involving a Grantor to any action taken by the other Agent or any other Claimholder, including the seeking by the other Agent or any other Claimholder of adequate protection of any of its rights and remedies under the Term Documents or the ABL Documents, as applicable.

6.8. Avoidance Issues. If any Claimholder is required in any Insolvency Proceeding or otherwise to turn over, disgorge, or otherwise pay to the estate of any Grantor, because such amount was avoided or ordered to be paid or disgorged for any reason, including without limitation because it was found to be a fraudulent or preference transfer, any amount paid in respect of the Debt of such Claimholder (or if any Claimholder elects to do so upon the advice of counsel) (a "**Recovery**"), whether received as proceeds of security, enforcement of any right of set-off or otherwise, then the Debt of such Claimholder shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred, and all rights, interests, priorities, and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Each Claimholder agrees that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement. In no event shall the ABL Cap be deemed exceeded solely by the occurrence of any such reinstatement; provided that any ABL Debt outstanding that does not consist of such reinstated amount shall be included in the calculation of ABL Debt for purposes of determining whether the ABL Cap has been exceeded. In no event shall the Term Cap be deemed exceeded solely by the occurrence of any such reinstatement; provided that any Term Debt outstanding that does not consist of such reinstated amount shall be included in the calculation of Term Loan Debt for purposes of determining whether the Term Cap has been exceeded

6.9. Plan of Reorganization.

(a) If, in any Insolvency Proceeding involving a Grantor, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant

to a confirmed plan of reorganization or similar dispositive restructuring plan, both on account of ABL Debt and on account of Term Debt, then, to the extent the debt obligations distributed on account of the ABL Debt and on account of the Term Debt are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(b) The provisions of Section 1129(b)(1) of the Bankruptcy Code notwithstanding, the Claimholders agree that they will not propose, support, or vote in favor of any plan of reorganization of a Grantor that is inconsistent with the priorities or other provisions of this Agreement.

(c) If, in connection with an Insolvency Proceeding involving a Grantor, the Term Claimholders receive any cash, debt, or equity securities on account of their Term Secured Claims in respect of their interest in the ABL Priority Collateral, the Term Agent or the other Term Claimholders, as applicable, shall turnover such cash, claims or securities to the ABL Agent for application in accordance with Section 4.1, unless (i) the receipt and retention of such cash, claims or securities is permitted under Section 6.5 or Section 6.9(c) of this Agreement, or (ii) the distribution of such cash, claims or securities is made pursuant to a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders. The Term Agent irrevocably authorizes and empowers the ABL Agent, in the name of each Term Claimholder, to demand, sue for, collect, and receive any and all such distributions on account of any Term Secured Claim in respect of such Term Claimholder's interest in the ABL Priority Collateral to which the ABL Claimholders are entitled hereunder. Nothing in this Agreement prohibits or limits the right of the Term Claimholders to receive and retain any cash, debt, or equity securities on account of Term Deficiency Claims or in respect of any other portion of their Term Secured Claims that are not on account of their interest in the ABL Priority Collateral.

(d) If, in connection with an Insolvency Proceeding involving a Grantor, the ABL Claimholders receive any cash, debt, or equity securities on account of their ABL Secured Claims in respect of their interest in the Term Priority Collateral, the ABL Agent or the other ABL Claimholders, as applicable, shall turnover such cash, claims or securities to the Term Agent for application in accordance with Section 4.1, unless (i) the receipt and retention of such cash, claims or securities is permitted under Section 6.5 or Section 6.9(d) of this Agreement, or (ii) the distribution of such cash, claims or securities is made pursuant to a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Claimholders. The ABL Agent irrevocably authorizes and empowers the Term Agent, in the name of each ABL Claimholder, to demand, sue for, collect, and receive any and all such distributions on account of any ABL Secured Claim in respect of such ABL Claimholder's interest in the Term Priority Collateral to which the Term Claimholders are entitled hereunder. Nothing in this Agreement prohibits or limits the right of the ABL Claimholders to receive and retain any cash, debt, or equity securities on account of ABL Deficiency Claims or in respect of any other portion of their ABL Secured Claims that are not on account of their interest in the Term Priority Collateral.

6.10. Post-Petition Interest.

(a) Neither the ABL Agent nor any ABL Claimholder shall oppose or seek to challenge any claim by the Term Agent or any Term Claimholder for allowance in any Insolvency Proceeding of Term Secured Claims consisting of Post-Petition Interest, fees or expenses to the extent of the value of the Lien on the Term Priority Collateral securing any Term Claimholder's claim, without regard to the existence of the Lien of the ABL Agent on behalf of the ABL Claimholders on the Term Priority Collateral; *provided* that nothing contained in this Agreement shall limit the right of the ABL Agent or any

ABL Claimholder from objecting to the use of any cash payment of such Post-Petition Interest, fees or expenses with proceeds of ABL Priority Collateral, ABL Cash Collateral or ABL DIP Financing.

(b) Neither the Term Agent nor any Term Claimholder shall oppose or seek to challenge any claim by the ABL Agent or any ABL Claimholder for allowance in any Insolvency Proceeding of ABL Secured Claims consisting of Post-Petition Interest, fees or expenses to the extent of the value of the Lien on the ABL Priority Collateral securing any ABL Claimholder's claim, without regard to the existence of the Lien of the Term Agent on behalf of the Term Claimholders on the ABL Priority Collateral; *provided* that nothing contained in this Agreement shall limit the right of the Term Agent or any Term Claimholder from objecting to the use of any cash payment of such Post-Petition Interest, fees or expenses with proceeds of Term Priority Collateral, Term Cash Collateral or Term DIP Financing.

6.11. Separate Grants of Security and Separate Classification.

(a) In furtherance of the foregoing, each Term Agent, for itself and on behalf of the Term Claimholders it represents, and the ABL Agent, for itself and on behalf of the ABL Claimholders, acknowledges and agrees that the grants of Liens pursuant to the ABL Collateral Documents and the Term Collateral Documents constitute separate and distinct grants of Liens, and because of, among other things, their differing rights in the Collateral, the Term Secured Claims are fundamentally different from the ABL Secured Claim and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency Proceeding. In furtherance of the foregoing, each Term Agent, for itself and on behalf of the Term Claimholders it represents, and the ABL Agent, for itself and on behalf of the ABL Claimholders, each agrees that the Term Claimholders and the ABL Claimholders will vote as separate classes in connection with any plan of reorganization in any Insolvency Proceeding and that no Agent nor any Claimholder will seek to vote with the other as a single class in connection with any plan of reorganization in any Insolvency Proceeding.

(b) To further effectuate the intent of the parties as provided in this Section 6.11, if it is held that the claims of the Term Claimholders and the ABL Claimholders in respect of the Term Priority Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each Term Agent, for itself and on behalf of the Term Claimholders it represents, and the ABL Agent, for itself and on behalf of the ABL Claimholders, hereby acknowledges and agrees that, subject to Sections 2.1 and 4.1, all distributions in respect of the Term Priority Collateral shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Term Priority Collateral (with the effect being that, to the extent that the aggregate value of the Term Priority Collateral is sufficient (for this purpose ignoring all claims held by the ABL Claimholders), the Term Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or would be owing if there were such separate classes of claims) in respect of Post-Petition Interest, including any additional interest payable pursuant to the Term Documents, arising from or related to a default, which is disallowed as a claim in any Insolvency Proceeding) before any distribution in respect of the Term Priority Collateral is made in respect of the claims held by the ABL Claimholders, with the ABL Agent, for itself and on behalf of the ABL Claimholders, hereby acknowledging and agreeing to turn over to the Term Agent, for itself and on behalf of the Term Claimholders it represents, amounts otherwise received or receivable by them in respect of the Term Priority Collateral to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the ABL Claimholders.

(c) To further effectuate the intent of the parties as provided in this Section 6.11, if it is held that the claims of the Term Claimholders and the ABL Claimholders in respect of the ABL Priority Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each Term Agent, for itself and on behalf of the Term Claimholders it represents, and the

ABL Agent, for itself and on behalf of the ABL Claimholders, hereby acknowledges and agrees that, subject to Sections 2.1 and 4.1, all distributions in respect of the ABL Priority Collateral shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the ABL Priority Collateral (with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral is sufficient (for this purpose ignoring all claims held by the Term Claimholders), the ABL Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or would be owing if there were such separate classes of claims) in respect of Post-Petition Interest, including any additional interest payable pursuant to the ABL Documents, arising from or related to a default, which is disallowed as a claim in any Insolvency Proceeding) before any distribution in respect of the ABL Priority Collateral is made in respect of the claims held by the Term Claimholders, with each Term Agent, for itself and on behalf of the Term Claimholders it represents, hereby acknowledging and agreeing to turn over to the ABL Agent, for itself and on behalf of the ABL Claimholders, amounts otherwise received or receivable by them in respect of the ABL Priority Collateral to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Term Claimholders.

SECTION 7. RELIANCE; WAIVERS; ETC.

7.1. Reliance. Other than any reliance on the terms of this Agreement, the ABL Agent acknowledges that it and each of the other ABL Claimholders have, independently and without reliance on any of the Term Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the ABL Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Documents or this Agreement. Other than any reliance on the terms of this Agreement, the Term Agent acknowledges that it and each of the other Term Claimholders it represents have, independently and without reliance on any of the ABL Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Documents or this Agreement.

7.2. No Warranties or Liability. The ABL Agent acknowledges and agrees that none of the Term Claimholders have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Term Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly *provided* herein, the applicable Term Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Term Agent acknowledges and agrees that none of the ABL Claimholders has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the ABL Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly *provided* herein, the ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the ABL Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Term Claimholders shall have no duty to the ABL Claimholders, and the ABL Claimholders shall have no duty to the Term Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the ABL Documents and the Term Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3. No Waiver of Lien Priorities.

(a) No right of any of the Claimholders, any Agent or any of them to enforce any provision of this Agreement or any Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any other Claimholder or any Agent, or by any noncompliance by any person with the terms, provisions and covenants of this Agreement or any of the Loan Documents, regardless of any knowledge thereof which any Agent or any other Claimholder may have (or be otherwise charged with).

(b) Without in any way limiting the generality of the provisions of Section 7.3(a) (but subject to any rights of the Grantors under the ABL Documents and subject to the provisions of Section 5.3(a)), the ABL Claimholders may, at any time and from time to time in accordance with the ABL Documents or applicable law, without the consent of, or notice to, any of the Term Claimholders, without incurring any liabilities to any of the Term Claimholders and without impairing or affecting the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the Term Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the ABL Debt or any Lien on any ABL Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by any of the ABL Claimholders, the ABL Debt or any of the ABL Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order all or any part of the ABL Priority Collateral or any liability of any Grantor to any ABL Claimholder, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any ABL Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the ABL Debt) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any ABL Priority Collateral and any guarantor or any liability of any Grantor to any of the ABL Claimholders or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise *provided* herein, the Term Agent also agrees that the ABL Claimholders shall have no liability to any of the Term Claimholders, and each Term Agent hereby waives any claim of the Term Claimholders it represents against any of the ABL Claimholders arising out of any and all actions which any of the ABL Claimholders may, pursuant to the terms hereof, take, permit or omit to take with respect to:

(i) the ABL Documents;

(ii) the collection of the ABL Debt; or

(iii) the foreclosure upon, or sale, liquidation or other disposition of, or the failure to foreclose upon, or sell, liquidate or otherwise dispose of, any ABL Priority Collateral. The Term

Agent agrees that the ABL Claimholders have no duty to the Term Claimholders in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Debt, or otherwise.

(d) Without in any way limiting the generality of the provisions of Section 7.3(a) (but subject to any rights of the Grantors under the Term Documents and subject to the provisions of Section 5.3(b)), the Term Claimholders may, at any time and from time to time in accordance with the Term Documents or applicable law, without the consent of, or notice to, any of the ABL Claimholders, without incurring any liabilities to any of the ABL Claimholders and without impairing or affecting the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the ABL Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Term Debt or any Lien on any Term Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Term Claimholders, the Term Debt or any of the Term Documents;

(ii) subject to Section 3.9, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order all or any part of the Term Priority Collateral or any liability of any Grantor to any Term Claimholder, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Term Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Term Debt) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any Term Priority Collateral and any guarantor or any liability of any Grantor to any of the Term Claimholders or any liability incurred directly or indirectly in respect thereof.

(e) Except as otherwise *provided* herein, the ABL Agent also agrees that the Term Claimholders shall have no liability to any of the ABL Claimholders, and the ABL Agent hereby waives any claim of the ABL Claimholders against any of the Term Claimholders arising out of any and all actions which any of the Term Claimholders may, pursuant to the terms hereof, take, permit or omit to take with respect to:

(i) the Term Documents;

(ii) the collection of the Term Debt; or

(iii) the foreclosure upon, or sale, liquidation or other disposition of, or the failure to foreclose upon, or sell, liquidate or otherwise dispose of, any Term Priority Collateral. The ABL Agent agrees that the Term Claimholders have no duty to the ABL Claimholders in respect of the maintenance or preservation of the Term Priority Collateral, the Term Debt, or otherwise.

(f) Until the Payment in Full of ABL Priority Debt and the Payment in Full of Term Priority Debt, each of the Term Agents and the ABL Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead, or otherwise assert, or otherwise claim the benefit of, any marshaling, appraisal, valuation, or other similar right that may otherwise be available under applicable law with respect to the other Agent's Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4. Obligations Unconditional. For so long as this Agreement is in full force and effect, all rights, interests, agreements and obligations of the ABL Claimholders and the Term Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

- (i) any lack of validity or enforceability of any ABL Documents or any Term Documents;
- (ii) except as otherwise expressly restricted in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the ABL Debt or Term Debt, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Document or any Term Document;
- (iii) except as otherwise expressly restricted in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Debt or Term Debt or any guarantee thereof;
- (iv) the commencement of any Insolvency Proceeding in respect of any Grantor; or
- (v) any other circumstances which otherwise might constitute a defense available to any Grantor in respect of the ABL Debt or the Term Debt.

SECTION 8. MISCELLANEOUS.

8.1. Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any of the ABL Documents or any of the Term Documents, the provisions of this Agreement shall govern and control; *provided*, that nothing herein shall be deemed to be a consent by ABL Claimholders to any Term Debt that is not expressly permitted under the ABL Credit Agreement.

8.2. Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the Claimholders may continue, at any time and without notice to any Claimholder, to extend credit and other financial accommodations to or for the benefit of any Grantor constituting ABL Debt or Term Debt in reliance hereof. Each Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for such Grantor in any Insolvency Proceeding. This Agreement shall terminate and be of no further force and effect:

(i) with respect to the ABL Claimholders and the ABL Debt, on the date of the indefeasible payment in full in cash of the ABL Debt (other than Bank Product Obligations and indemnity and other contingent obligations, in each case, as to which no claim has been asserted), the cancellation or expiration of all Letters of Credit issued under the ABL Credit Agreement (unless cash collateralized, otherwise collateralized with “back to back” letters of credit or otherwise supported), and the termination of all commitments thereunder; and

(ii) with respect to the Term Claimholders and the Term Debt, on the date of the indefeasible payment in full in cash of the Term Debt (other than indemnity and other contingent obligations as to which no claim has been asserted), and the termination of all commitments thereunder.

8.3. Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Each of the ABL Agent, on behalf of itself and the other ABL Claimholders, and the Term Agent, on behalf of itself and the other Term Claimholders that it represents, agrees that, notwithstanding anything to the contrary contained in this Agreement, any ABL Document or any Term Document, (i) no Grantor shall be bound by any amendment, modification or waiver of this Agreement that materially and adversely affects any Grantor unless consented to in writing by the Company, (ii) except as otherwise *provided* for herein, all references in any ABL Document or any Term Document to this Agreement (including any references to terms defined herein or provisions hereof) as they relate to any obligations or rights of, or any covenants, restrictions, limitations, defaults, events of default or agreements applicable to, any Grantor shall mean this Agreement as in effect on the date hereof or as amended or modified in accordance with the ABL Credit Agreement or the Term Credit Facility Agreement (other than any Term Hedge Agreement), as applicable, and (iii) this sentence shall inure to the benefit of the Grantors and their Subsidiaries and shall not be amended, modified or waived without the written consent of the Company. Notwithstanding the foregoing, any Additional Term Agent or Additional Term Representative, on behalf of itself and the Term Claimholders it represents under any Additional Term Debt Agreement, may become a party to this Agreement, without any further action by any other party hereto, upon execution and delivery by the Company and such Additional Term Agent and/or Additional Term Representative of a properly completed Joinder Agreement to each Agent. In the event that any Person that is not a Guarantor on the date hereof becomes a Guarantor under the ABL Credit Agreement or the Term Credit Facility Agreement, such Person shall execute and deliver to each Agent a joinder agreement in substantially the form of Exhibit B attached hereto and shall thereafter for all purposes have the same rights, benefits and obligations as a Grantor hereto.

8.4. Information Concerning Financial Condition of the Company and its Subsidiaries. The ABL Claimholders, on the one hand, and the Term Claimholders (other than the Term Agent and the Trustee), on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of the Company and its Subsidiaries and all endorsers or guarantors of the ABL Debt or the Term Debt and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Debt or the Term Debt. The ABL Claimholders shall have no duty to advise the Term Claimholders of information known to them regarding such condition or any such circumstances or otherwise. The Term Claimholders shall have no duty to advise the ABL Claimholders of information known to them regarding such condition or any such circumstances or otherwise. In the event any of the ABL Claimholders or any of the Term Claimholders, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other party to this Agreement, it shall be under no obligation:

(i) to make nor shall it be deemed to have made, and the ABL Claimholders and the Term Claimholders, as the case may be, shall not be under any obligation to make nor shall they be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so *provided*;

(ii) to provide any additional information or to provide any such information on any subsequent occasion;

(iii) to undertake any investigation; or

(iv) to disclose any information, which pursuant to accepted or reasonable commercial practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

8.5. Subrogation. (a) With respect to any payments or distributions in cash, property or other assets that any Term Claimholder pays over to the ABL Agent under the terms of this Agreement, such Term Claimholders shall be subrogated to the rights of the ABL Claimholders, and (b) with respect to any payments or distributions in cash, property or other assets that any ABL Claimholder pays over to the Term Agent under the terms of this Agreement, such ABL Claimholders shall be subrogated to the rights of the Term Claimholders; *provided* that (x) the Term Claimholders hereby agree not to assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of ABL Priority Debt has occurred, and (y) the ABL Claimholders hereby agree not to assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of Term Priority Debt has occurred. Notwithstanding the foregoing Section 8.5, (1) neither the Term Agent nor any other Term Loan Claimholder shall have any claim against any of the ABL Agent or any other ABL Claimholder for any impairment of any subrogation rights herein granted to the Term Claimholders arising from any action or failure to act of the ABL Agent or any such ABL Claimholder not prohibited by this Agreement and (2) neither the ABL Agent nor any other ABL Claimholder shall have any claim against any of the Term Agent or any other Term Claimholder for any impairment of any subrogation rights herein granted to the ABL Claimholders arising from any action or failure to act of the Term Agent or any such Term Claimholder not prohibited by this Agreement.

8.6. SUBMISSION TO JURISDICTION; WAIVERS.

(a) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF (OTHER THAN WITH RESPECT TO ACTIONS BY THE AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO), IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER *PROVIDED* BY LAW.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) IN ANY COURT REFERRED TO IN THIS SECTION 8.6. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND AGREES NOT ASSERT ANY SUCH DEFENSE.

(c) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER *PROVIDED* FOR NOTICES IN SECTION 8.7. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(d) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

8.7. Notices. All notices permitted or required under this Agreement shall be sent to the Term Agent and the ABL Agent, as the case may be, in accordance with the notice provisions set forth on Schedule 1 hereto. Unless otherwise specifically *provided* herein, any notice hereunder shall be in writing and may be personally served or sent by United States mail or courier service or electronic mail in accordance with, and subject to the restrictions of, the ABL Credit Agreement and the Term Credit Facility Agreement. For the purposes hereof, the addresses of the parties hereto shall be as may be designated by such party in a written notice to all of the other parties.

8.8. Further Assurances. The ABL Agent and the Term Agent each agrees to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the ABL Agent or the Term Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement, all at the sole expense of the Company. In furtherance of the foregoing, (i) the ABL Agent agrees that, if there is a Refinancing of any of the Term Debt and if the agent or other representative of the holders of the indebtedness that Refinances such Term Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative, and (ii) the Term Agent agrees that, if there is a Refinancing of the ABL Debt and if the agent or other representative of the holders of the indebtedness that Refinances the ABL Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative.

8.9. Applicable Law. This Agreement shall be deemed to be a contract under the laws of the State of New York and shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles that would require the application of any other law.

8.10. Binding on Successors and Assigns. This Agreement shall be binding upon the ABL Agent, the ABL Claimholders, the Term Agent, the Term Claimholders and their respective successors and assigns.

8.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

8.12. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by fax, electronic mail or other similar electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or any other Loan Document 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 record keeping 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.

8.13. Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of the ABL Claimholders and the Term Claimholders. Other than Section 8.3, in no event shall any Grantor be a third party beneficiary of this Agreement.

8.14. Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Claimholders, on the one hand, and the Term Claimholders on the other hand. No Grantor or any other creditor thereof shall have any rights hereunder and no Grantor may rely on the terms hereof; *provided* that the Grantors shall be entitled to rely on the provisions of this Agreement to the extent necessary for purposes of making representations and warranties under the applicable Loan Documents and to the benefit of Section 8.3 and this Section 8.14. Nothing in this Agreement shall impair, as between the Grantors and the ABL Claimholders, or as between the Grantors and the Term Claimholders, the obligations of the Grantors to pay principal, interest, premium, fees and other amounts as provided in the ABL Documents and the Term Documents, respectively. Nothing in this Agreement shall create, vary or modify the rights or duties of the ABL Claimholders, inter se, under the ABL Documents or the rights or duties of the Term Claimholders, inter se, under the Term Documents.

8.15. Integration. This Agreement reflects the entire understanding of the parties with respect to the subject matter hereof and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

8.16. Reciprocal Rights. Notwithstanding anything in this Agreement to the contrary, the terms and provisions of this Agreement shall (i) from and after the Payment in Full of ABL Priority

Debt and until the Payment in Full of the Term Priority Debt, apply to and govern, mutatis mutandis, the relationship between the Term Claimholders with respect to the Term Priority Debt, on the one hand, and the ABL Claimholders with respect to the Excess ABL Debt, on the other hand, and (ii) from and after the Payment in Full of the Term Priority Debt until the Payment in Full of the ABL Priority Debt, apply to and govern, mutatis mutandis, the relationship between the ABL Claimholders with respect to the ABL Priority Debt, on the one hand, and the Term Claimholders with respect to the Excess Term Debt, on the other hand.

8.17. Capacity of Initial Term Agent. [•] is entering into this Agreement solely in its capacities as Trustee and Priority Lien Collateral Agent under each Term Document for which [•] acts as Trustee and/or Priority Lien Collateral Agent, as applicable, and the rights, powers, privileges and protections afforded to each of the Trustee and the Priority Lien Collateral Agent under each Term Document for which [•] is the Trustee and/or Priority Lien Collateral Agent shall also apply to [•] as the Initial Term Representative and the Initial Term Agent, respectively, hereunder. The Term Claimholders have expressly authorized and instructed [•] to execute and deliver this Agreement as Initial Term Agent and Initial Term Representative.

SECTION 9. TERM PURCHASE OPTION.

9.1. Notice of Exercise.

(a) If a Term Purchase Option Trigger shall occur, the Term Claimholders shall have the right but not the obligation at any time during the period of 15 calendar days following the delivery of written notice by the ABL Agent to the Term Agent of the occurrence of the Term Purchase Option Trigger (such period, the “**Term Purchase Option Period**”), to purchase all (but not less than all) of the ABL Debt from the ABL Claimholders. If the Term Claimholders desire to exercise their option to purchase the ABL Debt, the Term Agent (acting pursuant to an Act of Required Secured Parties) shall deliver a written notice (any such notice under this Section 9.1, a “**Term Purchase Notice**”) to the ABL Agent prior to the expiration of the Term Purchase Option Period.

(b) A Term Purchase Notice, once delivered, shall be irrevocable. If a Term Purchase Option Trigger shall occur and the Term Agent does not deliver a Term Purchase Notice to the ABL Agent prior to the expiration of the Term Purchase Option Period, the Term Claimholders shall have no further right to purchase, and the ABL Claimholders shall have no further obligation to sell, the ABL Debt pursuant to this Section 9.

9.2. Purchase and Sale. If the Term Agent shall timely deliver a Term Purchase Notice to the ABL Agent, on the date specified in the Term Purchase Notice (which date shall not be less than 3 Business Days, nor more than 10 calendar days, after delivery of the Term Purchase Notice), the ABL Claimholders shall sell to the applicable Term Claimholders, and the applicable Term Claimholders shall purchase from the ABL Claimholders, all of the ABL Debt; *provided* that the ABL Agent and the other ABL Claimholders shall retain all rights to be indemnified or held harmless by the Grantors in accordance with the terms of the ABL Documents but shall not retain any rights to security therefor. Upon receipt of a Term Purchase Notice, absent Exigent Circumstances, the ABL Agent shall not commence any Enforcement Action (or, if the ABL Agent shall have already commenced Enforcement Action, shall cease such Enforcement Action) against any Collateral; *provided* that, if for any reason, the applicable Term Claimholders shall fail to complete the purchase of the ABL Debt by the date set forth in the Term Purchase Notice, the ABL Agent shall be entitled to immediately commence (or to continue) Enforcement Action against the ABL Priority Collateral. It is understood and agreed that the Term Agent’s sole responsibility in connection with a potential Term Purchase Option Trigger is to deliver the Term Purchase Notice to the ABL Agent in accordance with the Term Intercreditor Agreement.

9.3. Payment of Purchase Price. If the Term Agent shall timely deliver a Term Purchase Notice in accordance with Section 9.1(a), upon the date specified in the Term Purchase Notice, the applicable purchasing Term Claimholders shall (i) pay to the ABL Agent for the benefit of the ABL Claimholders as the purchase price therefor an amount equal to 100% of the ABL Debt then outstanding and unpaid (including principal, interest, fees and expenses, including reasonable attorneys' fees and legal expenses and indemnification amounts to the extent a claim for such amount has been made on such date but specifically excluding any prepayment premium, termination or similar fees), (ii) furnish cash collateral to the ABL Agent in a manner and in such amounts (not to exceed 103% of the face amount thereof) as is required in accordance with the terms of the ABL Documents in connection with any issued and outstanding Letters of Credit and Bank Product Obligations, (iii) agree to reimburse the ABL Agent and the ABL Claimholders for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding Letters of Credit and any checks or other payments provisionally credited to the ABL Debt, and/or as to which the ABL Agent has not yet received final payment, and (iv) agree to indemnify and hold harmless the ABL Agent and the other ABL Claimholders from and against any loss, liability, claim, damage or expense (including reasonable fees and expenses of legal counsel) arising out of any claim asserted by a third party in respect of the ABL Debt as a direct result of any acts by any Term Claimholder occurring after the date of such purchase. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account as the ABL Agent may designate in writing for such purpose.

9.4. Supplemental Purchase Price. Anything contained in this Section 9 to the contrary notwithstanding, in the event that (i) the purchasing Term Claimholders receive all or a portion of any prepayment premium, make-whole obligation or early termination fee payable pursuant to the ABL Documents in cash, (ii) all ABL Debt purchased by such purchasing Term Claimholders including principal, interest and fees thereon and costs and expenses of collection thereof (including reasonable attorneys' fees and legal expenses), is repaid in full in cash, and (iii) the ABL Credit Agreement is terminated, in each case, within 180 days following the date on which the purchasing Term Claimholders pay the purchase price described above in Section 9.3, then, within three Business Days after receipt by such applicable Term Claimholders of such amounts, the purchasing Term Claimholders shall pay a supplemental purchase price to the ABL Agent, for the benefit of the ABL Claimholders, in respect of their purchase under this Section 9 in an amount equal to the portion of the prepayment premium, make-whole obligation or early termination fee received by the purchasing Term Claimholders to which the ABL Claimholders would have been entitled to receive had the purchase under this Section 9 not occurred.

9.5. Resignation. In the event that any one or more of the Term Claimholders exercises and consummates the purchase option set forth in this Section 9, (i) the ABL Agent shall have the right, but not the obligation, to immediately resign under the ABL Credit Agreement, (ii) the purchasing Term Claimholders shall have the right, but not the obligation, to require the ABL Agent to immediately resign under the ABL Credit Agreement, and (iii) any Bank Product Provider shall have the right, but not the obligation, to require termination of any agreements evidencing any Bank Product Obligations.

SECTION 10. ABL PURCHASE OPTION.

10.1. Notice of Exercise.

(a) If an ABL Purchase Option Trigger shall occur, the ABL Claimholders shall have the right but not the obligation at any time during the period of 15 calendar days following the earlier of (i) delivery of written notice by the Term Agent to the ABL Agent of the occurrence of the ABL Purchase Option Trigger and (ii) the ABL Agent's actual knowledge of the occurrence of such ABL Purchase Option Trigger (such period, the "**ABL Purchase Option Period**"), to purchase all (but not less than all) of the Term Debt from the Term Claimholders. If the ABL Claimholders desire to exercise their option to purchase

the Term Debt, the ABL Agent shall deliver a written notice (any such notice under this Section 10.1, an “ABL Purchase Notice”) to the Term Agent prior to the expiration of the ABL Purchase Option Period.

(b) An ABL Purchase Notice, once delivered, shall be irrevocable. If an ABL Purchase Option Trigger shall occur and the ABL Agent does not deliver an ABL Purchase Notice to the Term Agent prior to the expiration of the ABL Purchase Option Period, the ABL Claimholders shall have no further right to purchase, and the Term Claimholders shall have no further obligation to sell, the Term Debt pursuant to this Section 10.

10.2. Purchase and Sale. If the ABL Agent shall timely deliver an ABL Purchase Notice to the Term Agent, on the date specified by the ABL Agent in the ABL Purchase Notice (which date shall not be less than 3 Business Days, nor more than 10 calendar days, after delivery of the ABL Purchase Notice), the Term Claimholders shall sell to the applicable ABL Claimholders, and the applicable ABL Claimholders shall purchase from the Term Claimholders, all of the Term Debt; *provided* that the Term Agent and the other Term Claimholders shall retain all rights to be indemnified or held harmless by the Grantors in accordance with the terms of the Term Documents but shall not retain any rights to security therefor. Upon receipt of an ABL Purchase Notice, absent Exigent Circumstances, the Term Agent shall not commence any Enforcement Action (or, if the Term Agent shall have already commenced Enforcement Action, shall cease such Enforcement Action) against any Collateral; *provided* that, if for any reason, the ABL Claimholders shall fail to complete the purchase of the Term Debt by the date set forth in the ABL Purchase Notice, the Term Agent shall be entitled to immediately commence (or to continue) Enforcement Action against the Term Priority Collateral.

10.3. Payment of Purchase Price. If the ABL Agent shall timely deliver an ABL Purchase Notice in accordance with Section 10.1(a), upon the date specified in the ABL Purchase Notice, the applicable purchasing ABL Claimholders shall (i) pay to the Term Claimholders or their designee for the benefit of the Term Claimholders as the purchase price therefor an amount equal to 100% of the Term Debt then outstanding and unpaid (including principal, interest, fees and expenses, including reasonable attorneys’ fees and legal expenses and indemnification amounts to the extent a claim for such amount has been made on such date but specifically excluding any prepayment premium, termination or similar fees), (ii) agree to reimburse the Term Agent and the Term Claimholders for any loss, cost, damage or expense (including reasonable attorneys’ fees and legal expenses) in connection with any checks or other payments provisionally credited to the Term Debt, and/or as to which the Term Agent has not yet received final payment, and (iii) agree to indemnify and hold harmless the Term Agent and the other Term Claimholders from and against any loss, liability, claim, damage or expense (including reasonable fees and expenses of legal counsel) arising out of any claim asserted by a third party in respect of the Term Debt as a direct result of any acts by any ABL Claimholder occurring after the date of such purchase. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account as the Term Agent may designate in writing for such purpose.

10.4. Supplemental Purchase Price. Anything contained in this Section 10 to the contrary notwithstanding, in the event that (i) the purchasing ABL Claimholders receive all or a portion of any prepayment premium, make-whole obligation or early termination fee payable pursuant to the Term Documents in cash, (ii) all Term Debt purchased by such purchasing ABL Claimholders including principal, interest and fees thereon and costs and expenses of collection thereof (including reasonable attorneys’ fees and legal expenses), is repaid in full in cash, and (iii) the Term Credit Facility Agreement is terminated, in each case, within 180 days following the date on which the purchasing ABL Claimholders pay the purchase price described above in Section 10.3, then, within three Business Days after receipt by such applicable ABL Claimholders of such amounts, the purchasing ABL Claimholders shall pay a supplemental purchase price to the Term Agent, for the benefit of the Term Claimholders, in respect of their purchase under this Section 10 in an amount equal to the portion of the prepayment premium, make-

whole obligation or early termination fee received by the purchasing ABL Claimholders to which the Term Claimholders would have been entitled to receive had the purchase under this Section 10 not occurred.

10.5. Resignation. In the event that any one or more of the ABL Claimholders exercises and consummates the purchase option set forth in this Section 10, (i) the Term Agent shall have the right, but not the obligation, to immediately resign under the Term Credit Facility Agreement, (ii) the purchasing ABL Claimholders shall have the right, but not the obligation, to require the Term Agent to immediately resign under the Term Credit Facility Agreement, and (iii) any Term Hedge Provider shall have the right, but not the obligation, to require termination of any Term Hedge Agreement.

[Signature Pages Follow]

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

REGIONS BANK, as Initial ABL Agent

By: _____

Name: **William M. Decamps**

Title: Vice President

[Signatures continue on the following page]

[●], not in its individual capacity but solely as Initial Term Representative and Initial Term Agent

By: _____
Name:
Title:

ACKNOWLEDGMENT

Each of the undersigned Subsidiaries of the Company hereby acknowledges that it has received a copy of the foregoing Intercreditor Agreement (as in effect on the date hereof, the “**Intercreditor Agreement**”) and agrees to recognize all rights granted by the Intercreditor Agreement to the ABL Claimholders and the Term Claimholders, waive, to the extent permitted by law, the provisions of Section 9-615(a) of the UCC in connection with the application of payments and proceeds of Collateral in accordance with the provisions of the Intercreditor Agreement, and not do any act or perform any obligation which is not in accordance with the agreements set forth in the Intercreditor Agreement. Except as provided in Sections 8.3 and 8.13 of the Intercreditor Agreement, each of the undersigned Subsidiaries of the Company further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the Intercreditor Agreement, as amended, restated, supplemented or otherwise modified hereafter.

[Remainder of page intentionally left blank; signatures appear on the following pages]

BORROWERS:

ALPHA METALLURGICAL RESOURCES, INC.

By: _____
Name: **J. Todd Munsey**
Title: Chief Financial Officer

ALPHA NATURAL RESOURCES HOLDINGS, INC.

By: _____
Name: **J. Todd Munsey**
Title: Chief Financial Officer

**ALPHA METALLURGICAL COAL SALES, LLC
ARACOMA COAL COMPANY, LLC
BLACK CASTLE MINING COMPANY, LLC
DICKENSON-RUSSELL CONTURA, LLC
ELK RUN COAL COMPANY, LLC
KINGSTON MINING, INC.
MARFORK COAL COMPANY, LLC
NICHOLAS CONTURA, LLC
PARAMONT CONTURA, LLC
REPUBLIC ENERGY, LLC
SPARTAN MINING COMPANY, LLC**

By: _____
Name: **J. Todd Munsey**
Title: Treasurer

[Signatures continue on the following page]

ALPHA METALLURGICAL RESOURCES, LLC

By: _____
Name: **J. Todd Munsey**
Title: President

GUARANTORS:

**ALPHA METALLURGICAL SERVICES, LLC
ANR, INC.**

By: _____
Name: **J. Todd Munsey**
Title: Chief Financial Officer

[Signatures continue on the following page]

**CONTURA CAPP LAND, LLC
BOONE EAST DEVELOPMENT CO., LLC
SIDNEY COAL COMPANY, LLC
LAXARE, INC.
APPALACHIA COAL SALES COMPANY, LLC
ALPHA APPALACHIA SERVICES, LLC
ALPHA METALLURGICAL TERMINAL, LLC
BARNABUS LAND COMPANY
ALPHA NATURAL RESOURCES SERVICES, LLC
MAXXIM SHARED SERVICES, LLC
GOALS COAL COMPANY
ALPHA NATURAL RESOURCES, LLC
DELBARTON MINING COMPANY, LLC
ALPHA LAND AND RESERVES, LLC
MAXXIM REBUILD CO., LLC
BLACK KING MINE DEVELOPMENT CO.
PIONEER FUEL CORPORATION
FOUNDATION ROYALTY COMPANY
LITWAR PROCESSING COMPANY, LLC
RIVERSIDE ENERGY COMPANY, LLC
HIGHLAND MINING COMPANY
POWER MOUNTAIN CONTURA, LLC
ALEX ENERGY, LLC
BANDMILL COAL LLC
BROOKS RUN SOUTH MINING, LLC
KEPLER PROCESSING COMPANY, LLC
RUM CREEK COAL SALES, INC.
MOUNTAIN EMPIRE LAND & CONSERVATION, LLC
ALPHA AMERICAN COAL COMPANY, LLC
ALPHA AMERICAN COAL HOLDING, LLC
ALPHA APPALACHIA HOLDINGS, LLC**

By: _____
Name: **J. Todd Munsey**
Title: Treasurer

[Signatures continue on the following page]

**ALPHA COAL SALES CO., LLC
ALPHA EUROPEAN MARKETING, LLC
ALPHA EUROPEAN SALES, LLC
ALPHA INDIA, LLC
ALPHA NATURAL RESOURCES INTERNATIONAL, LLC
APPALACHIA HOLDING COMPANY, LLC
BARBARA HOLDINGS INC.
BELFRY COAL CORPORATION
CLEAR FORK COAL COMPANY
CONTURA FREEPORT, LLC
ENTERPRISE MINING COMPANY, LLC
INDEPENDENCE COAL COMPANY, LLC
JACKS BRANCH COAL COMPANY
KANAWHA ENERGY COMPANY, LLC
KNOX CREEK COAL CORPORATION
LOGAN I, LLC
LOGAN III, LLC
LYNN BRANCH COAL COMPANY, INC.
MARTIN COUNTY COAL, LLC
NICEWONDER CONTRACTING, INC.
OLD ANR, LLC
OMAR MINING COMPANY, LLC
PERFORMANCE COAL COMPANY, LLC
PREMIUM ENERGY, LLC
RAWL SALES & PROCESSING CO., LLC
ROAD FORK DEVELOPMENT COMPANY, LLC
ROSTRAVER ENERGY COMPANY
TRACE CREEK COAL COMPANY
WABASH MINE HOLDING COMPANY**

By: _____
Name: **J. Todd Munsey**
Title: Treasurer

EXHIBIT A TO THE
INTERCREDITOR AGREEMENT

[Form of]

ADDITIONAL JOINDER AGREEMENT

[Name of Additional Term Agent/Representative]
[Address of Additional Term Agent/Representative]

[Date]

[Names of the ABL Agent and the Term Agent]
[Addresses of the ABL Agent and the Term Agent]

The undersigned, together with its successors and assigns (the “New Secured Agent”) under [identify Additional Term Debt Agreement] (the “New Secured Agreement”), is the [Additional Term Agent]/[Additional Term Representative] for Persons (the “New Secured Claimholders”) wishing to become Term Claimholders under and as defined in the Intercreditor Agreement, dated as of [_____] [____], [____] (as amended, restated, supplemented and/or otherwise modified from time to time, the “Intercreditor Agreement” (terms used without definition herein have the meanings assigned to such terms by the Intercreditor Agreement)), among the ABL Agent thereunder and each Term Agent thereunder.

In consideration of the foregoing, the undersigned hereby:

(i) represents that the New Secured Claimholders have authorized the New Secured Agent to become a party to the Intercreditor Agreement on behalf of such New Secured Claimholders and to act as the [Additional Term Agent]/[Additional Term Representative] on behalf of such New Secured Claimholders thereunder;

(ii) acknowledges that the New Secured Agent has received a copy of the Intercreditor Agreement;

(iii) acknowledges on behalf of itself and the other New Secured Claimholders that the obligations under the New Secured Agreement constitute Term Debt for all purposes of the Intercreditor Agreement; and

(iv) accepts and acknowledges, on behalf of itself and the New Secured Claimholders, the terms of the Intercreditor Agreement applicable to the [Additional Term Agent]/[Additional Term Representative] and the other Term Claimholders and agrees on its own behalf and on behalf of the New Secured Claimholders to be bound by the terms thereof applicable to holders of Term Debt, with all the rights, duties and obligations of the Term Claimholders under the Intercreditor Agreement and to be bound by all the provisions thereof as fully as if they had been named as Term Claimholders on the effective date of the Intercreditor Agreement and agrees that the New Secured Agent’s address for receiving notices pursuant to the Intercreditor Agreement shall be as follows:

[Address]

THIS ADDITIONAL JOINDER AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK,

WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF ANY OTHER LAW.

[] is entering into the Intercreditor Agreement pursuant to this joinder agreement in its capacity as [identify capacity] under the [identify Additional Term Debt Agreement] and the rights, powers, privileges and protections afforded to the [identify capacity] under the [identify Additional Term Debt Agreement] shall also apply to [] as an [Additional Term Agent]/[Additional Term Representative] under the Intercreditor Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned has caused this Additional Joinder Agreement to be duly executed by its authorized officer as of the date first written above.

[NAME OF NEW SECURED AGENT]

By: _____
Name:
Title:

The Company hereby represents and warrants to each Agent on the date hereof that the indebtedness or other obligations evidenced by the New Secured Agreement meets the requirements set forth in the definition of, and is hereby designated as, Additional Term Debt under the Intercreditor Agreement.

ALPHA METALLURGICAL RESOURCES, INC.,
as the Company

By: _____
Name:
Title:

EXHIBIT B TO THE
INTERCREDITOR AGREEMENT

[Form of]

GRANTOR JOINDER AGREEMENT

[DATE]

The undersigned hereby agrees to be bound as a Grantor for purposes of the Intercreditor Agreement, dated as of [_____] [____], [_____] (as amended, restated, supplemented and/or otherwise modified on or prior to the date hereof, the “**Intercreditor Agreement**”), among REGIONS BANK, as the Initial ABL Agent, [●], in its capacities as the Initial Term Agent and Initial Term Representative, and each Additional Term Agent and Additional Term Representative, and the undersigned hereby acknowledges receipt of a copy of the Intercreditor Agreement. In addition, the undersigned hereby agrees to recognize all rights granted by the Intercreditor Agreement to the ABL Claimholders and the Term Claimholders, waive, to the extent permitted by law, the provisions of Section 9-615(a) of the UCC in connection with the application of payments and proceeds of Collateral in accordance with the provisions of the Intercreditor Agreement, agree that it will not do any act or perform any obligation which is not in accordance with the agreements set forth in the Intercreditor Agreement. Except as provided in Sections 8.3 and 8.13 of the Intercreditor Agreement, the undersigned further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under the Intercreditor Agreement, as amended, restated, supplemented or otherwise modified hereafter. Capitalized terms used but not defined herein shall have the meanings set forth in the Intercreditor Agreement.

IN WITNESS HEREOF, the undersigned has caused this Grantor Joinder Agreement to be duly executed and delivered as of the date first written above.

[NAME OF NEW GRANTOR]

By: _____
Name:
Title:

SCHEDULE 1

NOTICES

If to the Initial Term Agent or Initial Term Representative:

[]

[]

[]

Attention: []

Phone: []

With a copy (which shall not constitute notice) to:

[]

[]

[]

Email: []

Phone: []

If to the Initial ABL Agent:

Regions Bank

1180 West Peachtree St. NW

Suite 1000

Atlanta, GA 30309

Attention: Alpha Metallurgical Resources, Inc. Loan Administration

With a copy (which shall not constitute notice) to:

Parker, Hudson, Rainer & Dobbs LLP

303 Peachtree Street, NE

Suite 3600

Atlanta, GA 30308

Attention: Harrison J. Roberts, Esq.

Schedule 1.1(c)

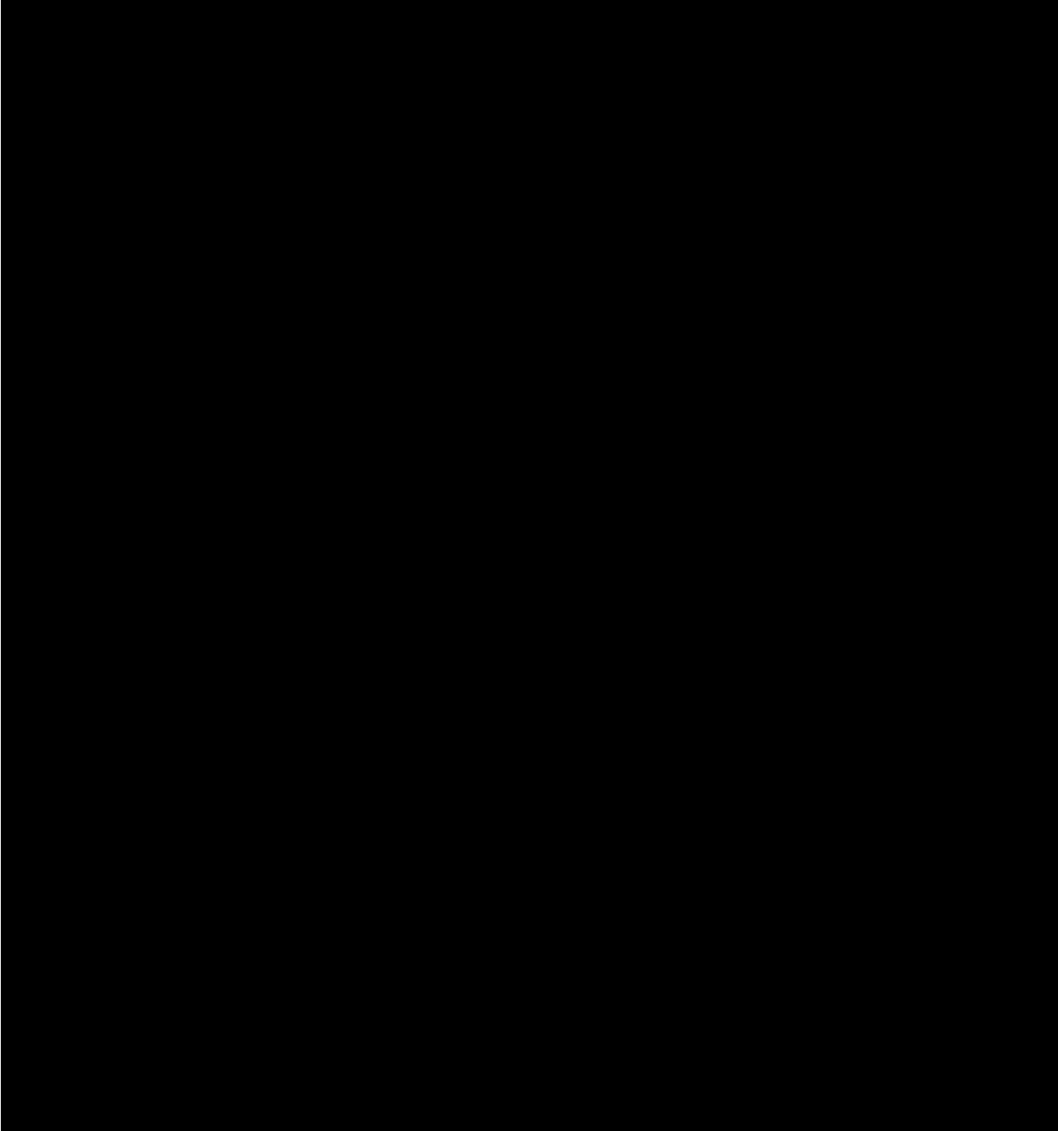
Immaterial Restricted Subsidiaries

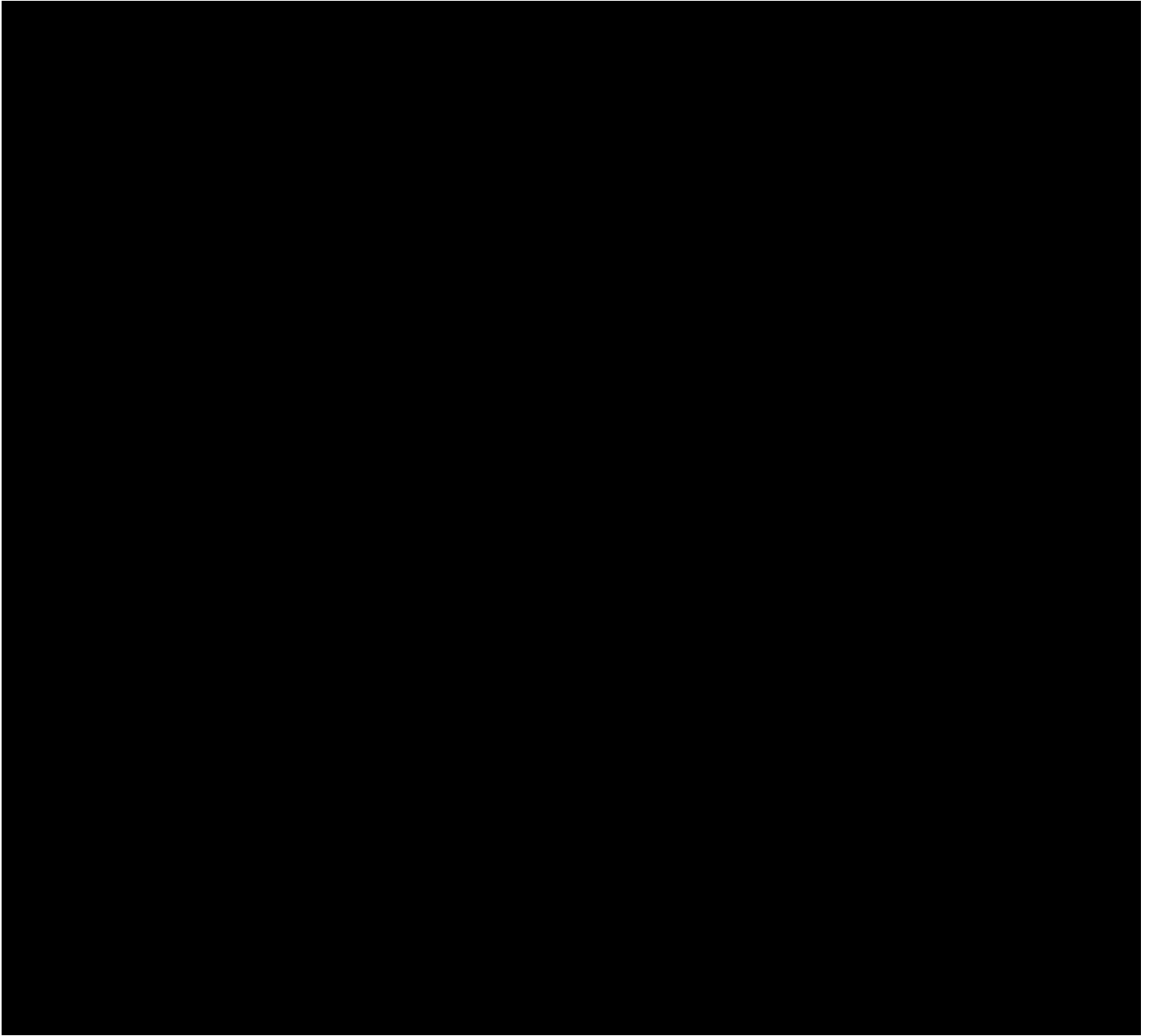
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Alpha Coal Sales Co., LLC
Alpha European Marketing, LLC
Alpha European Sales, LLC
Alpha India, LLC
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Appalachia Holding Company, LLC
Barbara Holdings Inc.
Belfry Coal Corporation
Contura Freeport, LLC
Enterprise Mining Company, LLC
Independence Coal Company, LLC
Jacks Branch Coal Company
Kanawha Energy Company, LLC
Knox Creek Coal Corporation
Logan I, LLC
Logan III, LLC
Martin County Coal, LLC
Nicewonder Contracting, Inc.
Old ANR, LLC
Omar Mining Company, LLC
Performance Coal Company, LLC
Premium Energy, LLC
Rawl Sales & Processing Co., LLC
Road Fork Development Company, LLC
Rostraver Energy Company
Trace Creek Coal Company
Wabash Mine Holding Company

Schedule 7.7

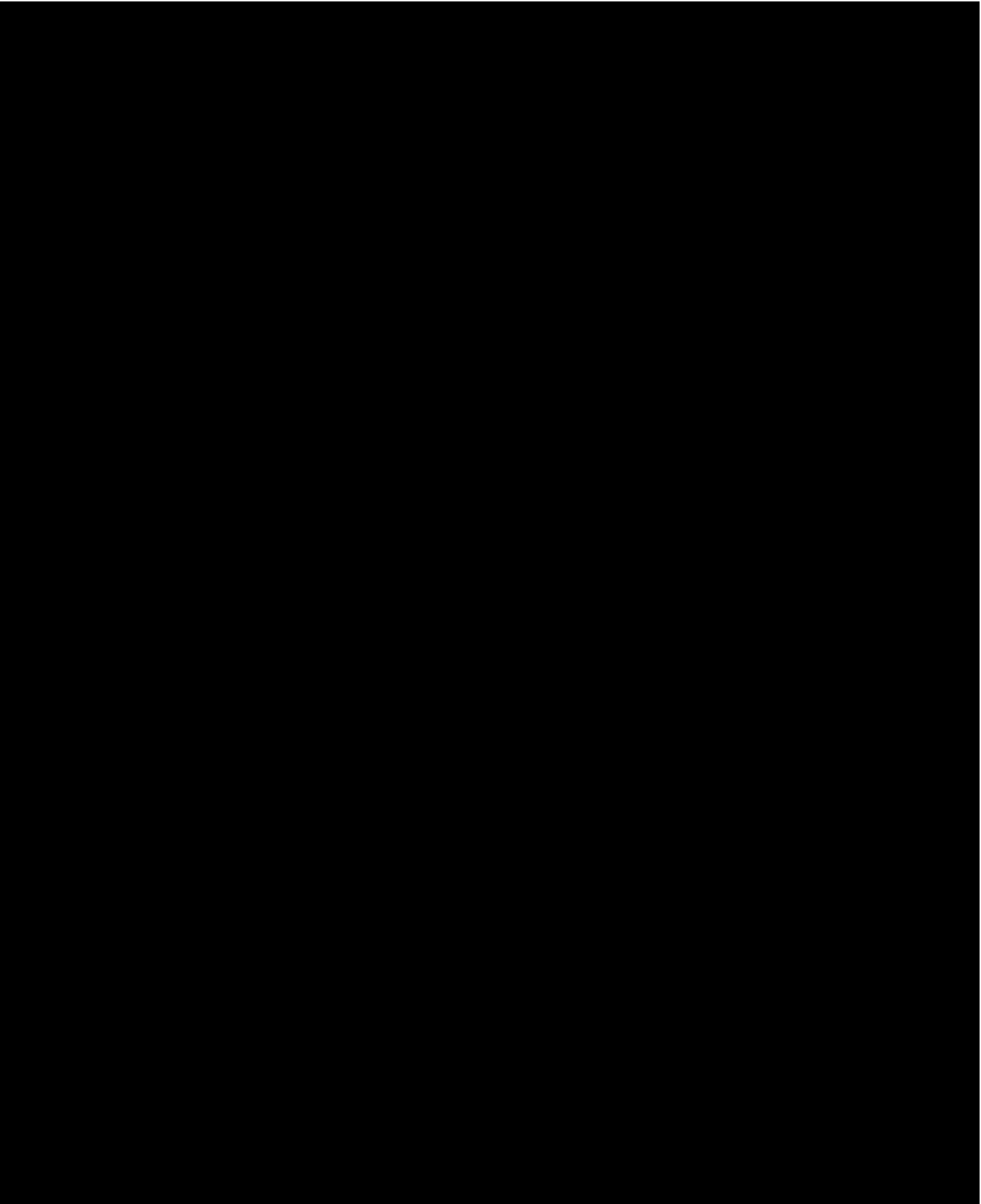
Real Estate

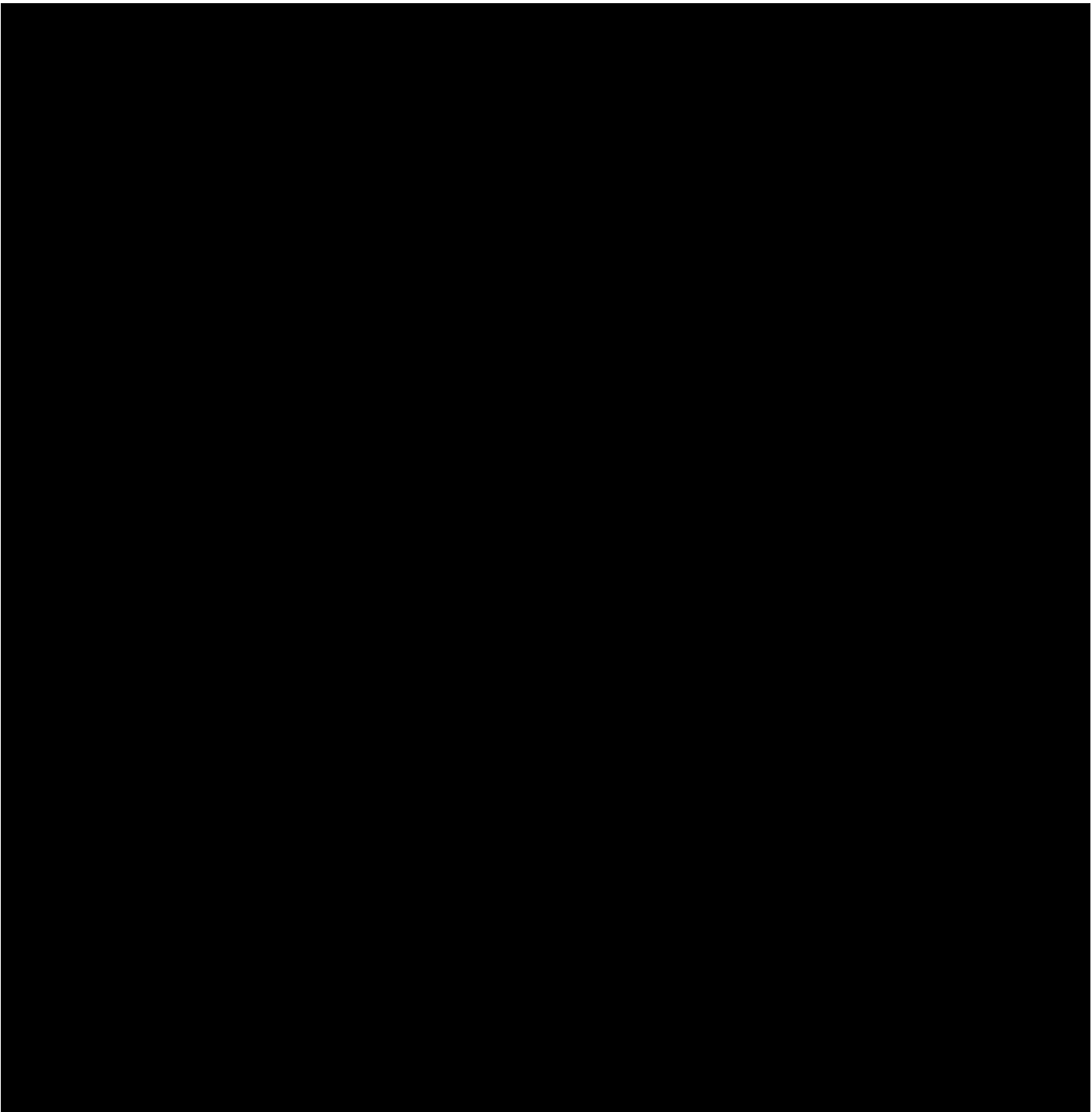
Material Owned Real Property





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Material Preparation Plants (Owned Properties)

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Material Preparation Plants (Leased Properties)

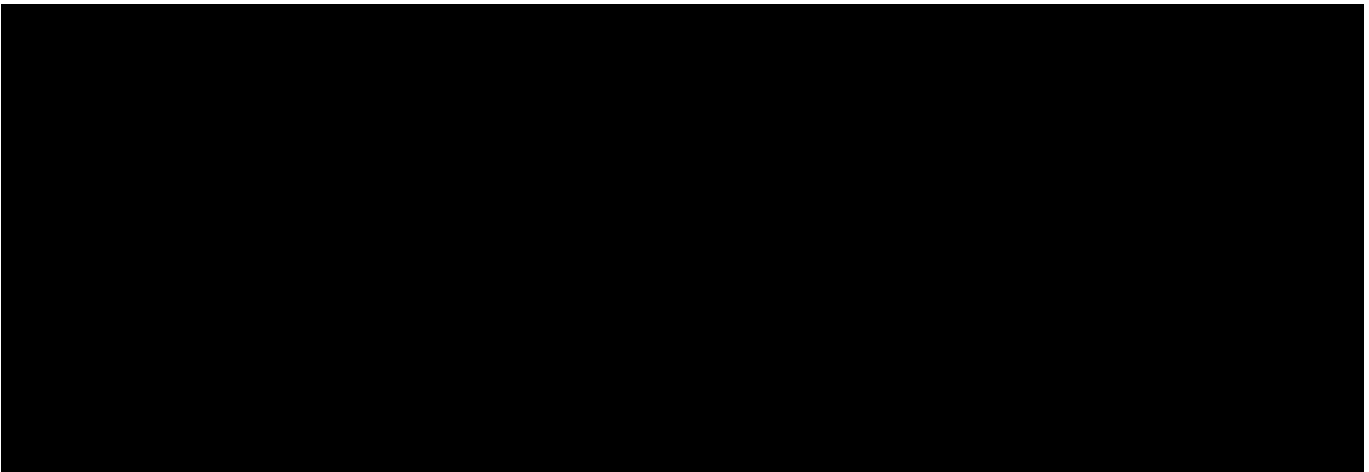
A large black rectangular box redacting the content of the table under the heading 'Material Preparation Plants (Leased Properties)'. The box covers the entire table area, obscuring all data.

EXHIBIT B

Conformed Copy of Security Agreement

(See attached.)

EXHIBIT B
MARKED VERSION REFLECTING CHANGES
PURSUANT TO THE FIRST AMENDMENT
TO SECURITY AGREEMENT
ADDED TEXT SHOWN UNDERScoreD
DELETED TEXT SHOWN ~~STRIKETHROUGH~~

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this “Agreement”), dated as of October 27, 2023, is made by and among (A) **ALPHA METALLURGICAL RESOURCES, INC.**, a Delaware corporation (the “Company”); (B) the Subsidiaries of the Company identified on the signature pages hereto as Borrowers and any other Subsidiaries of the Company that may become Borrowers pursuant to Section 8.14 of the Credit Agreement defined below (each of such Subsidiaries, together with the Company, jointly and severally, the “Borrowers” and, each, a “Borrower”); (C) the Subsidiaries of the Company identified on the signature pages hereto as Guarantors and any other Subsidiaries of the Company that may become Guarantors pursuant to Section 8.14 of the Credit Agreement defined below (each of such Subsidiaries, jointly and severally, the “Guarantors” and, each, a “Guarantor”); (D) any other Credit Parties, besides Borrowers and Guarantors, that are or become from time to time party hereto (collectively with Borrowers and Guarantors, the “Credit Parties” and each, individually, a “Credit Party”); and (E) **REGIONS BANK**, an Alabama bank (as further defined in the Credit Agreement, “Regions”), in its capacity as administrative agent and collateral agent for the Lenders (as defined in the Credit Agreement), the LC Issuer (as defined in the Credit Agreement) and any other Secured Parties (as defined in the Credit Agreement) (in such capacity and as further defined below, “Administrative Agent,” “Collateral Agent” or “Agent”).

RECITALS:

WHEREAS, Borrowers have requested that Administrative Agent and Lenders establish a revolving credit facility in favor of Borrowers, and that LC Issuer establish a letter of credit sub-facility in favor of Borrowers, all pursuant to that certain Credit Agreement dated of even date herewith among Credit Parties, Lenders, LC Issuer and Administrative Agent (as now or at any time hereafter amended, restated, supplemented or otherwise modified, the “Credit Agreement”).

WHEREAS, Administrative Agent and Lenders are unwilling to provide such revolving credit facility, and LC Issuer is unwilling to provide such letter of credit sub-facility, unless, among other things, all such Borrowers, Guarantors and other Credit Parties enter into this Agreement in order, among other purposes, to evidence their grant to Administrative Agent, for the benefit of Secured Parties, of a Lien (as defined in the Credit Agreement) in the Collateral (as defined below).

WHEREAS, to induce Administrative Agent and Lenders to provide such revolving credit facility, and LC Issuer to provide such letter of credit sub-facility, Borrowers Guarantors and the other Credit Parties desire to enter into this Agreement for the foregoing purposes.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, each Borrower, each Guarantor, each other Credit Party and Administrative Agent, each intending to be legally bound, hereby covenant and agree as follows:

Section 1. **Definitions.** Capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Credit Agreement. Without limitation of the foregoing, as more particularly set forth and described in Section 1.3 of the Credit Agreement, and subject to any limitations set forth

therein, any term used in this Agreement or in any Financing Statement filed in connection herewith which is defined in the UCC and not otherwise defined in this Agreement, the Credit Agreement or in such Financing Statement, shall have the meaning given such term in the UCC; provided, that, to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

In addition thereto, as used in this Agreement, the following terms shall have the following meanings:

“Collateral Disclosure Certificate” means each collateral disclosure certificate, to be substantially in the form of **Exhibit A** (or such other form as may be requested or approved by Administrative Agent from time to time), executed and delivered by a Credit Party as of the Closing Date or thereafter in accordance with **Section 10**.

“Environmental Indemnity Agreement” means an agreement of a Credit Party to indemnify Administrative Agent and Lenders from liability under Environmental Laws with respect to Real Estate subject to a Mortgage.

“Excluded Collateral” is as defined in Section 3.

~~“Excluded Property” means the property rights and interests in real and personal property set forth on **Schedule 4** attached to this Agreement.~~

“Extraordinary Receipts” means any cash proceeds received by a Credit Party or any of its Subsidiaries not in the Ordinary Course of Business (other than from the issuance of Equity Interests, the incurrence of Debt, the disposition of Collateral or any insured casualty Loss or business interruption insurance), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (d) condemnation awards (and payments in lieu thereof), (e) indemnity payments and (f) any adjustment received in connection with any purchase price in respect of an Acquisition.

~~“Material Prep Plants” means the leased locations designated as prep plants set forth on **Schedule 2** hereto.~~

~~“Material Real Estate” means any Mine or other Real Estate, in each case, owned or acquired in fee by any Credit Party having a fair market value in excess of \$1,000,000; provided, that Material Real Estate shall not include the Excluded Collateral.~~

“Material Leased Real Estate” means any (i) Mine or other Real Estate, in each case, subject to a lease with a Credit Party, as lessee, with annual minimum royalties, rents or other similar payment obligations, in excess of \$500,000 in the most recently ended Fiscal Year and (ii) Material Prep Plants.

“Material Prep Plants” means the leased locations designated as prep plants set forth on **Schedule 2** hereto.

“Material Owned Real Property” means (i) as of the First Amendment Date, all Real Estate consisting of a fee estate, excluding any fixtures or improvements located on leased land, located in Virginia, West Virginia or Pennsylvania owned by the Company or any other Credit Party that is essential to the Company’s mine plan or surface operations (including the transportation and/or shipping of coal, support for mining activities and maintenance of underground and surface equipment) for the

period from the First Amendment Date to May 4, 2029, as determined by the Company on the First Amendment Date, in its reasonable judgment (which, for the avoidance of doubt, includes the Real Estate set forth on Schedule 4), (ii) any other Real Estate consisting of contiguous fee estates, excluding any fixtures or improvements located on leased land, that the Company or any other Credit Party acquires an ownership interest in after the First Amendment Date for the purpose of mining or conducting mining operations on such Real Estate (including, without limitation, extraction of coal and other minerals and the processing and transport thereof) the fair value of which, as of the date of acquisition thereof, is equal to or greater than \$10,000,000 of contiguous fee estates as determined by the applicable tax assessor, and (iii) any other Real Estate for which Credit Parties are required to deliver a Mortgage in connection with a Permitted Bond Transaction to the extent such Real Property does not otherwise constitute Material Owned Real Property under clauses (i) or (ii) of this definition.

“Mortgage” means each mortgage, deed of trust, security deed or deed to secure debt pursuant to which a Credit Party grants to Administrative Agent, subject to Permitted Real Estate Encumbrances, Liens upon the applicable Material Owned Real EstateProperty owned by such Credit Party as security for the payment and performance of the Obligations or any portion thereof. The term “Mortgage,” as used herein, shall include any assignment of leases and rents, security agreement and Fixtures Filing included as part thereof, or executed and/or delivered separately therefrom but in connection therewith.

“Mortgage Documents” means, with respect to any Material Owned Real EstateProperty subject to a Mortgage, the following, in form and substance reasonably satisfactory to Administrative Agent, unless otherwise approved by Administrative Agent: (a) ~~such collateral assignments of leases, estoppel letters, attornment agreements, consents, waivers, and releases as Administrative Agent may reasonably require with respect to other Persons having an interest in such Material Real Estate to the extent such Person is required to do so pursuant to the terms of its agreement or lease with a Credit Party;~~ (b) completion by Administrative Agent of all flood insurance due diligence with respect to all Material Owned Real EstateProperty made subject to a Mortgage, and in connection therewith, but without limitation thereof, Administrative Agent shall have requested and received executed flood hazard determinations and a flood zone certification (together with notice to Borrower Representative regarding such flood zone certification) in regard to such Material Owned Real EstateProperty with buildings located thereon and to the extent that any such building or Material Owned Real EstateProperty is located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards that participates in the National Flood Insurance Program, evidence of flood insurance, in an amount reasonably determined to be adequate by Administrative Agent, naming Administrative Agent as mortgagee in regard thereto, together with such other reasonable documentation and coverages, each in compliance with the FDPA and other Applicable Laws, all of which shall be reasonably satisfactory in form and substance to Administrative Agent and each Lender (and for avoidance of any doubt, no Mortgage shall be executed, delivered or recorded in regard to any such Material Owned Real EstateProperty with buildings located thereon unless and until the foregoing has been completed); ~~(e) a current Qualified Appraisal of such Material Real Estate; (e) an environmental assessment regarding such Real Estate, prepared by environmental engineers reasonably acceptable to Administrative Agent, and accompanied by such reports, certificates, studies, or data as Administrative Agent may reasonably require in regard thereto;~~ ~~(d)~~ if applicable, a Fixture Filing; ~~(e with respect to any Material Owned Real Property;~~ (c) if reasonably requested by Administrative Agent, environmental diligence regarding such Material Owned Real Property to the extent required by Applicable Law or bank regulation or policy; (d) an opinion from legal counsel licensed to practice in the jurisdiction in which such Material Owned Real EstateProperty is located, addressing, among other things, the enforceability of such Mortgage and the attachment and perfection of Administrative Agent’s Lien in and to such Material Owned Real EstateProperty; ~~(f)~~ if reasonably required by Administrative Agent, and to the extent not otherwise contained herein, an Environmental Indemnity Agreement covering such Material Owned Real EstateProperty; and ~~(g)~~ and such other customary documents, instruments, certificates or agreements as

Administrative Agent may reasonably require with respect to such Material Owned Real ~~Estate~~Property or Mortgage.

“Permitted Location” means (a) any location described on **Schedule 2** attached to this Agreement and (b) any other location in the continental United States of which Borrower Representative has provided written notice to Administrative Agent in accordance with Section 11(e) below.

“Rolling Stock” means trucks, trailers, motor vehicles and other moveable Equipment.

Section 2. **Grant of Security Interest.** To secure the full and final payment and performance of all Obligations, each Credit Party hereby grants to Administrative Agent, for the benefit of Secured Parties, a continuing security interest in and to, and Lien upon, all right, title, and interest of such Credit Party in and to all of the following types, items and kinds of Property of such Credit Party, all whether now owned or hereafter existing, created, acquired or arising, whether tangible or intangible, and wherever located:

- (a) all Accounts;
- (b) all Chattel Paper (including Electronic Chattel Paper);
- (c) all Commercial Tort Claims, including those set forth in Schedule 8.17 of the Credit Agreement;
- (d) all Deposit Accounts, Securities Accounts, and Commodity Accounts together with all amounts and other Property at any time on deposit in any Deposit Account, Securities Account or Commodity Account or evidenced thereby;
- (e) all Documents;
- (f) all General Intangibles (subject to **Section 3(ba)**), with respect to General Intangibles consisting of Equity Interests in Subsidiaries), including all Payment Intangibles and Intellectual Property;
- (g) all Goods (including all Inventory, all Equipment and all Fixtures);
- (h) all Instruments;
- (i) all Investment Property (subject to **Section 3(b)**);
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all Extraordinary Receipts;
- (m) all As-Extracted Collateral, all Farm Products and all standing timber;
- (n) without limitation of any Collateral described in the foregoing clause (m),
 - (i) all present and future contracts, agreements, arrangements, or understandings (A) for the sale, supply, provision or disposition of any coal, natural gas, coalbed methane gas or other materials or minerals by any Credit Party or any of their agents, representatives, successors

or assigns to any purchaser or acquirer thereof, and all products, replacements and proceeds thereof (including all coal, natural gas and coalbed methane gas sales contracts), and (B) relating to the mining, drilling or recovery of any coal, mineral or gas reserves for the benefit of or on behalf of any of the Credit Parties or any of their agents, representatives, successors or assigns (including all contract mining, drilling or recovery agreements and arrangements); and

(ii) all coal, natural gas, coalbed methane gas and other minerals severed or extracted from the ground (specifically including all As-Extracted Collateral of each Credit Party and all severed or extracted coal, natural gas and coalbed methane gas purchased, acquired or obtained from other parties), and all Accounts, General Intangibles and products and Proceeds thereof or related thereto, regardless of (A) whether any such coal, natural gas, coalbed methane gas or other minerals are in raw form or processed for sale, (B) whether or not any Credit Party had any interest in the coal, natural gas, coalbed methane gas or other minerals before extraction or severance, (C) whether arising from present or future operations, and (D) whether such mineral or gas interests presently owned or hereafter acquired by such Credit Party;

(o) all money, cash, Cash Equivalents and other Property at any time in the possession of, or under the control (including Article 9 Control) of Administrative Agent, a Lender or another Secured Party, or a bailee, agent, correspondent or Affiliate of Administrative Agent, a Lender or another Secured Party, including Cash Collateral;

(p) all Accessions to, substitutions for, and all replacements, products, and cash Proceeds and non-cash Proceeds of the foregoing, including Proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage, or destruction of any Collateral;

(q) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs, and computer records) pertaining to any of the foregoing; and

(r) all other present and future personal Property and assets of each Credit Party not otherwise described hereinabove, whether now or hereafter existing, and wherever located;

provided, that notwithstanding the foregoing, this Agreement shall not constitute a grant or security interest in any Excluded Collateral and the Collateral shall not include Excluded Collateral.

Section 3. **Certain Exceptions Relating to Collateral.** Any term or provision of this Agreement or any other Loan Document to the contrary notwithstanding, ~~unless and except to the extent otherwise required or approved by, or acceptable to, Administrative Agent,~~ the Collateral shall not include any of the following (collectively, the “Excluded Collateral”):

(a) more than sixty-five percent (65%) of any Voting Equity Interests issued by a Foreign Subsidiary, to the extent as determined by Administrative Agent having such a Lien would result in a material adverse tax consequence to the Credit Parties, unless Administrative Agent’s Lien on a greater percentage of Voting Equity Interests is specifically provided in another Security Document;

(b) (i) any rights or interest in any contract, lease, permit, license, or license agreement covering any Property of any Credit Party if under the terms of such contract, lease, permit, license, or license agreement, or Applicable Law with respect thereto, the grant of a Lien thereon is prohibited as a matter of Applicable Law or expressly prohibited under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained, (ii) any United States “intent-to-use” trademark applications to the extent that, and solely during the period in which, the

grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law; provided that, upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. § 1060(a) (or any successor provision), such “intent-to-use” trademark application shall be considered Collateral; and (iii) Equipment securing Permitted Purchase Money Debt to the extent the underlying contract, lease, permit, license, or license agreement covering such Equipment expressly prohibits or restricts under the terms of such contract, lease, permit, license, or license agreement the granting of a security interest or Lien in such Equipment and such prohibition or restriction has not been waived or the written consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained; provided that, (x) the foregoing exclusions of clauses (i) and (iii) above shall in no way be construed to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the UCC or other Applicable Law, or to apply to the extent that any consent or waiver has been obtained that would permit Administrative Agent’s security interest to attach thereto notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (y) the foregoing exclusions of clauses (i) through (iii) above shall in no way be construed to limit, impair, or otherwise affect Administrative Agent’s continuing security interests in any rights, titles or interests of any Credit Party in or to monies due or to become due under or in connection with any of the foregoing, including any Proceeds from the sale, license, lease, or other dispositions of any of the foregoing (provided that the foregoing is not intended, and shall not be construed, to permit any such disposition to the extent otherwise prohibited or restricted hereunder, under the Credit Agreement or under any Loan Document);

(c) Commercial Tort Claims where the amount of the net proceeds claimed is less than \$3,000,000;

(d) (i) any interest (including any surface ownership interest) in Real Estate and/or improvements on land other than Material Owned Real Property, and (ii) any leasehold rights and interests in Real Estate, ~~other than Material Real Estate to the extent provided in Section 8.16 of the Credit Agreement, or (ii) leasehold rights and interests in Real Estate leased from any Governmental Authority;~~

(e) (i) any Equity Interests of captive insurance subsidiaries and not-for-profit subsidiaries, (ii) any Equity Interests in any Joint Venture or any other non-wholly owned Subsidiary, ~~and~~ (iii) any Equity Interests in the direct parent of any Joint Venture or non-wholly owned Subsidiary to the extent that a pledge thereof would be prohibited by, cause a default under or result in a breach of, or would give another Person (other than a Borrower or any ~~Controlled~~ Subsidiary) a right to terminate, under any Organizational Document, shareholders, Joint Venture or similar agreement applicable to such owned Subsidiary or Joint Venture, and (iv) any Equity Interest of Alpha Metallurgical Terminal, LLC;

(f) the Excluded Accounts;

(g) ~~the Excluded Property~~ [reserved];

(h) automobiles, trucks and trailers of Credit Parties to the extent that perfection of a Lien thereon requires the notation of Agent’s Lien thereon to be noted on the applicable certificate of title and excluding, for the avoidance of doubt, any such vehicles trucks and trailers or other Rolling Stock to the extent a security interest thereon is perfected by filing a UCC-1 Financing Statement against “Goods,” “Inventory” or “Equipment” of the applicable Credit Party in the proper filing office for such Credit Party;

(i) Sold Receivables; and

(j) all right, title and interest of Alpha Metallurgical Services, LLC (formerly known as Contura Energy Services, LLC) under (A) the Trust Agreement (N731BP) dated July 26, 2016 between Bank of Utah, as owner trustee, and Alpha Metallurgical Services, LLC, as operator and (B) the Aircraft Operating Agreement dated July 26, 2016 between Alpha Metallurgical Services, LLC and Owner Trustee;

provided, that (x) Excluded Collateral shall not include any proceeds, products, substitutions, or replacements of Excluded Collateral unless such proceeds, products, substitutions, or replacements of Excluded Collateral would otherwise constitute Excluded Collateral, and (y) if and when any property shall cease to be Excluded Collateral, a Lien on and security interest in such property shall automatically be deemed granted therein; provided, further, that, notwithstanding anything to the contrary in the immediately preceding sentence, to the extent that any Credit Party grants a Lien on any asset or right described in clauses (a) through (j) above to secure the any Senior Notes Debt incurred in connection with a Permitted Bond Transaction, such asset or right shall not constitute Excluded Collateral.

The Collateral shall not include, and none of the Obligations shall be paid with or with the Proceeds of, (A) any Account, Instrument, Chattel Paper, or other obligation or Property of any kind due from, owed by, or belonging to, a Sanctioned Person or Sanctioned Entity or (B) any lease under which the lessee is a Sanctioned Person or Sanctioned Entity. None of the foregoing items or Properties nor any Proceeds thereof shall be applied to the payment or reduction of the Obligations.

If and to the extent that, at the Borrower Representative's request, Administrative Agent determines, in its discretion, at any time, that the cost, burden or consequence of creating, perfecting or maintaining a security interest in any particular asset is excessive in view of the practical benefits to be obtained by the Secured Parties therefrom, and confirms in writing such determination to the Borrower Representative, then, so long as Administrative Agent has not revoked such determination, which it may do at any time in its discretion, the Credit Parties shall not be required to create, perfect or maintain, as applicable, a security interest in such asset.

Section 4. **Care of Collateral.** Except as otherwise may be expressly required by this Agreement, any other Loan Document or Applicable Law, Administrative Agent (a) shall have no obligation to (i) exercise any degree of care in connection with any Collateral in its possession or control (including Article 9 Control), or (ii) take any steps necessary to preserve any rights in the Collateral or to preserve any rights in the Collateral against senior or prior parties (which steps Credit Parties agree to take) and (b) shall not be liable or responsible for (i) any loss or damage to the Collateral or for any diminution in the value thereof or (ii) any act or default of any Third Party Claimant having possession of the Collateral. Administrative Agent's segregation or specific allocation of specified items of Collateral against any of Credit Parties' liabilities shall not waive or affect any Lien against other items of Collateral or any of Administrative Agent's options, powers, or rights under this Agreement, any other Loan Document or Applicable Law.

Section 5. **Liens on Goods on Consignment.** With respect to any Credit Party's Inventory which such Credit Party has, is buying or selling, or buys or sells, on Consignment (whether such Credit Party is a Consignor or Consignee), such Credit Party shall, at its expense and upon request of Administrative Agent from time to time, promptly (but in any event within five (5) Business Days after receipt of request) take whatever actions are requested by Administrative Agent in regard thereto, including, in the case of Consignments made by such Credit Party, to cause such Credit Party's security interest in and to such consigned Goods to be perfected (with such priority as Administrative Agent may require) in accordance with the UCC and assigned to Administrative Agent in accordance with the UCC.

Without limiting the generality of the foregoing, at Administrative Agent's reasonable request, for any Consignments made by such Credit Party, such Credit Party shall (i) file a Financing Statement in respect of such Inventory naming itself as "Consignor" and such Person as "Consignee" thereon, in the jurisdiction of such Consignee's incorporation (or organization), and assign such Financing Statement to Administrative Agent, (ii) cause such Consignee (and, if requested by Administrative Agent, any secured lender to, or landlord (or mortgagee) of, such Consignee to execute and deliver to Administrative Agent a Third Party Claimant Agreement in form and content satisfactory to Administrative Agent in respect of such Inventory. In furtherance of the foregoing, Credit Parties shall provide Administrative Agent, by the Closing Date, with a listing as set forth on Schedule 3 attached hereto of all such Consignment arrangements then existing, including therewith the name of the Consignor or Consignee, a description of the Inventory being Consigned (by type or kind) and the address where the Consigned Inventory is then located, and (iii) simultaneously with the delivery of the Borrowing Base Certificate pursuant to Section 8.6(a) of the Credit Agreement, notify Administrative Agent of any Consignment arrangement (or altering in any material respect any such Consignment arrangement), and provide Administrative Agent with evidence of such Credit Party's compliance with this Section in connection therewith prior to receiving or shipping any Inventory under such arrangement.

Section 6. **No Assumption of Liability.** The Lien on the Collateral granted to Administrative Agent hereunder is given as security only and shall not subject Administrative Agent to, or in any way modify, any duty, obligation or liability of Credit Parties relating to any Collateral. Without limitation of the foregoing, anything contained herein to the contrary notwithstanding, (a) each Credit Party shall remain liable under any contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Administrative Agent of any of its rights hereunder shall not release any Credit Party from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) Administrative Agent shall not have any obligation or liability under any contracts, licenses, and agreements included in the Collateral by reason of this Agreement, nor shall Administrative Agent be obligated to perform any of the obligations or duties of any Credit Party thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 7. **Real Estate Collateral-(Springing Covenant).** As and when required by Section 8.16 of the Credit Agreement (the "Springing Covenant Date"), the Credit Parties shall execute and deliver to Administrative Agent (or its trustee created for such purpose) Mortgages and Mortgage Documents in form and substance reasonably satisfactory to Administrative Agent in connection with the Credit Parties' Material Owned Real Estate Property set forth on Schedule 4, at Credit Parties' expense, to grant Administrative Agent, for the benefit of Secured Parties, a Lien or Liens on ~~such~~ Material Owned Real Estate Property to secure the due and punctual payment and performance of the Obligations. At any time after the occurrence of the Springing Covenant Date, if any Credit Party acquires any Material Owned Real Estate Property or any Real Estate becomes Material Owned Real Estate Property through an appraisal or otherwise, the Credit Parties shall execute and deliver to Administrative Agent (or such trustee) all Mortgages and Mortgage Documents in form and substance reasonably satisfactory to Administrative Agent in connection with such acquired or other Material Owned Real Estate Property within ~~ninety (90)~~ 180 days after the date of such acquisition or other event (or such later date as may be agreed to by the Administrative Agent in writing in its discretion). All Mortgages shall be executed by the applicable Credit Party in favor of Administrative Agent (or its trustee created for such purpose), for the benefit of Secured Parties, and in each case shall be duly recorded, at Credit Parties' expense, in each office where such recording is required to constitute a fully perfected, first priority Lien (or, if applicable, a second priority Lien subject only to the first priority Lien in favor of the Senior Notes Agent if such Mortgage is delivered in connection with a Permitted Bond Transaction) upon such Material Owned Real Estate Property covered thereby (subject to Permitted Real Estate Encumbrances and other Permitted Liens) as security for the payment or performance of the Obligations, together with

receipt (and recording, as applicable) by Administrative Agent of all applicable Mortgage Documents in connection therewith.

Section 8. **Power of Attorney.** Each Credit Party hereby constitutes and appoints Administrative Agent (and all Persons so designated from time to time by Administrative Agent) as such Credit Party's true and lawful attorney (and agent-in-fact) for the purposes provided in this **Section 8**, which power of attorney is coupled with an interest and is, therefore, irrevocable. Administrative Agent, or Administrative Agent's designee, may, without notice and in either its or a Credit Party's name, but at the cost and expense of Credit Parties:

(a) **Indorsements.** During the existence of a Cash Dominion Period, indorse a Credit Party's name on any Item or other Proceeds of Collateral (including Proceeds of insurance) that come into Administrative Agent's or its designee's possession or control (including Article 9 Control);

(b) **Financing Statements.** File any Financing Statements, Fixture Filings and amendments thereto relating to the Collateral which Administrative Agent deems appropriate, each in form and substance determined by Administrative Agent, and to (a) describe the Collateral thereon (i) as "all personal property of the debtor," "all assets," or words of similar effect, if appropriate and permitted by Applicable Law, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or any other Applicable Law, or (ii) by specific collateral category, and (b) include therein all other information which may be required by Article 9 of the UCC or other Applicable Law with respect to the preparation or filing of a Financing Statement (or other similar filings or public records or notices relating to the perfection of Liens), Fixture Filing, or amendment.

(c) **Post Default Actions.** During the existence of an Event of Default, (i) notify any Account Debtors of the assignment of Accounts owed by such Account Debtors, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge, or release any Accounts or other Collateral or any legal proceedings brought to collect Accounts or other Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts, and at such times as Administrative Agent deems advisable; (iv) collect, liquidate, and receive balances in Deposit Accounts or investment accounts and take control, in any manner, of Proceeds of Collateral; (v) prepare, file, and sign a Credit Party's name to a proof of claim or other document in any bankruptcy or similar proceeding of or relating to any Account Debtor or to any notice, assignment, or satisfaction of Lien or similar document; (vi) receive, open, and dispose of mail addressed to any Credit Party and notify postal authorities to deliver any such mail to an address designated by Administrative Agent; (vii) indorse any Chattel Paper, Document, Instrument, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use any Credit Party's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic, or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance, or other instrument for which any Credit Party is a beneficiary; and (xii) take all other actions as Administrative Agent deems appropriate to fulfill any Credit Party's obligations under the Loan Documents.

Section 9. **Additional Collateral and Perfection Information.** Each Credit Party represents, warrants, covenants and agrees that (i) Administrative Agent's Liens on the Collateral are duly perfected and constitute first-priority Liens, subject only to Permitted Liens (if any), and, in the case of priority, only to Permitted Liens that are expressly permitted under the Loan Documents to have priority, (ii) **Schedule 1** attached hereto sets forth as of the Closing Date, for each Credit Party and each of its Subsidiaries, (a) the address of such Person's chief executive office and other locations where

books and records are kept; (b) such Person's organizational identification number; (c) any fictitious name or trade name used by such Person during the past five years; and (d) a list of Third Party Claimants which hold any of such Person's Inventory, and (iii) as of the Closing Date, no Collateral is attached or affixed to any Real Estate so as to be classified as a Fixture (other than Fixtures located at any Real Estate that is subject to a Mortgage, but only for so long as Administrative Agent has a Lien on such Real Estate and Fixtures), except as set forth on **Schedule 1**.

Section 10. **Supplements to Schedules; Collateral Disclosure Certificates.**

Simultaneously with delivery of the Compliance Certificate required to be delivered pursuant to Section 8.6(d) of the Credit Agreement (or sooner if requested by Administrative Agent while any Event of Default is continuing), Credit Parties shall supplement **Schedules 1** and **2** attached hereto, with respect to any matter hereafter arising that, if existing or occurring at the Closing Date, would have been required to be set forth or described in any such Schedules; provided that (A) no such supplement to any Schedule or representation or warranty shall amend, supplement or otherwise modify any such Schedule or representation or warranty, or be deemed a waiver of any Default or Event of Default resulting from the matters disclosed therein, except as consented to by Administrative Agent and the Required Lenders or all Lenders, as applicable, in accordance with Section 15.2 of the Credit Agreement and (B) no supplement to any Schedule shall be required or permitted with respect to representations and warranties that relate solely to the Closing Date. All information set forth in any Collateral Disclosure Certificate delivered before the Closing Date is true and correct in all material respects as of the Closing Date, and all information in any Collateral Disclosure Certificate delivered after the Closing Date shall be true and correct in all material respects as of the date thereof.

Section 11. **Covenants Regarding Collateral Generally.** Until Payment in Full of the Obligations, each Credit Party shall, and shall cause each Subsidiary, as applicable, to:

(a) **Protection of Collateral.** Pay all expenses of protecting, storing, warehousing, insuring, handling, maintaining, and shipping any Collateral, all Taxes payable with respect to any Collateral (including any due upon the sale or use thereof), and all other payments that may be required to be made by Administrative Agent to any Person to retain, restore or realize upon any Collateral.

(b) **Defense of Title to Collateral.** Defend its title to Collateral and Administrative Agent's Liens therein against all Persons, claims, and demands whatsoever, except Permitted Liens, and at Administrative Agent's request, at Credit Party's expense, appear in and defend any action or proceeding that may affect such Credit Party's title to or Administrative Agent's security interest in all or any part of the Collateral.

(c) **Third Parties.** If such Person's records or reports of the Collateral are prepared or maintained by any other Person, irrevocably authorize such Person (and such Person is hereby irrevocably so authorized) to deliver, at Administrative Agent's request from time to time, such records, reports, and related documents to Administrative Agent and to discuss the same and all information therein with Administrative Agent.

(d) **After-Acquired and Other Collateral.**

(i) Simultaneously with delivery of the Compliance Certificate required to be delivered pursuant to Section 8.6(d) of the Credit Agreement, at such Credit Parties' expense, notify Administrative Agent in writing if, after the Closing Date, any Credit Party obtains any interest in any Collateral consisting of Deposit Accounts (other than Excluded Accounts) and promptly take such

actions as Administrative Agent deems appropriate to effect Administrative Agent's duly perfected, first-priority Lien upon such Collateral.

(ii) Simultaneously with delivery of the Compliance Certificate required to be delivered pursuant to Section 8.6(d) of the Credit Agreement, at such Credit Parties' expense, notify Administrative Agent in writing if, after the Closing Date, any Credit Party obtains any interest in (A) Chattel Paper in excess of \$3,000,000, individually or in the aggregate, (B) promissory notes and other Instruments evidencing indebtedness in excess of \$3,000,000, either individually or in the aggregate, (C) Electronic Chattel Paper in excess of \$3,000,000, either individually or in the aggregate, (D) Letter-of-Credit Rights of such Credit Party in excess of \$3,000,000, (E) any Commercial Tort Claim where the amount of the net proceeds claimed is equal to or greater than \$3,000,000, and (F) Investment Property or any other Collateral which may be perfected by means other than by filing a financing statement, and, upon Administrative Agent's request, subject to clause (f) of this Section 11, promptly take such actions as Administrative Agent deems appropriate to effect Administrative Agent's duly perfected, first-priority Lien upon such Collateral.

(e) Location of Collateral. Promptly (but, in any case simultaneously with delivery of the Compliance Certificate required to be delivered pursuant to Section 8.6(d) of the Credit Agreement), notify Administrative Agent in writing of any new location where any Credit Party maintains a material amount of Collateral; provided, that no inventory located at a new location shall be Eligible Inventory until the Credit Parties have notified the Administrative Agent of such location. The Credit Parties agree to maintain all material tangible Collateral (other than in-transit Inventory and Rolling Stock) at a Permitted Location. No material amount of Collateral shall, without the prior written approval of Administrative Agent, be moved from a Permitted Location (other than to another Permitted Location) except, before an Event of Default, with respect to sales or other dispositions of assets permitted pursuant to Section 9.5 of the Credit Agreement.

(f) Further Assurances. Provide such further assurances to Administrative Agent in respect of the Collateral as Administrative Agent may reasonably request from time to time. Without limitation of the foregoing, each Credit Party agrees that from time to time, at the expense of such Credit Party, such Credit Party will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Administrative Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Credit Party covenants as follows:

(i) Chattel Paper. On the Closing Date, if in existence on such date, and otherwise promptly (but in any event together with delivery of the Compliance Certificate required pursuant to Section 8.6(d) of the Credit Agreement), Credit Parties shall notify Administrative Agent in writing of receipt by such Credit Party of any interest in Chattel Paper in excess of \$3,000,000, either individually or in the aggregate, and at the request of Administrative Agent, promptly (but in any event within five (5) Business Days after receipt of request) mark conspicuously each such item of Chattel Paper and each of its records pertaining to the Chattel Paper, with a legend, in form and substance reasonably satisfactory to Administrative Agent, indicating that such Chattel Paper is subject to the security interest granted hereby and shall, upon the reasonable request of Administrative Agent, deliver to Administrative Agent all original counterparts of Chattel Paper, duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Administrative Agent;

(ii) Instruments. On the Closing Date, if in existence on such date, and otherwise promptly (but in any event together with delivery of the Compliance Certificate required pursuant to Section 8.6(d) of the Credit Agreement), Credit Parties shall deliver to Administrative Agent all

promissory notes and other Instruments evidencing indebtedness in excess of \$3,000,000, either individually or in the aggregate, duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Administrative Agent; and

(iii) Electronic Chattel Paper and Letter-of-Credit Rights. On the Closing Date, if in existence on such date, and otherwise promptly (but in any event together with delivery of the Compliance Certificate required pursuant to Section 8.6(d) of the Credit Agreement), Credit Parties shall, upon the reasonable request of Administrative Agent, deliver to Administrative Agent such documents, instruments, notices, records and consents, and take such other actions, necessary to establish that Administrative Agent has Article 9 Control over Electronic Chattel Paper in excess of \$3,000,000, either individually or in the aggregate, and Letter-of-Credit Rights of such Credit Party in excess of \$3,000,000 (except to the extent delivered to support any Eligible Account), either individually or in the aggregate.

Each Credit Party further hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without notice to, or consent of, any Credit Party (it being understood by the parties hereto that, with respect to any financing statements to be filed for As-Extracted Collateral, as of the Closing Date, Credit Parties have only provided information regarding Material Real Estate (which was defined in this Agreement prior to the First Amendment Date as any Mine or other Real Estate, in each case, owned or acquired in fee by any Credit Party having a fair market value in excess of \$1,000,000) and Material Leased Real Estate for purposes of filing financing statements covering As-Extracted Collateral).

Section 12. **Particular Covenants Relating to Accounts.** Until Payment in Full of the Obligations, each Credit Party shall, and shall cause each Subsidiary, as applicable, to:

(a) Taxes. During the existence of an Event of Default, authorize Administrative Agent, if an Account of any Credit Party includes a charge for any unpaid Taxes, to pay the amount thereof (and any penalty thereon) to the proper taxing authority for the account of such Credit Party and to charge Borrowers' account therefor; provided, however, that Administrative Agent shall not be obligated to pay, or otherwise be liable, for any Taxes that may be due from any Credit Party or with respect to any Collateral.

(b) Account Verification. Cooperate fully with Administrative Agent in facilitating Administrative Agent's verification of the validity, amount, or any other matter relating to any Accounts of Credit Parties, and each Credit Party, for itself and on behalf of each of its Subsidiaries, grants Administrative Agent the right, after an Event of Default has occurred and is continuing, and in the name of Administrative Agent, any designee of Administrative Agent, or such Credit Party or Subsidiary, to complete such verification by mail, telephone, or otherwise.

(c) Assignments of Accounts. If so requested by Administrative Agent from time to time during the existence of an Event of Default, promptly (but in any event within five (5) Business Days after requested to do so), execute and deliver to Administrative Agent formal, written assignments of all of such Credit Parties' Accounts which have not, as of such date been included in any such formal, written assignment.

Section 13. **Particular Covenants Regarding Inventory.** Until Payment in Full of the Obligations, each Credit Party shall, and shall cause each Subsidiary, as applicable, to:

(a) Records and Reports of Inventory. Keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions.

(b) Inventory Examinations. Conduct a physical inventory at least once per calendar year (and, during the existence of an Event of Default, at such other time or times as may be requested by Administrative Agent, as soon as practicable but in any event within thirty (30) days after such request) and periodic cycle counts consistent with historical practices and, if requested by Administrative Agent, provide to Administrative Agent a report based on each such physical inventory and count promptly upon completion thereof (but in any event within five (5) Business Days after completion), with such supporting information as Administrative Agent may request. Administrative Agent may (but shall have no duty to) participate in and observe each physical inventory and cycle count.

(c) [Reserved].

(d) Acquisition, Sale, and Maintenance. (i) Unless otherwise approved by Administrative Agent in its discretion, and then subject to compliance in all respects with **Section 5** hereof, not acquire or accept any Inventory on Consignment or approval; (ii) take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the Fair Labor Standards Act of 1938; (iii) unless otherwise approved by Administrative Agent in its discretion, and then subject to compliance in all respects with **Section 5** hereof, not sell any Inventory on Consignment or approval or any other basis under which the customer may return or require a Credit Party to repurchase such Inventory; and (iv) use, store, and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of insurance, manufacturer's (or supplier's) warranties and in compliance with all Applicable Law.

Section 14. **Particular Covenants Regarding Equipment.** Until Payment in Full of the Obligations, each Credit Party shall, and shall cause each Subsidiary, as applicable, to:

(a) Records of Equipment. (i) Keep accurate and complete records of its Equipment; and (ii) promptly upon reasonable request (but in any event within five (5) Business Days after receipt of request) by Administrative Agent, deliver to Administrative Agent evidence of Credit Parties' or Subsidiaries' ownership or interests in any such Equipment.

(b) Condition of Equipment. (i) Keep all Equipment in good operating condition and repair, and make all necessary replacements and repairs so that the value and operating efficiency of the Equipment is preserved at all times, reasonable wear and tear excepted; (ii) ensure that the Equipment is mechanically and structurally sound and capable of performing the functions for which it was designed in accordance with manufacturer specifications; and (iii) prevent any material Equipment from becoming affixed to Real Estate unless each applicable Third Party Claimant shall have executed and delivered a Third Party Claimant Agreement in regard thereto.

Section 15. **Remedies upon Default.**

(a) In addition to (and not in lieu of) the rights and remedies specified in Section 11.2 of the Credit Agreement, at any time and from time to time during the existence of any Event of Default, Administrative Agent may (and, at the written direction of the Required Lenders, shall) do any one or more or all of the following:

(i) (A) take possession of any Collateral; (B) on demand, require Credit Parties to assemble Collateral, at Credit Parties' expense, and make it available to Administrative Agent (or its designee) at a time and place designated by Administrative Agent; (C) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Credit Party, such Credit Party shall not charge for such storage, and will reimburse Administrative Agent for any such charges imposed by any other Person in regard thereto); (D) sell,

lease, or otherwise dispose of any Collateral in its then condition or after the refurbishing, restoration, repair, or further manufacturing or processing thereof (at Credit Parties' expense), at public or private sale, with only such notice as may be required by Applicable Law, in lots or in bulk, and at such locations, all as Administrative Agent, in its discretion, deems advisable, and at such prices or terms as Administrative Agent may deem reasonable, for cash, upon credit, or for future delivery; (E) demand, collect, invoice, and sue for all amounts owed pursuant to Accounts, General Intangibles, Chattel Paper, Instruments, or Documents or for Proceeds of any Collateral (either in a Credit Party's name or Administrative Agent's or any Lender's name, at Administrative Agent's option), with the right to enforce, compromise, settle, or discharge any such amounts; and (F) on demand, require or cause all invoices and statements sent to any Account Debtor to state that the Accounts and such other obligations have been assigned to Administrative Agent and are payable directly and only to Administrative Agent and Credit Parties shall deliver to Administrative Agent such originals of documents evidencing the sale and delivery of Goods or the performance of services giving rise to any Accounts as Administrative Agent may require; and

(ii) exercise such other rights and remedies which may be available to it under this Agreement, the other Loan Documents, and agreements relating to Bank Products, and Applicable Law (including all rights of a secured party under Article 9 of the UCC), all of which shall be cumulative.

(b) Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto while Collateral is in Administrative Agent's (or its designee's) possession or control (including Article 9 Control), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whatsoever, and all of the same shall be at Credit Parties' sole risk.

(c) Each Credit Party hereby acknowledges that the Obligations arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing Administrative Agent shall have the right to an immediate writ of possession of any Collateral on an *ex parte* basis and without notice of a hearing.

Section 16. **Commercially Reasonable Sale.** Each Credit Party agrees that notice of any proposed sale or other disposition of Collateral by Administrative Agent conducted pursuant to **Section 15** hereof shall be deemed to be "commercially reasonable" if such notice is delivered as provided in Section 15.1 of the Credit Agreement at least ten (10) days before the action to be taken, and Credit Parties waive any other notice in regard thereto. Administrative Agent shall have the right to conduct such sales or other dispositions of Collateral on any Credit Party's premises, without charge, and such sales or other dispositions may be adjourned by Administrative Agent from time to time in accordance with Applicable Law. Administrative Agent (acting individually or through its designee) may purchase any Collateral at any public sale or, if permitted by Applicable Law, at any private sale and, in lieu of actual full payment of the purchase price, may set off the amount of such price against all or such portion of the Obligations as Administrative Agent may elect. Each Credit Party shall be liable for any deficiencies, with interest at the highest interest rate provided for in the Credit Agreement in regard thereto (including interest arising after commencement any Credit Party's Insolvency Proceeding, whether or not such interest is allowed in such Insolvency Proceeding) and all costs and expenses of collection and enforcement, including attorneys' fees and expenses, if the Proceeds of the disposition of the Collateral do not result in Payment in Full of all Obligations. To the extent that Applicable Law imposes any duties on Administrative Agent to exercise remedies in a "commercially reasonable" manner which duties cannot be waived under Applicable Law (provided that, for the avoidance of any doubt, to the extent that any such duties that can be waived under Applicable Law the foregoing are hereby waived by each of the Credit Parties), each Credit Party acknowledges and agrees that it is not commercially unreasonable for Administrative Agent (a) to fail to obtain third party consents for access to Collateral to

be disposed of, or to obtain or, if not required by Applicable Law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of; (b) to fail to exercise collection remedies against Account Debtors, secondary obligors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against, Collateral; (c) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (d) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (e) to contact other Persons, whether or not in the same business as any Credit Party, for expressions of interest in acquiring all or any portion of the Collateral; (f) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (g) to dispose of Collateral by utilizing 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; (h) to dispose of assets in wholesale rather than retail markets; (i) to disclaim disposition and other warranties; (j) to purchase, at Credit Parties' expense, insurance or credit enhancements to insure Administrative Agent against risks of loss, collection, or disposition of Collateral or to provide to Administrative Agent and the other Secured Parties a guaranteed return from the collection or disposition of Collateral; or (k) to obtain the services of other brokers, investment bankers, consultants, and other professionals to assist Administrative Agent in the collection or disposition of any of the Collateral. Each Credit Party further agrees that any sale of Collateral to a Licensor pursuant to the terms of a License is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time). Each Credit Party acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Administrative Agent would not be commercially unreasonable in the exercise by Administrative Agent of rights and remedies against the Collateral and that other actions or omissions by Administrative Agent shall not be deemed to be commercially unreasonable solely on account of not being expressly indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to any Credit Party or to impose any duties on Administrative Agent that would not have been granted or imposed by this Agreement, any other Loan Document, any agreement related to Bank Products, or by Applicable Law in the absence of this Section.

Section 17. **Miscellaneous; Governing Law; Submission to Jurisdiction.** All terms of Section 15 of the Credit Agreement (Miscellaneous), as such Section 15 is in effect on the Closing Date, and as it may be modified or amended from time to time hereafter in accordance with Section 15.2 thereof, are herewith incorporated by reference into this Agreement and made an integral part hereof, as fully and completely as if set forth verbatim herein, with specific respect to this Agreement, such that each reference therein to "this Agreement" (and words of similar import) in said Section 15 shall mean and refer, for purposes hereof, to this Agreement, *mutatis mutandis*, unless and except to the extent otherwise expressly provided herein. THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED BY THE TERMS HEREOF OR UNLESS THE LAWS OF ANOTHER JURISDICTION MAY, BY REASON OF MANDATORY PROVISIONS OF SUCH LAW, GOVERN THE PERFECTION, PRIORITY, OR ENFORCEMENT OF SECURITY INTERESTS IN ANY COLLATERAL, SHALL BE GOVERNED BY THE LAWS OF THE JURISDICTION STATE, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES OR OTHER RULE OF LAW THAT WOULD CAUSE THE APPLICATION OF THE LAW OF ANY JURISDICTION OTHER THAN THE LAW OF THE JURISDICTION STATE (BUT GIVING EFFECT TO FEDERAL LAWS RELATING TO NATIONAL BANKS). EACH CREDIT PARTY HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE JURISDICTION STATE AND THE UNITED STATES DISTRICT COURT FOR EACH DISTRICT OF THE JURISDICTION STATE, IN RESPECT OF ANY PROCEEDING, DISPUTE, OR ADVERSE PROCEEDING BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS

(WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY WITH RESPECT HERETO OR THERETO, AND EACH CREDIT PARTY AGREES THAT ANY SUCH PROCEEDING, DISPUTE, OR ADVERSE PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN SUCH COURTS. WITH RESPECT TO SUCH COURTS, EACH CREDIT PARTY IRREVOCABLY WAIVES ALL CLAIMS, OBJECTIONS, AND DEFENSES THAT IT MAY HAVE REGARDING PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE, OR INCONVENIENT FORUM. EACH PARTY HERETO WAIVES PERSONAL SERVICE OF PROCESS OF ANY AND ALL PROCESS SERVED UPON IT AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES GENERALLY IN SECTION 15.1 OF THE credit agreement, SUCH SERVICE TO BE EFFECTIVE AT THE TIME SUCH NOTICE WOULD BE DEEMED DELIVERED UNDER SECTION 15.1 OF THE CREDIT AGREEMENT. NOTHING HEREIN SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT, OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN ANY OTHER COURT OR JURISDICTION, NOR LIMIT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE ENFORCEMENT BY ADMINISTRATIVE AGENT OF ANY JUDGMENT OR ORDER OBTAINED IN ANY FORUM OR JURISDICTION. NOTHING CONTAINED HEREIN SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO BRING PROCEEDINGS (INCLUDING ENFORCEMENT OF ANY JUDGMENT OR ORDER) AGAINST ANY CREDIT PARTY IN ANY OTHER JURISDICTION OR LIMIT THE RIGHT OF ANY SUCH PERSON TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

[Remainder of page intentionally left blank; signatures appear on the following pages]

[SIGNATURE PAGES INTENTIONALLY OMITTED FROM THIS EXHIBIT B TO FIRST
AMENDMENT TO SECURITY AGREEMENT]



CERTIFICATIONS

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER

Each of the officers below certifies that:

1. I have reviewed this Quarterly Report on Form 10-Q (this "Report") of Alpha Metallurgical Resources, Inc. (the "Registrant");
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;
4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined by Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d. disclosed in this Report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting;
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: May 9, 2025

By: /s/ Charles Andrew Eidson

Charles Andrew Eidson

Chief Executive Officer

(Principal Executive Officer)

Date: May 9, 2025

By: /s/ J. Todd Munsey

J. Todd Munsey

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Alpha Metallurgical Resources, Inc. (the “Registrant”) for the period ended March 31, 2025, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), each of the undersigned officers of the Registrant certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: May 9, 2025

By: /s/ Charles Andrew Eidson

Charles Andrew Eidson
Chief Executive Officer
(Principal Executive Officer)

Date: May 9, 2025

By: /s/ J. Todd Munsey

J. Todd Munsey
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

Mine Safety and Health Administration Data

Our subsidiaries' mining operations have consistently been recognized with numerous local, state and national awards over the years for outstanding safety performance.

Our behavior-based safety process involves all employees in accident prevention and continuous improvement. Safety leadership and training programs are based upon the concepts of situational awareness and observation, changing behaviors and, most importantly, employee involvement. The core elements of our safety training include identification of critical behaviors, frequency of those behaviors, employee feedback and removal of barriers for continuous improvement.

All employees are empowered to champion the safety process. Every person is challenged to identify hazards and initiate corrective actions, ensuring that hazards are addressed in a timely manner.

All levels of the organization are expected to be proactive and commit to perpetual improvement, implementing new safety processes that promote a safe and healthy work environment.

Our subsidiaries operate multiple mining complexes in two states and are regulated by both the U.S. Mine Safety and Health Administration ("MSHA") and state regulatory agencies. As described in more detail in the "Environmental and Other Regulatory Matters" section of our Annual Report on Form 10-K for the year ended December 31, 2024, the Federal Mine Safety and Health Act of 1977, as amended (the "Mine Act"), among other federal and state laws and regulations, imposes stringent safety and health standards on all aspects of mining operations. Regulatory inspections are mandated by these agencies with thousands of inspection shifts at our properties each year. Citations and compliance metrics at each of our mines and coal preparation facilities vary due to the size and type of the operation. We endeavor to conduct our mining and other operations in compliance with all applicable federal, state and local laws and regulations. However, violations occur from time to time. None of the violations identified or the monetary penalties assessed upon us set forth in the tables below have been material.

For purposes of reporting regulatory matters under Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), we include the following table that sets forth the total number of specific citations and orders and the total dollar value of the proposed civil penalty assessments that were issued by MSHA during the current reporting period for each of our subsidiaries that is a coal mine operator, by individual mine. During the current reporting period, none of the mines operated by our subsidiaries received written notice from MSHA of a pattern of violations under Section 104(e) of the Mine Act.

Three Months Ended March 31, 2025

MSHA Mine ID	Operator	Significant and Substantial Citations Issued (Section 104 of the Mine Act) *Excludes 104(d) citations/orders	Failure to Abate Orders (Section 104(b) of the Mine Act)	Unwarrantable Failure Citations/Orders Issued (Section 104(d) of the Mine Act)	Flagrant Violations (Section 110(b)(2) of the Mine Act)	Imminent Danger Orders Issued (Section 107(a) of the Mine Act)	Dollar Value of Proposed Civil Penalty Assessments (in Thousands)	Mining Related Fatalities
4405270	Paramont Contura, LLC	—	—	—	—	—	\$0.48	—
4405311	Dickenson-Russell Contura, LLC	2	—	—	—	—	\$1.40	—
4407223	Paramont Contura, LLC	14	—	—	—	—	\$14.02	—
4407308	Paramont Contura, LLC	7	—	—	—	—	\$12.47	—
4407381	Paramont Contura, LLC	1	—	—	—	—	\$0.64	—
4603317	Mammoth Coal Company	—	—	—	—	—	\$0.15	—
4604637	Kepler Processing Company LLC	3	—	—	—	—	\$2.54	—
4604669	Rum Creek Coal Sales	—	—	—	—	—	\$0.60	—
4605086	Bandmill Coal LLC	5	—	—	—	—	\$7.16	—
4606188	Elk Run Coal Company, LLC	—	—	—	—	—	\$0.15	—
4607491	Nicholas Contura, LLC	—	—	—	—	—	\$0.45	—
4608374	Marfork Coal Company, LLC	2	—	—	—	—	\$—	—
4608787	Nicholas Contura, LLC	19	—	—	—	—	\$77.92	—
4608932	Kingston Mining, Inc.	5	—	—	—	—	\$17.14	—
4609026	Republic Energy, LLC	1	—	—	—	—	\$0.45	—
4609054	Republic Energy, LLC	—	—	—	—	—	\$3.14	—
4609091	Marfork Coal Company, LLC	2	—	—	—	—	\$0.60	—
4609092	Marfork Coal Company, LLC	—	—	—	—	—	\$0.15	—
4609111	Nicholas Contura, LLC	—	—	—	—	—	\$1.40	—
4609212	Marfork Coal Company, LLC	3	—	—	—	—	\$7.92	—
4609375	Marfork Coal Company, LLC	2	—	—	—	—	\$8.93	—
4609475	Republic Energy, LLC	2	—	—	—	—	\$0.75	—

4609522	Spartan Mining Company, LLC	31	—	—	—	—	\$121.72	—
4609550	Marfork Coal Company, LLC	28	—	3	—	—	\$105.02	—
4609574	Aracoma Coal Company, LLC	1	—	—	—	—	\$3.50	—
4609575	Aracoma Coal Company, LLC	20	—	—	—	—	\$82.76	—
4609611	Aracoma Coal Company, LLC	2	—	—	—	—	\$4.30	—
4609631	Kingston Mining, Inc.	1	—	—	—	—	\$0.30	—
4609640	Elk Run Coal Company, LLC	—	—	—	—	—	\$2.36	—
F457	Maxxim Rebuild Company, LLC	1	—	—	—	—	\$2.53	—

For purposes of reporting regulatory matters under Section 1503(a) of the Dodd-Frank Act, we include the following table that sets forth a list of legal actions pending before the Federal Mine Safety and Health Review Commission, including the Administrative Law Judges thereof, pursuant to the Mine Act, and other required information, for each of our subsidiaries that is a coal mine operator, by individual mine including legal actions and other required information.

As of and For the Three Months Ended March 31, 2025

Mine ID	Operator Name	MSHA Pending Legal Actions (as of last day of reporting period) ⁽¹⁾	New MSHA Dockets commenced during reporting period	MSHA dockets in which final orders were entered (not appealed) during reporting period	Contests of Citations/ Orders referenced in Subpart B, 29 CFR Part 2700	Contests of Proposed Penalties referenced in Subpart C, 29 CFR Part 2700	Complaints for compensation referenced in Subpart D, 29 CFR Part 2700	Complaints for discharge, discrimination, or interference referenced in Subpart E, 29 CFR Part 2700	Applications for temporary relief referenced in Subpart F 29 CFR Part 2700	Appeals of judges' decisions or orders to FMSHRC referenced in Subpart H 29 CFR Part 2700
4608932	Kingston Mining, Inc.	—	—	2	—	—	—	—	—	—
4609091	Marfork Coal Company, LLC	—	1	2	—	—	—	—	—	—
4609522	Spartan Mining Company, LLC	1	2	4	—	1	—	—	—	—
4609550	Marfork Coal Company, LLC	2	2	2	—	2	—	—	—	—
4609212	Marfork Coal Company, LLC	—	1	1	—	—	—	—	—	—
4608787	Nicholas Contura, LLC	—	—	3	—	—	—	—	—	—
4609575	Aracoma Coal Company, LLC	—	1	1	—	—	—	—	—	—
4609375	Marfork Coal Company, LLC	2	1	—	—	1	—	1	—	—
4608374	Marfork Coal Company, LLC	1	—	—	—	1	—	—	—	—
4407308	Paramont Contura, LLC	3	2	1	—	3	—	—	—	—
4609640	Elk Run Coal Company, LLC	—	—	1	—	—	—	—	—	—
4405270	Paramont Contura, LLC	—	—	1	—	—	—	—	—	—
4604669	Rum Creek Coal Sales	—	1	1	—	—	—	—	—	—
4609475	Republic Energy, LLC	1	1	—	—	1	—	—	—	—

⁽¹⁾ The MSHA proposed assessments issued during the current reporting period do not necessarily relate to the citations or orders issued by MSHA during the current reporting period or to the pending legal actions reported herein.