

(j) This Guaranty is a continuing guaranty of the Obligations and all liabilities to which it applies or may apply under the terms hereof and shall be conclusively presumed to have been created in reliance hereon. No failure or delay by the Lenders in the exercise of any right, power, privilege or remedy shall operate as a waiver thereof, and no single or partial exercise by the Lenders of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy and no course of dealing between any Guarantor and the Lenders shall operate as a waiver thereof. No action by the Lenders permitted hereunder shall in any way impair or affect this Guaranty. For the purpose of this Guaranty, the Obligations shall include, without limitation, all Obligations of the Borrower to the Lenders, notwithstanding any right or power of any third party, individually or in the name of the Borrower and the Lenders to assert any claim or defense as to the invalidity or unenforceability of any such Obligation, and no such claim or defense shall impair or affect the obligations of any Guarantor hereunder.

(k) This is a guaranty of payment and not of collection. In the event any Lender makes a demand upon any Guarantor in accordance with the terms of this Guaranty, such Guarantor shall be held and bound to the Lenders directly as debtor in respect of the payment of the amounts hereby Guaranteed. All costs and expenses, including, without limitation, attorneys' fees and expenses, incurred by the Lenders in obtaining performance of or collecting payments due under this Guaranty shall be deemed part of the Obligations Guaranteed hereby.

(l) Each Subsidiary Guarantor is (i) a direct or indirect wholly owned Domestic Subsidiary of the Borrower, or (ii) a direct or indirect wholly owned Restricted Subsidiary of the Parent that is not a direct or indirect Restricted Subsidiary of the Borrower. Each Guarantor expressly represents and acknowledges that any financial accommodations by the Lenders to the Borrower, including, without limitation, the extension of credit, are and will be of direct interest, benefit and advantage to such Guarantor.

(m) Each Guarantor shall be entitled to subrogation and contribution rights from and against the Borrower to the extent any Guarantor is required to pay to the Lenders any amount in excess of the Term Loans advanced directly to, or other Obligations incurred directly by, such Guarantor or as otherwise available under Applicable Law; provided, however, that such subrogation and contribution rights are and shall be subject to the terms and conditions of this Section 3.1 and Section 10.20. The payment obligation of a Guarantor to any other Guarantor under any Applicable Law regarding contribution rights among co-obligors or otherwise shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of this Guaranty, and such Guarantor shall not exercise any right or remedy with respect to such rights until payment and satisfaction in full of all such obligations. Notwithstanding anything to the contrary contained in this Guaranty, no Guarantor shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, nor shall proceed or seek recourse against or with respect to any property or asset of, the Borrower, any other Guarantor or any other guarantor (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 the Borrower, any other Guarantor or any other guarantor whether pursuant to a Loan Document, or otherwise.

(n) Each Guarantor has independently, and without reliance on any information supplied by the Lenders, taken, and will continue to take, whatever steps it deems necessary to evaluate the financial condition and affairs of the Borrower or any Collateral, and the Lenders shall have no duty to advise the Guarantors of information at any time known to it regarding such financial condition or affairs or any Collateral.

Section 3.2 Special Provisions Applicable to Subsidiary Guarantors. Pursuant to Section 6.20 of this Agreement, any new Restricted Subsidiary, other than an Immaterial Subsidiary, an Excluded Foreign Subsidiary or Excluded Joint Venture, of the Parent is required to enter into this Agreement by executing and delivering to the Lender a Guaranty Supplement. Upon the execution and delivery of a Guaranty Supplement by such new Restricted Subsidiary, such Restricted Subsidiary shall become a Guarantor and Borrower Party hereunder with the same force and effect as if originally named as a Guarantor or Borrower Party herein. The execution and delivery of any Guaranty Supplement (or any other supplement to any Loan Document delivered in connection therewith) adding an additional Guarantor as a party to this Agreement or any other applicable Loan Document shall not require the consent of any other party hereto. The rights and obligations of each party hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor hereunder.

Section 3.3 Special Provisions Applicable to Parent. The following provisions shall apply to any interest payable by the Parent and any other Borrower Party organized or existing under the laws of Canada or any political subdivision thereof:

(a) For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(b) If any provision of this Agreement would oblige the Parent to make any payment of interest or other amount payable to a Lender in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited

by Applicable Law or so result in a receipt by such Lender of “interest” at a “criminal rate”.

#### ARTICLE 4

##### CONDITIONS PRECEDENT

Section 4.1 Conditions Precedent to the Making of the Initial Term Loans. The obligations of the Lenders to undertake their respective Initial Term Loan Commitments and to make the Initial Term Loans as contemplated hereunder are subject to the prior fulfillment of each of the following conditions on or prior to the Initial Funding Date:

(a) Each Lender (or, if applicable, the DIP Agent) shall have received each of the following, in form and substance satisfactory to such Lender:

(i) Copies of counterparts of each of the following, together with all exhibits and schedules thereto, as applicable, in each case, duly authorized, executed and delivered by each of the parties thereto, and each shall be in full force and effect: (i) this Agreement executed by each of the parties hereto, (ii) appropriate notes executed by the Borrowers for the account of each Lender which has requested a note at least one (1) Business Day prior to the Initial Funding Date, and (iii) such other forms, certificates, documents, instruments and agreements as DIP Agent or Lenders shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents;

(ii) Evidence of the delivery to the DIP Agent of UCC and Personal Property Security Act financing statements, certificates representing all of the certificated Equity Interests of the Borrower and the Restricted Subsidiaries of the Borrower Parties, and all other original Collateral to be delivered to the DIP Agent for the benefit of the Lenders pursuant to any Loan Document or as otherwise requested by the DIP Agent (as directed by Majority Lenders), and transfer powers with respect thereto duly endorsed in blank;

(iii) A Direction Letter duly executed by the Borrower;

(iv) Complete and correct copies of all leases listed on Schedule 5.1(x)-1;

(v) Other than as contemplated by Section 6.22, certificates of insurance and additional insured and loss payable endorsements, as applicable, with respect to the Borrower Parties and copies of all insurance policies of the Borrower Parties, in each case, meeting the requirements of Section 6.5;

(vi) All of the Liens described in Section 14.1 of this Agreement shall have been created and perfected upon entry of the Interim Order without the necessity of the execution, recordation of filings by the Debtors of, security agreements, control agreements, pledge agreements, financing statements or other similar

documents, or the possession or control by Agent of, or over, any Collateral, as set forth in the Interim Order. The Interim Order shall have been effective to create the relative priorities of the Liens described in Section 6.11 with respect to the Collateral. The automatic stay under the Bankruptcy Code shall have been automatically vacated, subject to the terms of the Interim Order, to permit enforcement of the Secured Parties' rights and remedies under this Agreement and the other Loan Documents;

(vii) The DIP Agent shall have received the Initial Budget, in form and substance reasonably acceptable to the DIP Agent and Majority Lenders;

(viii) A closing certificate executed by an Authorized Signatory of the Borrower, certifying as to the satisfaction of the closing conditions contained herein;

(ix) Term Notes, if requested;

(x) Evidence that all applicable stamp tax or other tax related to the Loan Documents have been paid;

(xi) The Petition Date shall have occurred and each Borrower and Guarantor shall be a debtor and debtor-in-possession in the Cases.

(xii) The Interim Order Entry Date shall have occurred prior to the Agreement Date and not later than five (5) Business Days following the Petition Date, and the Interim Order shall be in full force and effect, shall not (in whole or in part) have been vacated or reversed, shall not have been modified or amended other than as acceptable to the DIP Agent and Majority Lenders in their sole discretion and shall not be subject to a stay, and the DIP Agent shall have received a certified copy of the Interim Order entered by the Bankruptcy Court.

(xiii) The Borrower Parties shall be in compliance with the Interim Order in all respects.

(xiv) The First Day Orders and Second Day Orders sought by the Borrower (including a cash management order) shall be satisfactory in form and substance to DIP Agent and Majority Lenders in their sole discretion. All orders entered by the Bankruptcy Court and arrangements pertaining to cash management and adequate protection, and all motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance satisfactory to the Majority Lenders, including a finding that the DIP Term Loan Facility was entered into in good faith and otherwise complies with Section 364(e) of the Bankruptcy Code, and authorizing and approving (x) the DIP Term Loan Facility on an interim basis, including the refinancing in full of the Prepetition Loan Facility using proceeds of Initial Term Loans, (y) the reimbursement of the DIP Agent and the Lenders' fees and expenses in accordance with Section 10.2, including, without limitation, of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, Kutak Rock LLP, Fasken

Martineau and one financial advisor, and (y) the scheduling of the final hearing on the DIP Term Loan Facility;

(xv) The Lenders and DIP Agent shall have received all fees and expenses required to be paid under the Fee Letters and the other Loan Documents, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel to DIP Agent and Lenders, including, without limitation, of Paul, Weiss, Rifkind, Wharton & Garrison, Kutak Rock LLP, Fasken Martineau and one financial advisor) to the Borrower, whether incurred pre-or-post-petition; and

(xvi) All such other certificates, agreements, reports, confirmations, statements, opinions of counsel and other documents as the Lenders may require, certified, as applicable and if so requested, by an appropriate governmental official or an Authorized Signatory.

(b) The Lenders shall be satisfied in all regards with the results of their due diligence investigation of the Borrower Parties and their respective assets. The Lenders shall be further satisfied that no change in the business assets, management, operations, financial condition or prospects of the Borrower Parties, other than the filing of the Cases, shall have occurred since September 30, 2014, which change has had or could be expected to have a Material Adverse Effect, and the Lenders shall have received a certificate of an Authorized Signatory of the Borrower so stating.

(c) The Lenders shall have received evidence satisfactory to it that all Necessary Authorizations are in full force and effect and are not subject to any pending or threatened reversal or cancellation, that no other consents or approvals are required and that no Default exists, after giving effect to the making of the Term Loans hereunder, and the Lenders shall have received a certificate of an Authorized Signatory of the Borrower so stating.

(d) The Lenders shall have received UCC and Personal Property Security Act financing statements naming each Borrower Party as a debtor and naming the DIP Agent, for the benefit of the Lenders, as secured party in form for filing in all appropriate jurisdictions, in such form as shall be satisfactory to the Lenders (with the filing thereof to occur on or before the effectiveness of this Agreement).

(e) The Lenders shall have obtained such information about the Borrower Parties sufficient to allow it to comply to its satisfaction with all applicable bank regulatory, "know your customer," and anti-money laundering matters including, for the avoidance of doubt, with respect to the USA Patriot Act and OFAC.

(f) The Lenders shall be satisfied that all of the representations and warranties of the Borrower Parties under this Agreement and the other Loan Documents shall be true and correct in all material respects both before and after



giving effect to the application of the proceeds of the Term Loans and the Lenders shall have received a certificate of an Authorized Signatory of the Borrower so stating.

(g) There shall not exist on the date of the advance of the Term Loans, and after giving effect thereto, a Default.

Section 4.2 Conditions Precedent to All Term Loans. No Lender shall be required to make any Term Loan unless and until the following conditions are satisfied:

(a) No Default or Event of Default. At the time of and immediately after giving effect to such Term Loan, no Default or Event of Default shall have occurred and be continuing.

(b) Representations and Warranties. The representations and warranties of the Obligors set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Advance (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(c) DIP Orders.

(i) During the Interim Period, the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of Majority Lenders; and

(ii) On and after the Final Order Entry Date and prior to the Consummation Date, the Final Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of DIP Agent and Majority Lenders.

(d) No Injunction. The making of the Term Loans shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently.

(e) Milestones. The Obligors shall be in compliance with the Milestones, to the extent applicable at the time of such Advance.

(f) Chief Restructuring Officer. If a Chief Restructuring Officer has been retained pursuant to Section 6.26, such Chief Restructuring Officer shall continue to be retained by the Debtors unless otherwise agreed by the DIP Agent and Majority Lenders.

Each Term Loan shall be deemed to constitute a representation and warranty by Borrowers on the date thereof as to the matters specified in this Section 4.2.

Section 4.3 Conditions Precedent to Delayed Draw Term Loans. The occurrence of the Final Term Funding Date and the obligations of each Lender to make its Delayed Draw Term Loans provided for in this Agreement is subject to satisfaction of each Lender (or waiver in accordance with Section 13.1) of each of the following conditions precedent:

(a) Loan Request. The DIP Agent shall have received a loan request in form satisfactory to DIP Agent and Majority Lenders in accordance with Section 2.1(b) executed and delivered by the Borrower to the DIP Agent regarding the Delayed Draw Term Loans to be made on the Final Term Funding Date.

(b) Final Order. The Final Order Entry Date shall have occurred concurrently with or prior to the Final Term Funding Date and not more than 45 days after the Petition Date (unless such period is extended by the DIP Agent at the direction of Majority Lenders) and the Final Order shall approve the DIP Term Loan Facility, shall be reasonably satisfactory to the Majority Lenders, shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as reasonably acceptable to the DIP Agent and Majority Lenders in their sole discretion and shall not be subject to a stay, and the DIP Agent shall have received a certified copy of the Final Order entered by the Bankruptcy Court.

(c) Fees. The Lenders and DIP Agent shall have received all fees required to be paid under the Fee Letters, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel to DIP Agent and Lenders, including, without limitation, of Paul, Weiss, Rifkind, Wharton & Garrison, LLP, Kutak Rock LLP and Fasken Martineau) to the Borrower at least one (1) Business Day prior to the Final Term Funding Date. All such amounts will be paid with proceeds of Delayed Draw Term Loans made on the Final Term Funding Date and will be reflected in the funding instructions given by the Borrower to the DIP Agent on or before the Final Order Entry Date.

(d) No Material Adverse Effect. Since the Petition Date, no event, change, condition or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(e) Delivery of updated Budget. The DIP Agent shall have received updated (x) Budget and (x) Variance Reports, in each case, in form and substance reasonably acceptable to Majority Lenders;

(f) Second Day Orders. The Second Day Orders sought by the Debtors shall be satisfactory in form and substance to the DIP Agent and Majority Lenders in their sole discretion.

(g) Chief Restructuring Officer. If a Chief Restructuring Officer has been retained pursuant to Section 6.26, such Chief Restructuring Officer shall continue to

be retained by the Debtors unless otherwise agreed by the DIP Agent and Majority Lenders.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

Section 5.1 General Representations and Warranties. In order to induce the Lenders to enter into this Agreement and to extend the Term Loans, each Borrower Party hereby represents, and warrants that:

(a) Organization; Power; Qualification. Each Borrower Party and each Subsidiary of a Borrower Party (i) is a corporation, partnership or limited liability company duly organized, validly existing, and in active status or good standing under the laws of its state or province of incorporation or formation, (ii) has the corporate or other company power and authority to own or lease and operate its properties and to carry on its business as now being and hereafter proposed to be conducted, and (iii) is duly qualified and is in active status or good standing as a foreign corporation or other company, 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.

(b) Authorization; Enforceability. Subject to the entry of the Interim Order, (x) each Borrower Party has the power and has taken all necessary action, corporate or otherwise, to authorize it to execute, deliver, and perform its obligations under this Agreement and each of the other Loan Documents to which it is a party in accordance with the terms thereof and to consummate the transactions contemplated hereby and thereby and (y) each of this Agreement and each other Loan Document to which a Borrower Party is a party has been duly executed and delivered by such Borrower Party, and (except for UCC financing statements solely to the extent they do not contain any affirmative obligations of the Borrower Parties) is a legal, valid and binding obligation of such Borrower Party, enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditor's rights generally or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(c) Partnerships; Joint Ventures; Subsidiaries. Except as disclosed on Schedule 5.1(c)-1, as of the Agreement Date, no Borrower Party or any Subsidiary of a Borrower Party has any Subsidiaries, which Subsidiaries are identified on such Schedule as Domestic Subsidiaries or Foreign Subsidiaries. As of the Agreement Date, no Borrower Party or any Subsidiary of a Borrower Party is a partner or joint venturer in any partnership or joint venture other than (i) the Subsidiaries listed on Schedule 5.1(c)-1 and (ii) the partnerships and joint ventures (that are not Subsidiaries) listed on Schedule 5.1(c)-2. Schedule 5.1(c)-1 and Schedule 5.1(c)-2 set forth, for each Person set forth thereon, a complete and accurate statement of (i) the percentage ownership of each such Person by the applicable Borrower Party or



Subsidiary of a Borrower Party as of the Agreement Date, (ii) the state or other jurisdiction of incorporation or formation, as appropriate, of each such Person as of the Agreement Date, (iii) each state in which each such Person is qualified to do business as of the Agreement Date and (iv) all of each such Person's trade names, trade styles or doing business forms which such Person has used or under which such Person has transacted business during the five (5) year period immediately preceding the Agreement Date.

(d) Equity Interests and Related Matters. The authorized Equity Interests as of the Agreement Date of each Borrower Party and each Subsidiary of a Borrower Party that is a corporation and the number of shares of such Equity Interests that are issued and outstanding as of the Agreement Date are as set forth on Schedule 5.1(d). All of the shares of such Equity Interests in each Borrower Party and each Subsidiary of a Borrower Party that are issued and outstanding have been duly authorized and validly issued and are fully paid and non-assessable. None of such Equity Interests in each Borrower Party and each Subsidiary of a Borrower Party have been issued in violation of the Securities Act, or the securities, "Blue Sky" or other Applicable Laws of any applicable jurisdiction. As of the Agreement Date, the Equity Interests of each such Borrower Party and each such Subsidiary of a Borrower Party are owned by the parties listed on Schedule 5.1(d) in the amounts set forth on such schedule and a description of the Equity Interests of each such party is listed on Schedule 5.1(d). Except as described on Schedule 5.1(d), no Borrower Party or any Subsidiary of a Borrower Party has outstanding any stock or securities convertible into or exchangeable for any shares of its Equity Interests, nor are there any preemptive or similar rights to subscribe for or to purchase, or any other rights to subscribe for or to purchase, or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments, or claims of any character relating to, any Equity Interests or any stock or securities convertible into or exchangeable for any Equity Interests. Except as set forth on Schedule 5.1(d), (i) no Borrower Party or any Subsidiary of any Borrower Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or to register any shares of its Equity Interests, (ii) except as provided in the First Day Orders, there are no agreements restricting the transfer of any shares of such Borrower Party's or such Subsidiary's Equity Interests or restricting the ability of any Subsidiary of the Borrower from making distributions, dividends or other Restricted Payments to such Borrower and (iii) there are no shareholders or share purchase agreements relating to the Equity Interests of any of the Borrower Parties.

(e) Compliance with Law, Loan Documents, and Contemplated Transactions. The execution, delivery, and performance of this Agreement and each of the other Loan Documents in accordance with their respective terms and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any Applicable Law, (ii) conflict with, result in a breach of or constitute a default under the certificate of incorporation or formation, by-laws, partnership agreement, operating agreement or other governing documents of any Borrower Party or under any indenture, agreement, or other instrument to which any Borrower Party is a party or by which any Borrower Party or any of its properties may

be bound, or (iii) result in or require the creation or imposition of any Lien upon or with any assets or property of any Borrower Party except Permitted Liens.

(f) Necessary Authorizations. Subject to entry of the Interim Order, each Borrower Party has obtained all material Necessary Authorizations, and all such Necessary Authorizations are in full force and effect. None of such Necessary Authorizations is the subject of any pending or, to the best of each Borrower Party's knowledge, threatened attack, amendment, termination, revocation or adverse judgment, decree or order issued by the grantor of the Necessary Authorization. Each Borrower Party has duly and timely filed all material reports, certificates, notices, statements and filings, and paid all material required regulatory fees in accordance with Applicable Law, and are in all respects in material compliance therewith.

(g) Title to Properties. Each Borrower Party has good, marketable and legal title to, or a valid leasehold interest in, all of its properties and assets and none of such properties or assets is subject to any Liens, other than Permitted Liens.

(h) Material Contracts. Schedule 5.1(h) contains a complete list, as of the Agreement Date, of each Material Contract, true, correct and complete copies of which have been delivered to the Lenders. Schedule 5.1(h) further identifies, as of the Agreement Date, each Material Contract that requires consent to the granting of a Lien in favor of the Lenders on the rights of any Borrower Party thereunder. No Borrower Party is in default under or with respect to any Material Contract to which it is a party or by which it or any of its properties are bound which default gives rise to a right of termination by the non-defaulting party.

(i) Labor and Employment Matters. Except as disclosed on Schedule 5.1(i), (i) no Borrower Party is engaged in any unfair labor practice; (ii) there is no unfair labor practice complaint pending against any Borrower Party before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Borrower Party; and (iii) no strike or work stoppage is in existence involving any employees of any Borrower Party. No Borrower Party is aware of any of their officers or directors (a) who have an intention to terminate their employment with such Person during the term of this Agreement, (b) whose employment is expected to be terminated by such Person during the term of this Agreement or (c) whose position is expected to be demoted or eliminated or with respect to which any such Person expects to request or require that such officer or director no longer act in such position. None of the Borrower Parties nor any officers or directors of any of the foregoing have been arrested, indicted or are currently under investigation by any Governmental Authority.

(j) Taxes. Except as set forth on Schedule 5.1(j), all federal, state and other tax returns of each Borrower Party required by law to be filed have been duly filed, all such tax returns are true, complete and correct in all material respects, and all federal, state, and other taxes (including without limitation, all real estate and personal property, income, franchise, transfer and gains taxes), all general or

special assessments, and other governmental charges or levies upon each Borrower Party and any of their respective properties, income, profits, and assets, which are shown thereon as due and payable, have been paid, except any payment of any of the foregoing which such Borrower Party is currently reasonably and diligently contesting in good faith by appropriate proceedings and with respect to which reserves in conformity with the Applicable Accounting Standard have been provided on the books of such Borrower Party. No adjustment relating to any tax returns has been proposed formally or informally by any Governmental Authority and, to the knowledge of each Borrower Party no basis exists for any such adjustment, except as reflected in the charges, accruals and reserves on the books of the Borrower Parties. The charges, accruals, and reserves on the books of the Borrower Parties in respect of taxes are, in the reasonable judgment of the Borrower Parties, adequate. Except as set forth on Schedule 5.1(j), as of the Agreement Date, no Borrower Party has been audited, or has knowledge of any pending audit, by the Canadian Revenue Agency, the Internal Revenue Service or any other taxing authority. Except as described in Schedule 5.1(j), no Borrower Party has executed or filed with the Internal Revenue Service or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any taxes. Except as set forth on Schedule 5.1(j), none of the Borrower Parties and their respective predecessors are liable for any taxes: (i) under any agreement (including any tax sharing agreements) or (ii) to each Borrower Party's knowledge, as a transferee. No Borrower Party has agreed, or been requested, to make any adjustment under Code Section 481(a), by reason of a change in accounting method or otherwise. Parent has filed tax returns since the time of its acquisition of the Borrower on the basis that it is both resident in Canada for the purposes of the Income Tax Act (Canada) and a domestic corporation pursuant to Section 7874(b) of the Code.

(k) Financial Statements. The Borrower has furnished, or has caused to be furnished, to the Lenders (i) the consolidated audited financial statements of the Parent which are complete and correct in all material respects and present fairly in accordance with the Applicable Accounting Standard the respective financial positions of the Parent for the fiscal years ending on December 31, 2011, December 31, 2012 and December 31, 2013 and the results of operations for the fiscal years then ended, and (ii) the unaudited consolidated financial statements of the Parent which are complete and correct in all material respects and present fairly in accordance with the Applicable Accounting Standard, subject to normal year-end adjustments, the financial position of the Parent as at September 30, 2014, and the results of operations for the nine-month period then ended. Except as disclosed in such financial statements, no Borrower Party has any liabilities, contingent or otherwise, and there are no unrealized or anticipated losses of such Borrower Party which have not heretofore been disclosed in writing to the Lender.

(l) No Adverse Change. Since September 30, 2014, other than the filing of the Cases, there has occurred no event which has had or could be expected to have a Material Adverse Effect, other than the filing of the Cases.

(m) Investments and Guaranties. As of the Agreement Date, no Borrower Party owns any Equity Interests of any Person except as disclosed on Schedules 5.1(c)-1 and 5.1(c)-2, or has outstanding loans or advances to, or Guaranties of the obligations of, any Person, except as reflected in the financial statements referred to in Section 5.1(k) or disclosed on Schedule 5.1(m).

(n) Liabilities, Litigation, etc. As of the Agreement Date, except for liabilities incurred in the ordinary course of business, no Borrower Party has any (individually or in the aggregate) liabilities, direct or contingent, except as disclosed or referred to in the financial statements referred to in Section 5.1(k) or with respect to the Obligations under the Loan Documents. As of the Agreement Date, except for the Cases and as described on Schedules 5.1(n) and 5.1(y), there is no litigation, legal or administrative proceeding, investigation, or other action of any nature pending or, to the knowledge of the Borrower Parties, threatened against or affecting any Borrower Party or any of their respective properties which could be expected to result in any judgment against or liability of such Borrower Party in excess of \$500,000 individually or in the aggregate with respect to all Borrower Parties, or the loss of any certification or license material to the operation of such Borrower Party's business. None of such litigation disclosed on Schedules 5.1(n) and 5.1(y), individually or collectively, could be expected to have a Material Adverse Effect.

(o) ERISA. Schedule 5.1(o) lists (i) all ERISA Affiliates and (ii) all Plans and separately identifies all Title IV Plans, Multiemployer Plans, and Retiree Welfare Plans. Copies of all such listed Plans, together with a copy of the latest IRS/DOL 5500-series form for each such Plan, have been delivered to the Lender. Except with respect to Multiemployer Plans, each Plan intended to be qualified under Code Section 401 has been determined by the Internal Revenue Service to qualify under Section 401 of the Code, the trusts created thereunder have been determined to be exempt from tax under the provisions of Sections 501 of the Code, and nothing has occurred that would cause the loss of such qualification or tax-exempt status. Each Borrower Party and each ERISA Affiliate and each of their respective Plans are in compliance in all respects with ERISA and the Code and no Borrower Party nor any of its ERISA Affiliates has incurred any accumulated funding deficiency with respect to any Plan within the meaning of ERISA or the Code. No Borrower Party or, to each Borrower Party's knowledge, any of its ERISA Affiliates has made any promises of retirement or other benefits to employees, except as set forth in the Plans. No Borrower Party or ERISA Affiliate has incurred any liability to the PBGC in connection with any Plan (other than the payment of premiums that are not past due). No Title IV Plan has any Unfunded Pension Liability. No ERISA Event or event described in Section 4062(e) of ERISA has occurred and is continuing with respect to any Plan. There are no pending, or to the knowledge of any Borrower Party, threatened claims (other than claims for benefits in the ordinary course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any Person as fiduciary (as defined in Section 3(21) of ERISA) or sponsor of any Plan. No Plan or trust created thereunder, or party in interest (as defined in Section 3(14) of ERISA) of such Plan, or any fiduciary (as defined in Section 3(21) of ERISA) of such Plan, has engaged in a non-exempt "prohibited transaction" (as such term is defined in



Section 406 of ERISA or Section 4975 of the Code) which could subject such Plan or any other Plan of any Borrower Party or any of its ERISA Affiliates, any trust created thereunder, or any such party in interest or fiduciary, or any party dealing with any such Plan or any such trust to any penalty or tax on "prohibited transactions" imposed by Section 502 of ERISA or Section 4975 of the Code. No Borrower Party is a party to any Multiemployer Plan, or has had any direct or contingent liability under any Multiemployer Plan within the last six (6) years.

(p) Intellectual Property; Licenses; Certifications. As of the Agreement Date, except as set forth on Schedule 5.1(p), no Borrower Party owns any registered patents, trademarks, service marks or copyrights, and has no pending registration applications with respect to any of the foregoing. No other patents, trademarks, service marks or copyrights are necessary for the operation of the business of the Borrower Parties. Except as set forth on Schedule 5.1(p), no licenses or certifications are necessary for the operation of the Borrower Parties' business. The Borrower Parties own or have the right to use, all Intellectual Property, licenses and certifications necessary for the conduct of their business. No claim has been asserted and is pending by any Person challenging the use of any such Intellectual Property by any Borrower Party or the validity or effectiveness of any such Intellectual Property. The use of such Intellectual Property by the Borrower Parties does not infringe on the rights of any Person.

(q) Compliance with Law; Absence of Default. Each Borrower Party is in material compliance with all Applicable Laws and with all of the provisions of its certificate of incorporation or formation and by-laws or other governing documents, and no event has occurred or has failed to occur which has not been remedied or waived, the occurrence or non-occurrence of which constitutes (i) a Default, or (ii) except with respect to Funded Debt in an aggregate principal amount equal to or less than \$500,000, a default, other than as a result of filing of the Cases, under any other indenture, agreement, or other instrument, or any judgment, decree, or order to which such Borrower Party is a party or by which such Borrower Party or any of their respective properties may be bound.

(r) Obligations Constitute Senior Secured Debt. Subject to the entry of the DIP Orders and to the terms thereof, (i) the Obligations constitute first-priority senior secured indebtedness of the Borrower and there is no other Funded Debt that ranks senior in right of payment to the Obligations or is pari passu in right of payment with the Obligations, and (ii) the Liens securing the Second Lien Notes are junior to the Liens securing the Obligations.

(s) Accuracy and Completeness of Information. All written information, reports, other papers and data relating to the Borrower Parties furnished by or at the direction of the Borrower Parties to the Lenders were, at the time furnished, complete and correct in all material respects and did not fail to include any information, the omission of which could cause such written information, reports, other papers and data to be misleading in any respect. Other than the filing of the Cases, no fact is currently known to any Borrower Party which has, or could be



expected to have, a Material Adverse Effect. With respect to projections, estimates and forecasts given to the Lenders, such projections, estimates and forecasts are based on the Borrower Parties' good faith assessment of the future of the business at the time made, based upon their exercise of due diligence and review of all relevant information. The Borrower Parties had a reasonable basis for such assessment.

(t) Compliance with Regulations T, U, and X. No Borrower Party is engaged principally in the business of, or has as one of its important activities the business of, extending credit for the purpose of purchasing or carrying, and no Borrower Party owns or presently intends to acquire, any "margin security" or "margin stock" as defined in Regulations T, U and X of the Board of Governors of the Federal Reserve System (herein called "Margin Stock"). None of the proceeds of the Term Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock or for the purpose of reducing or retiring any Funded Debt which was originally incurred to purchase or carry Margin Stock or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of said Regulations T, U and X. No Borrower Party nor any bank acting on its behalf has taken or will take any action which might cause this Agreement or any other Loan Documents to violate Regulation T, U or X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the SEA, in each case as now in effect or as the same may hereafter be in effect. If so requested by a Lender, the Borrower Parties will furnish such Lender with (i) 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 (ii) other documents evidencing its compliance with the margin regulations requested by the Lender, including without limitation an opinion of counsel in form and substance satisfactory to such Lender. Neither the making of the Term Loans nor the use of proceeds thereof will violate, or be inconsistent with, the provisions of Regulation T, U or X of said Board of Governors.

(u) Budget. (a) On and as of the Agreement Date, the Budget of Parent and its Subsidiaries for the 13-week period from the week ending April 11, 2015 through and including the week ending July 4, 2015, copies of which have heretofore been furnished to DIP Agent and the Lenders and (b) following the Agreement Date, the 13-Week Projections delivered pursuant to Section 7.1(a)(iv), in each case are based on good faith estimates and assumptions made by the management of Parent; provided that the Budget is not to be viewed as facts and that actual results during the period or periods covered by the Budget may differ from the Budget, and that the differences may be material; provided, further, the Budget was based in good faith on assumptions believed by the management of Parent to be reasonable at the time made and (1) in the case of the Budget in clause (a) above, on the Agreement Date and (2) in the case of the Budget delivered pursuant to clause (b) above, the date of delivery of the same (it being understood that with respect to projections, estimates, forecasts given to the Lenders, such projections, estimates and forecasts are based on the Borrower Parties' good faith assessment of the future of the business at the time made, based upon their exercise of due diligence and review of all relevant information and the Borrower Parties had a reasonable basis for such assessment).

(v) Insurance. The Borrower Parties have insurance meeting the requirements of Section 6.5, and such insurance policies are in full force and effect. As of the Agreement Date, all insurance maintained by the Borrower Parties is fully described on Schedule 5.1(v).

(w) Broker's or Finder's Commissions. No broker's or finder's fee or commission will be payable with respect to the execution and delivery of this Agreement and the other Loan Documents, and no other similar fees or commissions will be payable by the Borrower Parties for any other services rendered to the Borrower Parties ancillary to the credit transactions contemplated herein.

(x) Real Property. All real property leased by each Borrower Party as of the Agreement Date, and the name of the lessor of such real property, is set forth in Schedule 5.1(x)-1. The leases of each Borrower Party are valid, enforceable and in full force and effect, have not been modified or amended and are not the subject of any side agreement or omnibus amendment, in each case, except for lease modification and amendments otherwise disclosed on Schedule 5.1(x)-1. No Borrower Party has made any pledge, mortgage, assignment or sublease of any of its rights under such leases except pursuant to the Loan Documents and as set forth in Schedule 5.1(x)-1 and, there is no default or condition which, with the passage of time or the giving of notice, or both, could constitute a default on the part of any party under such leases and the Borrower Parties have paid all rents, royalties and other charges due and payable under such leases, other than as set forth on Schedule 5.1(x). None of the Borrower Parties have agreed with the lessor to defer the payment of any such rents, royalties or other payments.

(y) All real property owned by each Borrower Party as of the Agreement Date is set forth in Schedule 5.1(x)-2. As of the Agreement Date, no Borrower Party owns, leases or uses any real property other than as set forth on Schedules 5.1(x)-1 or 5.1(x)-2. Each Borrower Party owns good and marketable fee simple title to all of its owned real property, and none of its respective owned real property is subject to any Liens, except Permitted Liens. No Borrower Party 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 property owned or leased by it.

(z) Environmental Matters.

(i) Except as specifically disclosed in Schedule 5.1(y), no Borrower Party thereof (A) has failed to comply in any material respect with any Environmental Law or to obtain, maintain or comply with any material permit, license or other approval required under any Environmental Law, (B) has received notice of any material claim with respect to any Environmental Law or (C) knows of any basis for any material liability under any Environmental Law.

(ii) Except as set forth in Schedule 5.1(y), (A) there are no and never have been any underground or above-ground storage tanks or any surface

impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any Property currently owned or, to the knowledge of any Borrower Party, operated by any Borrower Party; (B) there is no asbestos or asbestos-containing material on any Property currently owned or, to the knowledge of any Borrower Party, operated by any Borrower Party or; and (C) to the knowledge of the Borrower Parties, Hazardous Materials have not been released, discharged or disposed of on any Property currently or formerly owned or operated by any Borrower Party.

(iii) Except as set forth on Schedule 5.1(y), (i) no Borrower Party is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and (ii) all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any Property currently or formerly owned or operated by any Borrower Party have been disposed of in a manner which could not be expected to result in liability to any Borrower Party.

(aa) OSHA. All of the Borrower Parties' operations are conducted in compliance, in all material respects, with all applicable rules and regulations promulgated by the Occupational Safety and Health Administration of the United States Department of Labor.

(bb) Name of Borrower Party. Except as set forth on Schedule 5.1(aa), no Borrower Party has changed its name within the five (5) years prior to the Agreement Date, nor has any Borrower Party transacted business under any other name or trade name.

(cc) Investment Company Act. No Borrower Party is required to register under the provisions of the Investment Company Act of 1940, as amended, and the entering into or performance by the Borrower Parties of this Agreement does not violate any provision of such Act or require any consent, approval, or authorization of, or registration with, any governmental or public body or authority pursuant to any of the provisions of such Act.

(dd) Patriot Act; FCPA. Each Borrower Party is in material compliance with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the USA Patriot Act. No part of the proceeds of the Term Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(ee) OFAC. No Borrower Party (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

(ff) Capitalized Lease Obligations. As of the Agreement Date, no Borrower Party has any Capitalized Lease Obligations except as disclosed on Schedule 5.1(ee). There is no default or condition which, with the passage of time or the giving of notice, or both, could constitute a default on the part of any party under the leases underlying such Capitalized Lease Obligations and the Borrower Parties have paid all charges due and payable under such leases.

Section 5.2 Survival of Representations and Warranties, etc. All representations and warranties made under this Agreement and the other Loan Documents shall be deemed to be made, and shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein), on the Agreement Date. All representations and warranties made under this Agreement and the other Loan Documents shall survive, and not be waived by, the execution hereof by the Lenders, any investigation or inquiry by the Lenders or the making of the Term Loans.

## ARTICLE 6

### GENERAL COVENANTS

Until the Obligations are repaid and performed in full and unless the DIP Agent and Majority Lenders shall otherwise give their prior consent in writing in accordance herewith:

Section 6.1 Preservation of Existence and Similar Matters. Each Borrower Party will, and will cause each of its Restricted Subsidiaries to (i) except as expressly permitted by Section 8.7, preserve and maintain its due organization, valid existence and good standing, in each case in its jurisdiction of incorporation or organization, (ii) 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, and (iii) maintain all Necessary Authorizations.

Section 6.2 Compliance with Applicable Law. Each Borrower Party will, and will cause each of its Restricted Subsidiaries to, comply, with the material requirements of all Applicable Law.



Section 6.3 Maintenance of Properties. Each Borrower Party will, and will cause each of its Restricted Subsidiaries to, maintain or cause to be maintained in the ordinary course of business in good repair, working order and condition, normal wear and tear and disposal of obsolete equipment excepted, all properties used or useful in its business (whether owned or held under lease), and from time to time make or cause to be made all needed and appropriate repairs, renewals, replacements, additions, betterments, and improvements thereto.

Section 6.4 Accounting Methods and Financial Records. Parent and its Restricted Subsidiaries shall maintain, on a consolidated basis, a system of accounting established and administered in accordance with the Applicable Accounting Standard and will keep adequate records and books of account in which complete entries will be made in accordance with such accounting principles consistently applied and reflecting all transactions required to be reflected by such accounting principles.

Section 6.5 Insurance. Each Borrower Party will, and will cause each of its Restricted Subsidiaries to, maintain insurance including, but not limited to, property insurance, public liability, business interruption and fidelity coverage insurance, in such amounts and against such risks as would be customary, in the Majority Lenders' reasonable opinion, for companies in the same industry and of comparable size as the Borrower Parties from financially sound and reputable insurance companies having and maintaining an A.M. Best rating of "A minus" or better and being in a size category of VI or larger or otherwise acceptable to the Majority Lenders. In addition to the foregoing, each Borrower Party further agrees to maintain and pay for insurance upon all goods constituting Collateral wherever located, in storage or in transit in vehicles, vessels or aircraft, including goods evidenced by documents, covering casualty, hazard, public liability and such other risks and in such amounts as would be customary, in the Majority Lenders' reasonable opinion, for companies in the same industry and of comparable size as the Borrower Parties, from financially sound and reputable insurance companies having and maintaining an A.M. Best rating of "A minus" or better and being in a size category of VI or larger or otherwise acceptable to the Majority Lenders to insure the DIP Agent and/or the Lenders' interest in such Collateral. All such property insurance policies covering goods that constitute Collateral shall name the DIP Agent, for the benefit of the Lenders, as loss payee and all liability insurance policies shall name the DIP Agent, for the benefit of the Lenders, as additional insured. Each Borrower Party shall deliver certificates of insurance evidencing that the required insurance is in force together with satisfactory lender's loss payable and additional insured, as applicable, endorsements. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than thirty (30) days' prior written notice to the Lenders in the event of cancellation or modification of the policy for any reason whatsoever (other than non-payment of premiums, which notice may be less than thirty (30) days but shall be at least ten (10) days). If any Borrower Party fails to provide and pay for such insurance, the Lenders may, at the Borrower's expense, procure the same, but shall not be required to do so. Each Borrower Party agrees to deliver to the Lenders, promptly as rendered, true copies of all reports made in any reporting forms to insurance companies.



Section 6.6 Payment of Taxes and Claims. Each Borrower Party will, and will cause each of its Restricted Subsidiaries to, pay and discharge all taxes, assessments, and governmental charges or levies imposed upon it or its income or profit or upon any properties belonging to it prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which have become due and payable and which by law have or may become a Lien upon any of its property; except that, no such tax, assessment, charge, levy, or claim need be paid which is being reasonably and diligently contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on the appropriate books, but only so long as such tax, assessment, charge, levy, or claim does not become a Lien or charge other than a Permitted Lien and no foreclosure, distraint, sale, or similar proceedings shall have been commenced and remain unstayed for a period thirty (30) days after such commencement. Each Borrower Party shall, and shall cause each of its Restricted Subsidiaries to, timely file all information returns required by federal, state, or local tax authorities.

Section 6.7 Visits and Inspections. Each Borrower Party will, and will permit each of its Restricted Subsidiaries to, permit representatives of the DIP Agent to (a) visit and inspect the properties of the Borrower Parties during normal business hours, (b) inspect and make extracts from and copies of the Borrower Parties' books and records, (c) conduct appraisals, field examinations and audits of Inventory and other personal property of the Borrower Parties and (d) discuss with the Borrower Parties' respective principal officers the Borrower Parties' businesses, assets, liabilities, financial positions, results of operations, and business prospects relating to the Borrower Parties.

Section 6.8 Conduct of Business. Each Borrower Party shall, and shall cause each of its Restricted Subsidiaries to, continue to engage in business of the industry and type as conducted by it as of the Agreement Date.

Section 6.9 ERISA. Each Borrower Party shall at all times 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 Borrower Party's and its ERISA Affiliates' Plans that are subject to such funding requirements; furnish to the Lenders, promptly upon any Lender's request therefor, copies of any annual report required to be filed pursuant to ERISA in connection with each Plan of each Borrower Party and its ERISA Affiliates; notify the Lenders as soon as practicable of any ERISA Event regarding any Plan that could be expected to have a Material Adverse Effect or give rise to a pension Lien on any Borrower Party or on any of the assets thereof; and furnish to the Lenders, promptly upon any Lender's request therefor, such additional information concerning any Plan as may be requested by a Lender.

Section 6.10 Lien Perfection. Each Borrower Party agrees to take such action as may be requested by a Lender or the DIP Agent to perfect or continue the perfection of the DIP Agent's security interest, for the benefit of the Lenders, in the Collateral. Each Borrower Party hereby authorizes the DIP Agent to file or transmit for filing, at any time, any financing statements and amendments in any jurisdiction and in any filing office (i) describing the Collateral as "all assets of the debtor" or "all personal

property of the debtor” or words of similar effect, in each case, at the option of the DIP Agent (as directed by Majority Lenders), indicating such Collateral includes such assets or property “whether now owned or hereafter acquired”, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contains any information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance. Each Borrower Party also hereby ratifies any and all financing statements or amendments previously filed by or on behalf of the DIP Agent for the benefit of the Lenders in any jurisdiction.

Section 6.11 Priority of Liens. Each Obligor hereby covenants, represents and warrants that, upon the execution of this Agreement and upon entry of the Interim Order (and when applicable, the Final Order), the Obligations of each Obligor hereunder and under the Loan Documents:

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim in the Cases (excluding a claim on Avoidance Actions but including a claim on Avoidance Proceeds upon entry of the Final Order), subject only to the Carve-Out to the extent provided in the applicable DIP Order, and any payments or proceeds on account of such Superpriority Claim shall be distributed in accordance with Section 2.10;

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code and subject to the Carve-Out to the extent provided in the applicable DIP Order, shall be secured by a perfected first priority Lien on all of the assets of the Obligors, whether consisting of real, personal, tangible or intangible property (including all of the outstanding shares of Equity Interests of Subsidiaries and proceeds of the foregoing other than any of the Voting Stock of a first tier Foreign Subsidiary in excess of 66 2/3% of the outstanding Voting Stock of such first tier Foreign Subsidiary) that is not subject to valid, perfected and non-avoidable liens as of the Petition Date, excluding Avoidance Actions but including Avoidance Proceeds upon entry of the Final Order;

(c) pursuant to section 364(d)(1) of the Bankruptcy Code and subject only to the Carve-Out to the extent provided in the applicable DIP Order, shall at all times be secured by a valid, binding, continuing, enforceable, fully-perfected senior priming security interest in and Lien upon all pre- and post-petition property of the Obligors, whether now existing or hereafter acquired, of the same nature, scope and type as the Collateral securing the obligations under the Prepetition Loan Facility and the Second Lien Notes. Such security interests and Liens shall be senior in all respects to the interests in such property of the lenders under the Prepetition Loan Facility and holders of the Second Lien Notes (collectively, the “Primed Liens”), in each case arising from their respective current and future Liens;

(d) pursuant to Section 364(c)(3) of the Bankruptcy Code and subject only to the Carve-Out to the extent provided in the applicable DIP Order, shall be secured by a valid, binding, continuing, enforceable, fully-perfected junior Lien on all of the assets of the Obligors that are subject to (x) valid, perfected and non-avoidable Liens in existence at the time of the commencement of the Cases (other than the Primed Liens) or

(y) valid Liens (other than Primed Liens) in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code;

(e) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) unless otherwise provided for in the Loan Documents, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors; and

(f) for the avoidance of doubt, the Collateral shall exclude Avoidance Actions, but, subject only to and effective upon entry of the Final Order, shall include Avoidance Proceeds.

Subject to and effective only upon entry of the Final Order, except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent and the Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the DIP Agent or the Lenders. In no event shall the DIP Agent or the DIP Lenders be subject to (i) the “equities of the case” exception contained in section 552(b) of the Bankruptcy Code or (ii) the equitable doctrine of “marshaling” or any other similar doctrine with respect to the Collateral.

Except for the Carve-Out, the Superpriority Claims shall at all times be senior to the rights of each Borrower Party, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including, without limitation, post petition counterparties and other post petition creditors) in the Chapter 11 Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any chapter 7 cases (if any of the Borrower Party’s cases are converted to cases under chapter 7 of the Bankruptcy Code).

Section 6.12 Location of Collateral. All tangible property owned by a Borrower Party constituting Collateral, other than Inventory in transit, Inventory sold in the ordinary course of business and raw materials and work-in-process located at manufacturing sites operated by a third party, will at all times be kept by the Borrower Parties at one or more of the business locations of the Borrower Parties set forth in Schedule 6.11. The Inventory shall not, without the prior written approval of the Lenders, be moved from the locations set forth on Schedule 6.11 except as permitted in the immediately preceding sentence and except for, in the absence of a continuing Event of Default, (a) sales or other dispositions of assets permitted pursuant to Section 8.7 and

(b) the storage of Inventory at locations within the continental US other than those specified in the first sentence of this Section 6.11 if (i) the Borrower gives the Lenders written notice of the new storage location at least thirty (30) days prior to storing Inventory at such location, (ii) the DIP Agent and/or the Lenders' security interest in such Inventory is and continues to be a duly perfected, first priority Lien thereon, (iii) neither any Borrower Party's nor the Lenders' right of entry upon the premises where such Inventory is stored or its right to remove the Inventory therefrom, is in any way restricted, (iv) the Borrower Parties shall have used commercially reasonable efforts to notify any owner of such premises, and any bailee, warehouseman or similar party that will be in possession of such Inventory, of the Liens made in favor of the DIP Agent for the benefit of the Lenders, and shall have used commercially reasonable efforts to cause any such owner of such premises, or any such bailee, warehouseman or similar party that will be in possession of such Inventory, to have executed and delivered to the DIP Agent, for the benefit of the Lenders, a Collateral Access Agreement, and (v) all negotiable documents and receipts in respect of any Collateral maintained at such premises are promptly delivered to the DIP Agent, for the benefit of the Lenders, and any non-negotiable documents and receipts in respect of any Collateral maintained at such premises are issued to the DIP Agent, for the benefit of the Lenders, and promptly delivered to the DIP Agent, for the benefit of the Lenders.

Section 6.13 Protection of Collateral. All insurance expenses and expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping the Collateral (including, without limitation, all rent payable by any Borrower Party to any landlord of any premises where any of the Collateral may be located), and any and all excise, property, sales, and use taxes imposed by any state, federal, or local authority on any of the Collateral or in respect of the sale thereof, shall be borne and paid by the Borrower Parties. If the Borrower Parties fail to promptly pay any portion thereof when due, after giving effect to any applicable grace periods, the Lenders may, at its option during the existence of an Event of Default, but shall not be required to, direct the DIP Agent to pay the same directly to the appropriate Person. Each Borrower agrees, jointly and severally, to reimburse the DIP Agent promptly therefor with interest accruing thereon daily at the Default Rate provided in this Agreement. All sums so paid or incurred by the Lenders for any of the foregoing and all costs and expenses (including attorneys' fees, legal expenses, and court costs) which the DIP Agent may incur in enforcing or protecting the Lien on or rights and interest in the Collateral or any of their rights or remedies under this or any other agreement between the parties hereto or in respect of any of the transactions to be had hereunder until paid by the Borrower to the Lenders with interest at the Default Rate, shall be considered Obligations owing by the Borrower to the Lenders hereunder. Such Obligations shall be secured by all Collateral and by any and all other collateral, security, assets, reserves, or funds of the Borrower Parties in or coming into the hands or inuring to the benefit of the Lenders. The Lenders shall not be liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto (and specifically disclaims any liability or responsibility with respect thereto) or for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other person whomsoever, but the same shall be at the Borrower Parties' sole risk.



Section 6.14 Reserved.

Section 6.15 Administration of Accounts.

(a) The Lenders retain the right upon the occurrence and during the continuance of an Event of Default to direct the DIP Agent to notify the Account Debtors that the Accounts have been assigned to the DIP Agent for the benefit of the Lenders, and to collect the Accounts directly in its own name and to charge the collection costs and expenses, including attorneys' fees, to the Borrower. The Lenders have no duty to protect, insure, collect or realize upon the Accounts or preserve rights in them. Each Borrower Party irrevocably makes, constitutes and appoints the DIP Agent as such Borrower Party's true and lawful attorney and agent-in-fact to endorse such Borrower Party's name on any checks, notes, drafts or other payments relating to, the Accounts which come into any Lender's, the DIP Agent's or any DIP Agent's possession or under such Person's control as a result of its taking any of the foregoing actions. Additionally, upon the occurrence and during the continuance of an Event of Default, the Lenders shall have the right to direct the DIP Agent to collect and settle or adjust all disputes and claims directly with the Account Debtors and to compromise the amount or extend the time for payment of the Accounts upon such terms and conditions as the DIP Agent may deem advisable, and to charge the deficiencies, costs and expenses thereof, including attorney's fees, to the Borrower.

(b) If an Account includes a charge for any tax payable to any governmental taxing authority, upon the occurrence and during the continuance of an Event of Default, the Lenders are authorized, in their reasonable discretion, to direct the DIP Agent to pay the amount thereof to the proper taxing authority for the account of the applicable Borrower Party. Each Borrower agrees, jointly and severally, to reimburse the Lenders or the DIP Agent promptly therefor with interest accruing thereon daily at the Default Rate provided in this Agreement. The Borrower Parties shall notify the Lenders if any Account includes any tax due to any governmental taxing authority and, in the absence of such notice, the Lenders shall have the right to direct the DIP Agent to retain the full proceeds of the Account and shall not be liable for any taxes to any governmental taxing authority that may be due by any Borrower Party by reason of the sale and delivery creating the Account.

(c) Whether or not a Default has occurred, any Lender's officers, employees or agents (or through the DIP Agent (acting at the direction of Majority Lenders) shall have the right after prior notice to the Borrower (provided no prior notice shall be required if an Event of Default shall have occurred and be continuing), at any time or times hereafter, in the name of the Lenders or the DIP Agent, or any designee thereof or the Borrower Parties, to verify the validity, amount or other matter relating to any Accounts by mail, telephone, telegraph or otherwise. The Borrower Parties shall cooperate fully with the Lenders in an effort to facilitate and promptly conclude any such verification process.



Section 6.16 The Blocked Accounts. On or before the Agreement Date, and at all times thereafter:

(a) [Reserved];

(b) As of the Agreement Date, all bank accounts, deposit accounts, securities accounts and investment accounts of the Borrower Parties are listed on Schedule 6.15. Except as otherwise expressly permitted under this Agreement and the other Loan Documents, no Borrower Party shall open or maintain any other bank account, deposit account, securities account or investment account unless the depository bank or financial institution for such account shall have entered into an agreement with the DIP Agent, for the benefit of the Lenders, substantially in the form of the Blocked Account Agreement and satisfying the requirements of this Section 6.15.

Section 6.17 Further Assurances. Upon the request of a Lender, each Borrower Party will promptly cure, or cause to be cured, defects in the execution and delivery of the Loan Documents (including this Agreement), resulting from any act or failure to act by any Borrower Party or any employee or officer thereof. Each Borrower Party at its expense will promptly execute and deliver to the Lenders, or cause to be executed and delivered to the Lenders, all such other and further documents, agreements, and instruments in compliance with or accomplishment of the covenants and agreements of the Borrower Parties in the Loan Documents (including this Agreement) or to correct any omissions in the Loan Documents, or more fully to state the obligations set out herein or in any of the Loan Documents, or to obtain any consents, all as may be necessary or appropriate in connection therewith as may be requested by the Lenders.

Section 6.18 Broker's Claims. Each Borrower Party hereby indemnifies and agrees to hold the Lenders harmless from and against any and all losses, liabilities, damages, costs and expenses which may be suffered or incurred by any Lender in respect of any claim, suit, action or cause of action now or hereafter asserted by a broker or any Person acting in a similar capacity arising from or in connection with the execution and delivery of this Agreement or any other Loan Document or the consummation of the transactions contemplated herein or therein. This Section 6.17 shall survive termination of this Agreement.

Section 6.19 Indemnity. Each Borrower Party will indemnify and hold harmless each Indemnified Person from and against any and all claims, liabilities, investigations, losses, damages, actions, demands, penalties, judgments, suits, investigations and costs, expenses (including fees and expenses of experts, agents, consultants and counsel) and disbursements, in each case, of any kind or nature (whether or not the Indemnified Person is a party to any such action, suit, investigation or proceeding) whatsoever which may be imposed on, incurred by, or asserted against an Indemnified Person resulting from any breach or alleged breach by the Borrower Parties of any representation or warranty made hereunder, or otherwise in any way relating to or arising out of the Commitments, the Term Loans, this Agreement, the other Loan Documents or any other document contemplated by this Agreement, the making,

administration or enforcement of the Loan Documents and the Term Loans, any transaction contemplated hereby or any related matters unless, with respect to any of the above, such Indemnified Person's acts or omissions are determined by a final non-appealable judgment of a court of competent jurisdiction to constitute gross negligence or willful misconduct. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY LOAN DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY LOAN DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT. This Section 6.18 shall survive termination of this Agreement.

Section 6.20 Environmental Matters. Each Borrower Party shall (a) conduct its operations and keep and maintain its Properties in compliance in all material respects with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and Properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of its Properties or to otherwise comply in all material respects with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Properties, provided, however, that no Borrower Party shall be required to undertake any such investigation, remediation, removal or response action to the extent that its obligation to do so is being reasonably and diligently contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Borrower Parties with respect to such circumstances in accordance with the Applicable Accounting Standard.

Section 6.21 Additional Collateral; Additional Guarantors and Formation of Subsidiaries

(a) Subject to this Section 6.20 and in addition to Section 6.22 and Section 6.16, with respect to any property acquired after the Agreement Date by any Borrower Party that is intended to be subject to the Lien created by any of the Loan Documents or any DIP Order but is not so subject, at the time of the acquisition thereof, such Borrower Party shall (i) execute and deliver to the DIP Agent such Loan Documents or such other documents as the DIP Agent or Majority Lenders shall deem necessary to grant to the DIP Agent, for the benefit of the Lenders, a Lien on such property subject only to Permitted Liens, and (ii) take all actions necessary to cause such Liens to be duly perfected to the extent required by such Loan Document in accordance with all requirements of Applicable Law, including the filing of UCC financing statements in such jurisdictions as may be requested by the Lenders. The Borrower Parties shall otherwise take such actions and execute and deliver to the DIP Agent, for the benefit of the Lenders, such documents as the Lenders shall require to

confirm the validity, perfection and priority of the Liens created under the Loan Documents against such after-acquired properties.

(b) At the time of the formation of any direct or indirect Restricted Subsidiary of any Borrower Party after the Agreement Date or the acquisition of any direct or indirect Restricted Subsidiary of any Borrower Party after the Agreement Date, the Borrower Parties, as appropriate, shall (i) to the extent such Restricted Subsidiary is a Domestic Subsidiary, cause such Domestic Subsidiary to provide to the Lenders a joinder and supplement to this Agreement substantially in the form of Exhibit B (each, a “Guaranty Supplement”), pursuant to which such Domestic Subsidiary shall agree to join as a Guarantor of the Obligations under Article 3 and as a Borrower Party under this Agreement, Security Documents, together with appropriate UCC and *Personal Property Security Act* financing statements, all in form and substance satisfactory to the Lenders, (ii) provide to the DIP Agent, for the benefit of the Lenders, appropriate certificates and powers or UCC financing statements, pledging all direct or beneficial ownership interest in any such Restricted Subsidiary, in form and substance satisfactory to the Lenders, provided, however, such pledge shall exclude any Excluded Asset, and (iii) provide to the Lenders all other documentation, including one or more opinions of counsel satisfactory to the Lenders, which in its opinion is appropriate with respect to such formation and the execution and delivery of the applicable documentation referred to above. Nothing in this Section 6.20 shall authorize any Borrower Party to form or acquire any Restricted Subsidiary absent express authorization to so form or acquire such Restricted Subsidiary pursuant to Article 8. Any document, agreement or instrument executed or issued pursuant to this Section 6.20 shall be a “Loan Document” for purposes of this Agreement.

(c) At the time of the acquisition of any fee interest in real property by any Borrower Party after the Agreement Date, such Borrower Party shall grant to the DIP Agent for the benefit of the Lenders a first priority security interest in such real property (subject to, but not necessarily as to priority, Permitted Liens) and execute and deliver a Mortgage for each parcel of such real property encumbering the fee interest of the applicable Borrower Party in such real property, together with (i) to the extent commercially practicable, a chain of title opinion issued by legal counsel reasonably acceptable to the Lenders and the DIP Agent and opining as to all matters of record affecting title to such real property, (ii) duly authorized UCC fixture financing statements to be filed in connection with each such Mortgage, and (iii) a legal opinion of local counsel to the Borrower Parties with respect to the Mortgage, addressed to the Lenders and the DIP Agent.

(d) At the time of the acquisition of any leasehold interests in any real property by any Borrower Party after the Agreement Date, (i) promptly deliver to the Lenders a complete and correct copy of the lease agreement evidencing such leasehold interests, and (ii) if requested by the DIP Agent (acting at the direction of Majority Lenders), execute and deliver a Mortgage with respect to such Borrower Party’s leasehold interest in each parcel of such real property, together with (1) to the extent commercially practicable, a chain of title opinion issued by legal counsel

reasonably acceptable to the Lenders and opining as to all matters of record affecting title to such real property, (2) duly authorized UCC fixture financing statements to be filed in connection with each such Mortgage, (3) a legal opinion of local counsel to the Borrower Parties with respect to the Mortgage, addressed to the Lenders, and (4) to the extent required under any lease to be subject to a leasehold Mortgage, the consent of the lessor under such lease to such Mortgage, provided that if the Borrower Parties have used commercially reasonable efforts to obtain all such consents, this condition shall be satisfied.

Section 6.22 Use of Proceeds. Use the proceeds of the Term Loans only for the purposes set forth in Section 2.11. No Borrower Party shall withdraw proceeds of the Term Loans from the Deposit Account listed in the Direction Order in respect of such Term Loans, except in accordance with Section 8.16.

Section 6.23 Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 6.23, in each case within the time limits specified on such schedule.<sup>1</sup>

Section 6.24 Bankruptcy Related Matters. Each Borrower Party will, and will cause each of the Guarantors and Restricted Subsidiaries to:

- (a) Comply with the DIP Order.

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<sup>1</sup> Schedule 6.23 shall include: "in form, scope and substance satisfactory to DIP Agent and Majority Lenders in their reasonable discretion, one or more legal opinions of counsel to the Obligor, addressed to DIP Agent and each of the Lenders and dated as of the Initial Funding Date with respect to the entry into the DIP Term Loan Facility;"; "The Borrower Parties shall establish and maintain one or more deposit accounts pursuant to arrangements acceptable to the Majority Lenders. Except for Excluded Accounts, the Borrower Parties shall use commercially reasonable efforts to cause each such Cash Management Bank to enter into a Blocked Account Agreement with the DIP Agent, for the benefit of the Lenders within 45 days of the Initial Funding Date, in form and substance mutually satisfactory to the Majority Lenders, the DIP Agent and such Cash Management Bank."; and "Within 10 days of the Initial Funding Date, with respect to each Borrower Party, a loan certificate signed by the secretary or assistant secretary of such Person (or, in the case of a Person that is a partnership, the general partner of such Person or, in the case of a Person that is a limited liability company, the members or manager, as appropriate, of such Person), in form and substance satisfactory to the Lenders, including a certificate of incumbency with respect to each Authorized Signatory of such Person, together with appropriate attachments which shall include the following: (A) a copy of the certificate of incorporation or formation of such Person certified to be true, complete and correct by the Secretary of State of the State of such Person's incorporation or formation within 10 days of the Agreement Date, (B) a true, complete and correct copy of the By-Laws, partnership agreement or operating agreement of such Person, (C) a true, complete and correct copy of the resolutions of such Person (or its general partner, members or manager, as applicable) authorizing the execution, delivery and performance by such Person of the Loan Documents and, with respect to the Borrower, authorizing the borrowings hereunder, (D) certificates of good standing from such Person's jurisdiction of formation, provided that to the extent such copy is issued more than 10 days prior to the Agreement Date, the Lenders shall have received a verbal bring down certificate affirming such good standing, and each other jurisdiction in which such Person does business, dated within 30 days of the Agreement Date, and (E) copies of all shareholders or share purchase agreements relating to the Equity Interests of such Person;" "delivery of Schedules to the Agreement in form and substance acceptable to Majority Lenders."



(b) Comply in all material respects with each Chapter 11 Order (other than the DIP Order) except where failure to comply could not reasonably be expected to have a Material Adverse Effect.

(c) Provide the DIP Agent and the Lenders with reasonable access to non-privileged information (including historical information) and relevant personnel regarding strategic planning, cash and liquidity management, operational and restructuring activities, in each case subject to customary confidentiality restrictions.

(d) Deliver to the DIP Agent (for distribution to the Lenders) and to counsel to the DIP Agent promptly as soon as available but no later than three (3) Business Days prior to filing, copies of all proposed pleadings, motions, applications, orders, financial information and other documents to be filed by or on behalf of the Obligors or any other Borrower Party with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Obligors or any other Loan Party to any official or unofficial committee appointed or appearing in the Cases or any other party in interest.

(e) If not otherwise provided through the Bankruptcy Court's electronic docketing system, as soon as available, deliver to the DIP Agent (for distribution to the Lenders) and to counsel to the DIP Agent and Lenders promptly as soon as available, copies of all final pleadings, motions, applications, orders, financial information and other documents filed by or on behalf of the Obligors or any other Borrower Party with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Obligors or any other Loan Party to any official or unofficial committee appointed or appearing in the Cases.

(f) Provide the Lenders with advance copies of, and a reasonable opportunity to comment on, any press release in which a Lender or any affiliate of a Lender is mentioned or describing or mentioning Acceptable Reorganization Plan.

Section 6.25 Milestones. The Obligors shall ensure the satisfaction of the following milestones (collectively, the "Milestones" and individually a "Milestone"), (unless waived or extended with the consent of DIP Agent and Majority Lenders):

(i) by no later than five (5) days following the Petition Date, entry by the Bankruptcy Court of the Interim Order;

(ii) by no later than forty-five (45) days following the Petition Date, entry by the Bankruptcy Court of the Final Order;

(iii) by no later than seventy-five (75) days following the Petition Date, the Debtors shall file with the Bankruptcy Court in the Cases a proposed Acceptable Reorganization Plan and a motion seeking approval of a disclosure statement for such Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing which disclosure



statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders;

(iv) by no later than one hundred and twenty (120) days following the Petition Date, the Bankruptcy Court shall have entered an order approving a disclosure statement for an Acceptable Reorganization Plan and solicitation procedures contemplating completion of a confirmation hearing, which disclosure statement and solicitation procedures must otherwise be in form and substance reasonably acceptable to the DIP Agent and Majority Lenders, and the Bankruptcy Court's approval of such disclosure statement and solicitation procedures shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by Majority Lenders;

(v) by no later than one hundred and eighty (180) days following the Petition Date, the Bankruptcy Court shall have entered an order confirming an Acceptable Reorganization Plan, which order shall be in form and substance acceptable to DIP Agent and Majority Lenders in their sole discretion and shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by DIP Agent and Majority Lenders; and

(vi) by no later than two hundred and ten (210) days following the Petition Date, the effective date of an Acceptable Reorganization Plan shall have occurred, and the order confirming the Acceptable Reorganization Plan shall not have been amended, modified or supplemented (or any portions thereof reversed, stayed or vacated) other than as agreed in writing by DIP Agent and Majority Lenders.

Section 6.26 Chief Restructuring Officer. Within 15 days of a written request by the Majority Lenders (which request may be given upon the earlier of (i) 60 days from the Petition Date or (ii) upon the occurrence of any Event of Default), the Debtors in consultation with the Majority Lenders shall retain a consultant or other professional (a "Chief Restructuring Officer") reasonably acceptable to the Majority Lenders, and with a scope of responsibility to be mutually agreed upon, and such Chief Restructuring Officer shall be made reasonably accessible to respond to inquiries by the DIP Agent.

## ARTICLE 7

### INFORMATION COVENANTS

Until the Obligations are repaid and performed in full and unless the Lenders shall otherwise give their prior consent in writing, the Borrower Parties will furnish or cause to be furnished to the DIP Agent, but subject to Section 7.5:

Section 7.1 Reports.

(a) So long as any Obligations are outstanding, whether or not the Parent is a reporting company listed on the Toronto Stock Exchange or otherwise subject to reporting requirements under Canadian securities laws, the Parent will furnish to the Lenders:

(i) on or before 90 days after the end of each fiscal year, all annual information that the Parent is required to file with the Canadian Securities Administrators under National Instrument 51-102—Continuous Disclosure Obligations, including (A) “Management’s discussion and analysis of financial condition and results of operations,” (B) a report on the annual financial statements by the Parent’s independent chartered accountants, and (C) the annual information form;

(ii) on or before 45 days after the end of each of the first three fiscal quarters of each fiscal year, all quarterly financial information that the Parent is required to file with the Canadian Securities Administrators under National Instrument 51-102—Continuous Disclosure Obligations, including (A) “Management’s discussion and analysis of financial condition and results of operations” and (B) unaudited interim financial statements;

(iii) on or before 10 days after the occurrence of a material change as specified in the Securities Act (Ontario), the material change report required to be filed with the Canadian Securities Administrators under National Instrument 51-102—Continuous Disclosure Obligations;

(iv) no later than 5:00 p.m. on Friday of each calendar week, commencing on April 10, 2015, an updated Variance Report;

(v) no later than 5:00 p.m. on the first Business Day of each calendar month, an updated Budget pursuant to terms of the definition thereof and a Budget Variance Report for the previous calendar month;

(vi) no later than 5:00 p.m. on Friday of each calendar week, commencing with April 10, 2015, a report detailing fees and expenses for professional services incurred by the Obligor during the preceding week.

(b) [intentionally omitted];

(c) So long as any Obligations are outstanding, the Parent will furnish to the Lenders a notice of (i) any change or event which has had or could be expected to have a Material Adverse Effect, within 2 Business Days after the occurrence of such change or event and (ii) any Default, immediately upon the occurrence thereof.

(d) So long as any Obligations are outstanding, the DIP Agent (acting at the direction of Majority Lenders) may, by 10 Business Days’ advance written notice to the Borrower, with specific reference to this Section 7.1(d), require

that the Borrower provide to the Lenders, either on a one-time or regular ongoing basis, such additional financial and other information about the Collateral and about the business, operations, prospects, properties, condition (financial or otherwise), assets or income of the Borrower Parties, as may be required or desirable in the commercially reasonable judgment of the DIP Agent (acting at the direction of Majority Lenders), exercised in good faith in accordance with customary business practices for comparable term lending transactions to allow the Lenders to administer, monitor and assess compliance with this Agreement, and evaluate the credit risk of lending to the Borrower Parties or the security of the Collateral.

(e) At any time that any of Parent's Subsidiaries are Unrestricted Subsidiaries with combined consolidated net assets exceeding 5% of Parent's consolidated net assets, then the quarterly and annual reports required pursuant to either clause (a) or (b) above, as the case may be, will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in "Management's discussion and analysis of financial condition and results of operations" or other comparable section, of the financial condition and results of operations of Parent and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of Parent.

(f) [intentionally omitted];

(g) In addition, Parent shall furnish to Lenders, upon their request, any information required to be delivered to holders of Second Lien Notes pursuant to Rule 144A(d)(4) under the Securities Act so long as the Second Lien Notes are not freely transferable under the Securities Act.

Delivery of any reports, information and documents under this Section 7.1, as well as any such reports, information and documents pursuant to this Agreement, to the Lenders is for informational purposes only and the Lenders' receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of its covenants hereunder (as to which the Lenders are entitled to rely exclusively on the Compliance Certificates). The Lenders shall have no responsibility or liability for the filing, timeliness or content of any report required under this Section 7.1 or any other reports, information and documents required under this Agreement (aside from any report that is expressly the responsibility of the Lenders subject to the terms hereof).

Section 7.2 Compliance Certificates. At the time any financial statements are furnished pursuant to Section 7.1, a Compliance Certificate:

(a) Stating whether any material change in the Applicable Accounting Standard or the application thereof has occurred since the date of the Parent's audited financial statements delivered on the Agreement Date, and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(b) Stating that, to the best of his or her knowledge, no Default or Event of Default has occurred as at the end of such period, or, if a Default or Event of Default has occurred, disclosing each such Default and/or Event of Default, as applicable, its nature, when it occurred, whether it is continuing and what actions the Borrower Parties have taken or propose to take with respect thereto;

(c) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 7.1(a)(i) above shall be accompanied by a written statement of the Borrower's independent public accountants (who shall be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Borrower has violated any provisions of Article 8 hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants shall not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation; and

(d) Simultaneous with the delivery of the Compliance Certificate requested under this Section 7.2, the Borrower shall deliver to the Lenders an Officers' Certificate stating that all Liens and security interests created and granted to the DIP Agent on behalf of the Lenders in connection herewith and the transactions contemplated hereunder remain in full force and effect and continue to be perfected.

Section 7.3 Access to Accountants. Each Borrower Party hereby authorizes the Lenders and the DIP Agent to communicate directly with the Borrower Parties' independent public accountants and authorizes these accountants to disclose to the Lenders and the DIP Agent any and all financial statements and other supporting financial data, including matters relating to the annual audit and copies of any management letter with respect to its business, financial condition and other affairs.

Section 7.4 Notice of Litigation and Other Matters.

(a) Promptly upon (and in any event within three (3) Business Days of) any Borrower Party's obtaining knowledge of the institution of, or a written threat of, any action, suit, governmental investigation or arbitration proceeding against any Borrower Party or any Property, which action, suit, governmental investigation or arbitration proceeding, if adversely determined, is reasonably likely to, in such Borrower Party's reasonable judgment, result in a Default or a Material Adverse Effect, such Borrower Party shall notify the Lenders of the occurrence thereof, and the Borrower Parties shall provide such additional information with respect to such matters as any Lender may request.

(b) Promptly upon (and in any event within three (3) Business Days of) any Borrower Party's obtaining knowledge of the occurrence of any default (whether or not any Borrower Party has received notice thereof from any other Person) on Funded Debt of any Borrower Party which singly, or in the aggregate, is reasonably



likely to, in such Borrower Party's reasonable judgment, result in a Default or a Material Adverse Effect, such Borrower Party shall notify the Lenders of the occurrence thereof.

(c) Promptly upon (and in any event within three (3) Business Days of) any Borrower Party's receipt of notice of the pendency of any proceeding for the condemnation or other taking of any Property of any Borrower Party, that is reasonably likely to, in such Borrower Party's reasonable judgment, result in a Default or a Material Adverse Effect, such Borrower Party shall notify the Lenders of the occurrence thereof.

(d) Promptly upon (and in any event within three (3) Business Days of) any Borrower Party's receipt of notice of any other event that is reasonably likely to result in a Material Adverse Effect, such Borrower Party shall notify the Lenders of the occurrence thereof.

(e) Promptly (but in any event within three (3) Business Days) following the occurrence of (i) any ERISA Event, (ii) a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan of any Borrower Party or any of its ERISA Affiliates which is reasonably likely to subject any Borrower Party to any penalty or tax on "prohibited transactions" imposed by Section 502 of ERISA or Section 4975 of the Code or (iii) the commencement or threatened commencement of any litigation regarding any Plan or naming it or the trustee of any such Plan with respect to such Plan (other than claims for benefits in the ordinary course of business), the Borrower Parties shall notify the Lenders of the occurrence thereof; provided such occurrence, proceeding, or failure is reasonably likely to, in the DIP Agent's reasonable judgment (with the concurrence of Majority Lenders), result in a Default or a Material Adverse Effect.

(f) Promptly after (and in any event within three (3) Business Days of) the occurrence of any Governmental Authority having regulatory authority over Parent or any of its Restricted Subsidiaries imposing upon any Borrower Party (i) any restriction on the payment of dividends or other payments by Parent or any such Restricted Subsidiary to a Borrower Party or (ii) any required capital or equity contribution to such Restricted Subsidiary by a Borrower Party that is reasonably likely to, in such Borrower Party's reasonable judgment, result in a Default or a Material Adverse Effect, the Borrower Parties shall, and shall cause their Restricted Subsidiaries to, deliver to the Lenders copies of all such notices, reports and other information received or submitted with respect to such action.

(g) Promptly after (and in any event within two (2) Business Days of) receipt of notice by any of the Borrower Parties that any warehouseman, bailee or similar person which has executed a Collateral Access Agreement in favor of the Lenders will move or has moved Inventory of the Borrower Parties to a location no longer subject to a Collateral Access Agreement in favor of the DIP Agent or the Lenders.

Section 7.5 Platform for Disclosure. The Borrower hereby acknowledges and agrees that (a) it will make available to the Lenders materials and/or information provided by or on behalf of the Borrower and the Borrower Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information (or, in the case of a company that is not a public-reporting company, material information of a type that would not be reasonably expected to be publicly available if such company were a public-reporting company) with respect to the Parent, the Borrower or any of their Subsidiaries or any of their respective securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the DIP Agent and the Lenders to treat such Borrower Materials as solely containing information that is either (A) of a type that would reasonably be expected to be publicly available for a public-reporting company or (B) not material (although it may be sensitive and proprietary) with respect to the Parent, the Borrower, any of their Subsidiaries or any of their respective securities for purposes of United States Federal and state securities laws (provided, however, that such Borrower Materials shall be treated as set forth in Section 10.16, to the extent such Borrower Materials constitute information subject to the terms thereof), (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (iv) the DIP Agent and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

## ARTICLE 8

### NEGATIVE COVENANTS

Until the Obligations are repaid and performed in full and unless the Lenders shall otherwise give their prior consent in writing in accordance herewith:

Section 8.1 Funded Debt. No Borrower Party will, or will permit any of its Restricted Subsidiaries to, create, assume, incur, or otherwise become or remain obligated in respect of, or permit to be outstanding, any Funded Debt except:

- (a) Funded Debt incurred under this Agreement;
- (b) Funded Debt existing or committed on the Agreement Date and described on Schedule 8.1, including, without limitation, the Second Lien Notes;
- (c) Funded Debt of a Borrower Party that is secured by Permitted Liens described in clause (g) of the definition of Permitted Liens (including,

without limitation, Capitalized Lease Obligations), in an aggregate principal amount, including all Funded Debt incurred as a result of a Permitted Refinancing to renew, refund, refinance, replace, defease or discharge any Funded Debt incurred pursuant to this clause (c), not to exceed \$1,500,000 at any time outstanding;

(d) [intentionally omitted];

(e) Funded Debt incurred by a Borrower Party in respect of Mining Financial Assurances, reclamation liabilities, water treatment, workers' compensation claims, payment obligations in connection with health or social security benefits, unemployment or other insurance obligations, statutory obligations, bankers' acceptances, performance, letter of credit or completion or performance guarantees (including, without limitation, performance guarantees pursuant to coal supply agreements or equipment leases) and surety bonds, in each case, in the ordinary course of business;

(f) Funded Debt of a Borrower Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Funded Debt is covered within five Business Days;

(g) Funded Debt incurred by a Borrower Party arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, incurred in connection with the disposition of any business, assets or Restricted Subsidiary of the Borrower Parties (other than Guaranties made in favor of any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition), so long as the principal amount does not exceed the gross proceeds actually received by the Borrower Parties in connection with such disposition;

(h) Funded Debt incurred by a Borrower Party in respect of netting services, overdraft protections and otherwise in respect of deposit accounts;

(i) Guaranties of a Borrower Party permitted by Section 8.2;

(j) unsecured obligations under Hedge Agreements entered into for bona fide risk management reasons, not entered into for speculative purposes, and approved by the Lender; and

(k) [intentionally omitted];

(l) [intentionally omitted];

(m) the incurrence by the Borrower or any of its Restricted Subsidiaries of intercompany Funded Debt between or among the Borrower and any of its Restricted Subsidiaries; provided, however, that (1) if the Borrower or any Subsidiary Guarantor is the obligor on such Funded Debt and the payee is not the Borrower or a Subsidiary Guarantor, such Funded Debt must be unsecured junior debt

subordinated in all respects to the prior payment of the Obligations, and (2) (i) any subsequent issuance or transfer of Equity Interests that results in any such Funded Debt being held by a Person other than the Borrower or a Restricted Subsidiary of the Borrower and (ii) any sale or other transfer of any such Funded Debt to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower will be deemed, in each case, to constitute an incurrence of such Funded Debt by the Borrower or a Restricted Subsidiary of the Borrower, as the case may be, that was not permitted by this clause (m);

(n) the issuance by any of the Borrower's Restricted Subsidiaries to the Borrower or to any of its Restricted Subsidiaries of Equity Interests constituting Funded Debt; provided, however, that (1) any subsequent issuance or transfer of Equity Interests that results in any such Equity Interest being held by a Person other than the Borrower or a Restricted Subsidiary of the Borrower, and (2) any sale or other transfer of any such Equity Interest to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower will be deemed, in each case, to constitute an issuance of such Equity Interest by such Restricted Subsidiary that was not permitted by this clause (n); and

(o) Funded Debt of a Borrower Party incurred in connection with any Permitted Refinancing of any of the foregoing;

provided that no such Funded Debt permitted under Section 8.1 (other than Funded Debt permitted by Section 8.1(a)) shall, except with the express prior written consent of the DIP Agent and Majority Lenders and the lenders under the Prepetition Loan Facility, be, or be designated as, All-Asset Priority Lien Debt (as defined in the DIP Order).

**Section 8.2 Guaranties.** Other than Guaranties of the Obligations, no Borrower Party will, or will permit any Restricted Subsidiary of a Borrower Party to, at any time Guaranty or enter into or assume any Guaranty, or be obligated with respect to, or permit to be outstanding, any Guaranty, other than, so long as done in the ordinary course of business, (a) Guaranties by any Borrower Party of obligations under agreements of any other Borrower Party entered into in connection with the acquisition of services, supplies, and equipment, (b) endorsements of instruments and (c) Guaranties by a Borrower Party of any Funded Debt permitted by Section 8.1 and Section 8.5(k).

**Section 8.3 Liens.** No Borrower Party will, or will permit any Restricted Subsidiary of a Borrower Party to, create, assume, incur, or permit or suffer to exist or to be created, assumed, or permitted or suffered to exist, directly or indirectly, any Lien on any of its property, real or personal, now owned or hereafter acquired, except for Permitted Liens.

**Section 8.4 Restricted Payments.**

(a) No Borrower Party shall, or shall permit any Restricted Subsidiary of a Borrower Party to, directly or indirectly declare or make any Restricted Payment, or set aside any funds for any such purpose; provided, however,



that the Restricted Subsidiaries of the Parent may make Restricted Payments to the Borrower or any of its Restricted Subsidiaries that is a Borrower Party.

(b) The provisions of Section 8.4(a) will not prohibit payments to the Parent to permit the Parent to pay reasonable and bona fide accounting, legal and administrative expenses and taxes of the Parent when due, in accordance with the Budget.

Section 8.5 Investments. No Borrower Party will, or will permit any Restricted Subsidiary of a Borrower Party to, make Investments, except that:

(a) the Borrower may purchase or otherwise acquire and own and may permit any of its Restricted Subsidiaries to purchase or otherwise acquire and own Cash Equivalents;

(b) the Borrower may hold the Investments in existence on the Agreement Date and described on Schedule 5.1(c)-2;

(c) the Borrower may hold the Investments in existence on, or made pursuant to binding commitments existing on, the Agreement Date and described on Schedule 8.5, and any Investment consisting of an extension, modification or renewal of any Investments existing on, or made pursuant to a binding commitment existing on, the Agreement Date, provided that the amount of any such Investment may only be increased (i) as required by the terms of such Investment as in existence on the Agreement Date or (ii) as otherwise permitted under this Agreement;

(d) so long as no Event of Default exists, the Borrower may convert any of its Accounts that are in excess of ninety (90) days past due into notes or Equity Interests from the applicable Account Debtor so long as the DIP Agent for the benefit of Lenders is granted a first priority security interest in such Equity Interests or notes which Lien is perfected contemporaneously with the conversion of such Account to Equity Interests or notes;

(e) the Borrower Parties may hold the Equity Interests of their respective Restricted Subsidiaries in existence as of the Agreement Date;

(f) without limiting Section 8.1, any Borrower Party may make Investments in any other Borrower Party (other than the Parent or any of the Parent's Subsidiaries that is not a Restricted Subsidiary of the Borrower);

(g) the Borrower Parties may hold Investments resulting from the receipt of non-cash consideration from a Disposition that was made pursuant to and in compliance with Section 8.7;

(h) the Borrower Parties may hold Investments arising out of Hedge Agreements not entered into for speculative purposes;

(i) [intentionally omitted];

(j) the Borrower Parties may make Investments consisting of certificates of deposit and similar instruments with any commercial bank formed under the laws of the United States or any state of the United States or the District of Columbia or under the laws of Canada or any province or territory thereof having capital and surplus in excess of \$500,000,000 and a rating at the time of acquisition thereof of “P-1” or better from Moody’s or “A-1” or better from S&P which are used, in each case, by the Borrower or any of its Restricted Subsidiaries for Mining Financial Assurances;

(k) the Borrower Parties may incur any guarantee of Funded Debt, provided that both the guarantee and the Funded Debt are permitted to be incurred by Section 8.1, other than a guarantee of Funded Debt of an Affiliate of the Parent that is not a Restricted Subsidiary of the Borrower;

(l) [intentionally omitted]; and

(m) the Borrower Parties may make Investments consisting of purchases and acquisitions of Inventory or supplies or the licensing or contribution or intellectual property pursuant to joint marketing arrangements with other Persons, in each case in the ordinary course of business.

#### Section 8.6 Affiliate Transactions.

(a) No Borrower Party shall, or shall permit any Restricted Subsidiary of a Borrower Party to, enter into or be a party to any agreement or transaction with any Affiliate (other than a Borrower Party) except to the extent such agreement or transaction (i) if entered into on or prior to the Agreement Date, is described on Schedule 8.6 or, if entered into after the Agreement Date, is fully disclosed to the Lender, to the satisfaction thereof, and (ii) occurs upon fair and reasonable terms that are no less favorable, as determined by the Lender, to such Borrower Party than it would obtain in a comparable arm’s length transaction with a Person not an Affiliate of such Borrower Party or such Restricted Subsidiary.

(b) The following items will not be deemed to be an agreement or transaction with an Affiliate and, therefore, will not be subject to the provisions of Section 8.6(a):

(i) any employment agreement, consulting agreement, severance agreement, employee benefit plan, payment of directors’ fees, officer or director indemnification agreement or any similar arrangement entered into by the Parent or any of its Restricted Subsidiaries in effect on the Agreement Date or, if entered into after the Agreement Date, in the ordinary course of business, and payments pursuant thereto;

(ii) transactions between or among the Parent and/or its Restricted Subsidiaries expressly permitted hereunder;

(iii) [Reserved];

(iv) payment of reasonable and customary fees and reimbursements of expenses (pursuant to indemnity arrangements or otherwise) of officers, directors, employees or consultants of the Parent or any of its Restricted Subsidiaries;

(v) [intentionally omitted];

(vi) Restricted Payments permitted under Section 8.4;

(vii) [intentionally omitted];

(viii) payments to the Parent to permit the Parent to pay reasonable and bona fide accounting, legal and administrative expenses and taxes of the Parent when due, in accordance with the Budget; and

(ix) to the extent the Borrower and any of its Restricted Subsidiaries, or the Parent and any of its Foreign Subsidiaries, are properly treated as members of the same group filing a consolidated or combined tax return, any payments from any such Restricted Subsidiary to the Borrower or from any such Foreign Subsidiary to the Parent (as the case may be) pursuant to a tax-sharing agreement among the members of such group.

Section 8.7 Liquidation; Disposition or Acquisition of Assets; Merger or Consolidation; Change in Name or Year; Etc. No Borrower Party shall, or shall permit any Restricted Subsidiary to, at any time:

(a) Liquidate or dissolve itself (or suffer any liquidation or dissolution) or otherwise wind up its business;

(b) Consummate a Disposition, except for a Disposition that complies with Section 2.6 hereof and with each of the following: (i) immediately prior to and immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing, and (ii) if any such sale or related sales of assets or other Disposition has a Fair Market Value in excess of \$500,000 (or in excess of \$1,000,000 for all such sales or Dispositions occurring during any twelve-month period), the DIP Agent acting at the direction of the Majority Lenders have approved such sale.

(c) Merge or consolidate with any other Person, or complete the acquisition by the Borrower or any Restricted Subsidiary of the Borrower of another Person, or of all or substantially all of the assets of another Person, or any other transaction by way of a merger, amalgamation or consolidation with or into the Borrower or any of its Restricted Subsidiaries, except for, if at the time thereof and immediately after giving effect thereto no Event of Default, including a Change of Control, shall have occurred and be continuing and no Funded Debt *pari passu* or junior to the Obligations shall be repaid or purchased, in whole or in part, in connection therewith:

(i) mergers into or consolidations or amalgamations of any Subsidiary with any Borrower in a transaction in which such Borrower is the surviving corporation;

(ii) mergers, consolidations or amalgamations of any Subsidiary or any Obligor (other than, in each case, a Borrower or Parent) into or with any Obligor in a transaction in which the surviving entity is an Obligor;

(iii) mergers, consolidations or amalgamations of any Subsidiary (other than an Obligor) into or with any other wholly-owned Subsidiary (other than an Obligor);

(iv) such transaction shall, to the satisfaction of counsel and the Lender, be upon such terms that preserve and not impair any of the rights and powers of the DIP Agent or the Lenders;

(v) the Borrower has notified the DIP Agent and the Lenders, in writing in advance, as certified by the Board of Directors of the Parent and the Borrower, that such transaction would not have a Material Adverse Effect; and

(vi) such surviving entity shall continue to be solely engaged in a Permitted Business.

(d) Change its legal name, state of incorporation or formation or structure without giving the Lender at least thirty (30) days prior written notice of its intention to do so and complying with all requirements of the Lender in regard thereto;

(e) Change its year-end for accounting purposes from the fiscal year ending December 31; or

(f) Create any Restricted Subsidiary unless the requirements set forth in Section 6.20(b) shall have been satisfied substantially concurrently therewith.

Section 8.8 Conduct of Business. The Borrower Parties shall not engage substantially in any line of business substantially different from a Permitted Business.

Section 8.9 Amendment and Waiver. Except as permitted hereunder, no Borrower Party shall, or shall permit any Restricted Subsidiary of a Borrower Party to, enter into any amendment of, or agree to or accept any waiver, which could adversely affect the rights of such Borrower Party or the Lenders, of its articles or certificate of incorporation or formation and by-laws, partnership agreement or other governing documents.

Section 8.10 ERISA Liability. No Borrower Party shall fail to meet all of the applicable minimum funding requirements of ERISA and the Code, without regard



to any waivers thereof, to the extent that the assets of any of their Plans would be less (by \$500,000 or more) than an amount sufficient to provide all accrued benefits payable under such Plans, the Borrower Parties shall make the maximum deductible contributions allowable under the Code (based on the Borrower's current actuarial assumptions). No Borrower Party shall, or shall cause or permit any ERISA Affiliate to, (a) cause or permit to occur any event that could result in the imposition of a Lien under Section 430 of the Code or Section 302 or 4068 of ERISA, or (b) cause or permit to occur an ERISA Event.

Section 8.11 [Reserved].

Section 8.12 Negative Pledge. No Borrower Party shall, or shall permit any Restricted Subsidiary of any Borrower Party to, directly or indirectly, enter into any agreement (other than the Loan Documents or the Indenture) with any Person that prohibits or restricts or limits the ability of any Borrower Party to create, incur, pledge, or suffer to exist any Lien upon any of its respective assets (other than Excluded Assets), or restricts the ability of any Restricted Subsidiary of Parent to pay Dividends to such Borrower.

Section 8.13 Inconsistent Agreements. No Borrower Party shall, or shall permit any Restricted Subsidiary of any Borrower Party to, enter into any contract or agreement which would violate the terms hereof or of any other Loan Document.

Section 8.14 Certain Bankruptcy Matters. No Borrower Party shall, or shall permit any Restricted Subsidiary of any Borrower Party to at any time:

(a) except as otherwise permitted or provided hereunder or under the DIP Order or agreed to by DIP Agent and Majority Lenders, create or permit to exist (i) any administrative expense, unsecured claim, or Superpriority Claim (except for the Carve-Out) or a Lien that is *pari passu* with or senior to the Obligations and/or the DIP Liens (other than in respect of the Carve-Out), or apply to the Bankruptcy Court for authority to do so, or (ii) any obligation to make adequate protection payments, or otherwise provide adequate protection, other than as provided in the DIP Order;

(b) make or permit to be made any change, amendment or modification, or make an application or motion for any change, amendment or modification, to any Chapter 11 Order which could reasonably be expected to have a Material Adverse Effect in each case, without the prior written consent of DIP Agent and Majority Lenders;

(c) except as otherwise permitted under the Acceptable Reorganization Plan or consented to by Majority Lenders, (i) assume any executory contract or unexpired lease or reject any executory contract or unexpired lease, (ii) pursue a sale of all or substantially all of the Obligors' assets, (iii) consent to termination or reduction of the Obligors' exclusive plan filing and plan solicitation periods under section 1121 of the Bankruptcy Code (the "Exclusivity Periods") or fail to object to any motion by a party-in-interest (other than a Lender or the DIP Agent) seeking to terminate or reduce the Exclusivity Periods, in each case other than a motion filed by or with the

consent of DIP Agent and Majority Lenders or (iv) file a chapter 11 plan of reorganization without the consent of DIP Agent and Majority Lenders, other than an Acceptable Reorganization Plan;

(d) file a motion or plan with the Bankruptcy Court, or otherwise seek or consent to an action requesting substantive consolidation of any of the Obligors' bankruptcy estates without the prior written consent of the DIP Agent and Majority Lenders; and

(e) assert any right of subrogation or contribution against any other Borrower Party until all Obligations are paid or satisfied in full as provided herein.

Section 8.15 Minimum Liquidity. The aggregate amount of cash and cash equivalents of the Borrower Parties after the Initial Funding Date shall be at least \$500,000 at all times on and after April 30, 2015.

Section 8.16 Variance from Budget and Projected Revenues. As of the last day of each calendar month beginning with April 30, 2015: (a) aggregate disbursements of the Borrower Parties (other than professional fees) listed in the current Budget for such month shall not be greater than 115% of the aggregate amount specified for expenditures in such month in the then current Budget; and (b) the aggregate revenues of the Borrower Parties shall be at least 85% of those projected in the current Budget.

Section 8.17 Capital Expenditures. The aggregate amount of Capital Expenditures of the Borrower Parties in any fiscal year shall not exceed \$5,000,000 [(except to the extent such Capital Expenditures are funded entirely by Net Cash Proceeds as permitted under Section 2.6(c))].

Section 8.18 Sale / Leaseback Transactions. Borrower Parties shall not directly or indirectly become or remain liable as lessees and/or guarantors in respect of one or more sale / leaseback transactions in an aggregate amount in excess of \$5,000,000.

## ARTICLE 9

### DEFAULT

Section 9.1 Events of Default. Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule, or regulation of any governmental or non-governmental body:

(a) Any representation, warranty or certification made under this Agreement or any other Loan Document shall be incorrect or misleading (including by omission) in any respect when made or deemed to have been made pursuant to Article IV,

(b) Any payment of any interest or fees payable hereunder or under the other Loan Documents by any Borrower Party shall not be received by the Lender to which it is owed within two (2) Business Days after the date such payment is due;

(c) Any payment of any principal or any premium thereon payable hereunder or under the other Loan Documents by any Borrower Party shall not be received by the Lender to which it is owed on the date such payment is due (including, without limitation, any prepayments required under the Loan Documents);

(d) Any Borrower Party shall default in the performance or observance of any agreement or covenant contained in [Section 2.6, Section 2.11, Section 6.22, Section 6.23, Article 7, or Article 8];

(e) Any Borrower Party shall default for ten (10) Business Days after notice by the DIP Agent (acting at the direction of Majority Lenders) in the performance or observance of any of the other agreements or covenants contained in herein or in the other Loan Documents;

(f) There shall occur any Change of Control;

(g) A final judgment or order (other than a money judgment or judgments fully covered (except for customary deductibles or copayments in an amount not to exceed \$100,000 in the aggregate) by insurance as to which the insurance company has acknowledged coverage) shall be entered by any court against any Borrower Party or any Subsidiary (other than an Immaterial Subsidiary) of any Borrower Party for the payment of money which exceeds \$250,000 in the aggregate, or (ii) a warrant of attachment or execution or similar process shall be issued or levied against property of any Borrower Party or any Subsidiary (other than an Immaterial Subsidiary) of a Borrower Party pursuant to a final judgment which, exceeds in value \$250,000 in the aggregate, and, in the case of each of clauses (i) and (ii), if, within thirty (30) days after the entry, issue, or levy thereof, such judgment, warrant, or process shall not have been paid or discharged or stayed pending appeal, or if, after the expiration of any such stay, such judgment, warrant, or process shall not have been paid or discharged, or (iii) a final judgment or order (other than a money judgment or judgments fully covered (except for customary deductibles or copayments in an amount not to exceed \$100,000 in the aggregate) by insurance as to which the insurance company has acknowledged coverage) shall be entered by any court against any Borrower Party or any Subsidiary (other than an Immaterial Subsidiary) of any Borrower Party for the payment of money which exceeds, together with all such other judgments of the Borrower Parties and their Subsidiaries (other than an Immaterial Subsidiary), \$1,000,000 in the aggregate provided that, for the purposes of calculating any aggregate threshold in this Section 9.1(i), a customary deductibles or copayments shall be included only with reference to the amount of such customary deductibles or copayments that is in excess of \$100,000;

(h) There shall be at any time (i) any “accumulated funding deficiency,” as defined in ERISA or in Section 412 of the Code, with respect to any Plan maintained by any Borrower Party or any ERISA Affiliate of a Borrower Party, or to which any Borrower Party or any of its ERISA Affiliates has any liabilities; (ii) a trustee shall be appointed by a United States District Court to administer any Plan maintained by any Borrower Party or any ERISA Affiliate of a Borrower Party, or to which any Borrower Party or any of its ERISA Affiliates has any liabilities; (iii) the PBGC shall institute proceedings to terminate any Plan; (iv) any Borrower Party or any ERISA Affiliate of any Borrower Party shall incur any liability to the PBGC in connection with the termination of any such Plan; (v) any Plan or trust created under any Plan of any Borrower Party or any ERISA Affiliate of any Borrower Party shall engage in a non-exempt “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) which could subject any Plan, any trust created thereunder, any trustee or administrator thereof, or any party dealing with any such Plan or trust to any tax or penalty on “prohibited transactions” imposed by Section 502 of ERISA or Section 4975 of the Code; (vi) any Borrower Party or any ERISA Affiliate of any Borrower Party shall enter into or become obligated to contribute to a Multiemployer Plan; (vii) there shall be at any time a Lien imposed against the assets of a Borrower Party or ERISA Affiliate under Code Section 430, or ERISA Sections 302 or 4068; or (viii) there shall occur at any time an ERISA Event; provided, however that no Event of Default shall occur as a result of an event described in clauses (i), (ii), (iii), (iv), (v), (vi) or (viii) of this Section 9.1(i) unless such event either individually or in the aggregate with other events described therein could be expected result in an aggregate liability greater than \$500,000 or otherwise have a Material Adverse Effect or give rise to a pension Lien on any Borrower Party or on any of the assets thereof;

(i) [intentionally omitted];

(j) Except as permitted by this Agreement, all or any portion of any Loan Document shall at any time and for any reason be declared to be null and void, the effect of which is to render any such Loan Document inadequate for the practical realization of the rights and benefits afforded thereby, or a proceeding shall be commenced by any Borrower Party or any Affiliate thereof, or by any Governmental Authority having jurisdiction over any Borrower Party or any Affiliate thereof, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Borrower Party or any Affiliate thereof shall deny that it has any liability or obligation for the payment of any Obligation provided under any Loan Document or any such liability or obligation shall be terminated as a result of a default or event of default thereunder by any Borrower Party;

(k) Except as permitted by this Agreement, the obligation of any Guarantor under Article 3 shall be limited or terminated by operation of law or by such Guarantor;



(l) Except as permitted by this Agreement, any Lien purported to be created by any DIP Order or any Loan Document shall cease to be in full force and effect, or shall cease to give the DIP Agent, for the benefit of the Lenders, the Liens, rights, powers and privileges purported to be created and granted under such DIP Orders or Loan Documents (including a perfected first priority security interest in and Lien on, any portion of the Collateral thereunder (except as otherwise expressly provided in this Agreement or such DIP Order or Loan Document)) in favor of the DIP Agent, for the benefit of the Lenders, or shall be asserted by any Borrower Party not to be valid, perfected, first priority (except as expressly provided in this Agreement or such DIP Order or Loan Document) security interest in or Lien on any portion of the Collateral covered thereby;

(m) There shall occur any event which has had or could be expected to have a Material Adverse Effect; or

(n) Any of Gregory L. "Bernie" Mason and Michael R. Castle ceases to hold the office or position with Parent or any other Borrower Party held by such Person on the Agreement Date, and such Person is not replaced by a Person acceptable to the DIP Agent (acting at the direction of Majority Lenders), acting reasonably, within 45 days of such cessation.

(o) Dismissal or Conversion of Cases; Appointment of Trustee or Examiner; Cash Collateral Use.

(i) Any of the Cases of the Obligors shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(ii) A trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Obligors;

(iii) An order of the Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Obligors;

(iv) Any Obligor, or any person on behalf of any Obligor, shall file a motion or other pleading seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iii) above or the granting of any other relief that if granted would give rise to an Event of Default; or

(v) Any Obligor or any of its Subsidiaries, or any person claiming by or through any Obligor or any of its Subsidiaries, with any Obligor's or any Subsidiary's consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the DIP Agent or any of the Lenders relating to the DIP Term Loan Facility.

(p) Superpriority Claims. The existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of the DIP Term Loan Facility and the Carve-Out or as otherwise permitted under the applicable Loan Documents, entitled to superpriority administrative expense claim status in any Chapter 11 Case pursuant to Section 364(c)(1) of the Bankruptcy Code *pari passu* with or senior to the claims of the DIP Agent and the Lenders under the DIP Term Loan Facility, or there shall arise or be granted by the Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the DIP Order then in effect (but only in the event specifically consented to by the DIP Agent), whichever is in effect.

(q) Relief from Stay. The Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Obligor(s) which have a value in excess of \$250,000 in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Obligor(s) or their estates (taken as a whole).

(r) Certain Orders.

(i) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, without the prior written consent of Majority Lenders;

(i) the Interim Order (prior to Final Order Entry Date) or Final Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the DIP Agent and Majority Lenders;

(ii) any of the Obligor(s) shall fail to comply with the Interim Order (prior to Final Order Entry Date) or Final Order (on and after the Final Order Entry Date);

(iii) an order in the Cases shall be entered charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the commencement of other actions that is materially adverse to DIP Agent, the Lenders or their respective rights and remedies under the DIP Term Loan Facility in any of the Cases or inconsistent with any of the Loan Documents; or

(iv) if the Final Order does not include a waiver, in form and substance satisfactory to DIP Agent and Majority Lenders, of the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code.

(s) Invalid Plan. A Reorganization Plan that is not an Acceptable Reorganization Plan shall be confirmed in any of the Cases of the Obligors, or any order shall be entered which dismisses any of the Cases of the Obligors and which order does not provide for payment in full in cash of the Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable), or any of the Obligors and their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such Reorganization Plan or entry of any such order.

(t) Milestones. Failure to satisfy any of the Milestones in accordance with the terms relating to such Milestone (unless waived or extended with the consent of DIP Agent and Majority Lenders).

(u) Supportive Actions. Any Obligor or any Subsidiary thereof shall take any action in support of any matter set forth in clauses (p) through (t) (inclusive) of this Section 9.01 or any other Person shall do so and such application is not contested in good faith by the Obligors and the relief requested is granted in an order that is not stayed pending appeal.

(v) Other Actions. Any Obligor or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the Obligations or any other rights granted to the DIP Agent and the Lenders in the DIP Orders or this Agreement or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Collateral.

(w) Challenges. Any Obligor shall challenge, support or encourage a challenge of any payments made to the DIP Agent or any Lender with respect to the Obligations or any lender under the Prepetition Loan Facility with respect to the obligations thereunder, other than to challenge the occurrence of a Default or Event of Default.

(x) Adequate Protection Motion. Without the consent of DIP Agent and Majority Lenders, the filing of any motion by the Obligors seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any prepetition agent, trustee or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date).

(y) Section 364 Financing. Without Majority Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Obligor or any of its Subsidiaries of any motion or other request with the Bankruptcy

Court (in each case, other than the DIP Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without DIP Agent's and Majority Lenders' consent or to obtain any financing under section 364 of the Bankruptcy Code other than the facility hereunder unless such motion or order contemplates Payment in Full in cash of the Obligations immediately upon consummation of the transactions contemplated thereby.

(z) Asset Sale Motion. Any Obligor or any person on behalf of any Obligor shall file any motion seeking authority to consummate a sale of assets of the Obligors or the Collateral having a value in excess of \$250,000 outside the ordinary course of business and not otherwise permitted hereunder;

(aa) Restriction on Business. If any Obligor or any of its Subsidiaries (other than Excluded Subsidiaries) is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of Obligors and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; provided, that the Obligors shall have five (5) Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order.

(bb) Prepetition Indebtedness Payment. Any Obligor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition Indebtedness or payables other than payments in respect of the repayment of the Prepetition Loan Facility or as otherwise permitted under this Agreement, in each case, to the extent authorized by one or more First Day Orders or Second Day Orders and consistent with the Budget.

(cc) Change of Venue. If, unless otherwise approved by DIP Agent and Majority Lenders, an order of the Bankruptcy Court shall be entered providing for a change in venue with respect to the Cases and such order shall not be reversed or vacated within 10 days.

(dd) Other Motions or Requests Affecting Certain Rights and Liens. Without Majority Lenders' consent, any Obligor or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (a) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the DIP Agent's liens and security interests; (b) to use, or seek to use, Cash Collateral (as defined in the DIP Orders) or; (c) to modify or affect any of the rights of the DIP Agent, or the Lenders under the DIP Orders or the Loan Documents, by any Reorganization Plan confirmed in the Cases or subsequent order entered in the Cases.

Section 9.2 Remedies. If an Event of Default shall have occurred and shall be continuing, in addition to the rights and remedies set forth elsewhere in this



Agreement and the other Loan Documents and as otherwise available to the Lenders by any Applicable Laws:

(a) With the exception of an Event of Default specified in Section 9.1(f) or (g), the Lenders (or the DIP Agent acting at the direction of the Lenders) may declare the principal of and interest on the Term Loans and all other Obligations, including any prepayment premium, to be forthwith due and payable without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Upon the occurrence and continuance of an Event of Default specified in Section 9.1(f) or (g), such principal, interest, and other Obligations, including any prepayment premium, shall thereupon and concurrently therewith become due and payable, all without any action by the Lenders, and without presentment, demand, protest, or other notice of any kind, all of which are expressly waived, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(c) The DIP Agent, for the benefit of the Lenders, shall at the direction of the Lenders exercise any or all of the post-default rights granted to the DIP Agent, for the benefit of the Lenders, under the Loan Documents or under Applicable Law. The DIP Agent, for the benefit of the Lenders, shall have the right to the appointment of a receiver for the Property of the Borrower Parties, and the Borrower Parties hereby consent to such rights and such appointment and hereby waive any objection the Borrower Parties may have thereto or the right to have a bond or other security posted by the Lenders in connection therewith.

(d) The Lenders may in their discretion require the Borrower Parties to engage a consulting firm or chief restructuring officer, reasonably satisfactory to the Lenders, and deliver to the Lenders a copy of the fully-executed engagement letter with such consultant, which engagement letter shall be in form and substance reasonably acceptable to the Lenders, and, among other things, (A) require such consulting firm or chief restructuring officer to cooperate with any financial advisor to the Lenders in regard to the monthly reporting of covenants and (B) provide for such engagement to have a term ending on or after the Maturity Date (or a shorter term if agreed to in writing by the Lenders).

(e) The DIP Agent, for the benefit of the Lenders, may in its discretion require each Borrower Party to use its best efforts to assist the DIP Agent in the sale of Collateral, and each Borrower Party further agrees to use its best efforts to cause such employees or agents of such Borrower Party, which Persons shall be licensed to dispose of such Collateral, as are reasonably necessary to accomplish the disposition of such Collateral to the DIP Agent's satisfaction to assist in such disposition. In connection with the sale of such Collateral, each Borrower Party agrees to use its best efforts to obtain sales of such Collateral at commercially reasonable prices and terms.

(f) The Lenders (or the DIP Agent acting at the direction of the Lenders) may terminate the Commitments with immediate effect.

(g) The rights and remedies of the Lenders and the DIP Agent hereunder shall be cumulative, and not exclusive.

## ARTICLE 10

### MISCELLANEOUS

#### Section 10.1 Notices.

(a) All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given five (5) days after deposit in the mail, designated as certified mail, return receipt requested, postage-prepaid, or one (1) day after being entrusted to a reputable commercial overnight delivery service, or when delivered to the telegraph office or sent out (with receipt confirmed) by telex or telecopy addressed to the party to which such notice is directed at its address determined as in this Section 10.1. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses:

(i) If to any Borrower Party, to such Borrower Party in care of the Borrower at:

8531 East Walker Springs Lane, Suite 400  
Knoxville, TN 37923  
Attn: Michael R. Castle, Chief Financial Officer  
Telecopy No.: 865-474-7020  
Email: mcastle@xinenergycorp.com

with a copy to:

Stubbs Alderton & Markiles, LLP  
Attn: John McIlvery  
Telecopy: 818-444-6302  
Email: jmcilvery@stubbsalderton.com

(ii) If to a Lender or the DIP Agent, to it at its address for notices set forth on Annex I hereto (or as designated in writing to the Borrower from time to time):

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Brian S. Hermann, Esq.

Oksana Lashko, Esq.  
Sarah Harnett, Esq.  
Telecopy: (212) 492-0158  
Email: [arosenberg@paulweiss.com](mailto:arosenberg@paulweiss.com)

(b) Any party hereto may change the address to which notices shall be directed under this Section 10.1 by giving ten (10) days' written notice of such change to the other parties.

(c) All notices and other items to be, or which may be from time to time, delivered by and among the Borrower Parties, the DIP Agent and the Lenders (including the delivery of the items required by Sections 7.1 and 7.2), may be made via Electronic Transmission.

Section 10.2 Expenses. Each Borrower agrees, jointly and severally, to promptly pay or promptly reimburse:

(a) All costs and expenses of the Lenders, the DIP Agent and each of their Affiliates in connection with the Cases and the preparation, negotiation, execution, delivery of this Agreement and the other Loan Documents and post-closing assignments of the Term Loans and Commitments, the transactions contemplated hereunder and thereunder, and the making of the Term Loans hereunder, including, but not limited to, the fees, charges and disbursements of outside counsel for the Lenders and their Affiliates;

(b) All costs and expenses of the Lenders and the DIP Agent in connection with the administration of the transactions contemplated in this Agreement and the other Loan Documents and the preparation, negotiation, execution, and delivery of any waiver, amendment, or consent by the Lenders relating to this Agreement or the other Loan Documents, and the fees and disbursements of counsel for the Lenders;

(c) All costs and expenses of the Lenders in connection with any restructuring, refinancing, or "work out" of the transactions contemplated by this Agreement, and of obtaining performance under this Agreement and the other Loan Documents, and all costs and expenses of collection if default is made in the payment of the Obligations, which in each case shall include fees, charges and expenses of outside counsel for the Lenders, and the fees and expenses of any experts of the Lenders, or consultants of the Lenders; and

(d) All taxes, assessments, general or special, and other charges levied on, or assessed, placed or made against any of the Collateral or the Obligations.

Section 10.3 Waivers. The rights and remedies of the Lenders under this Agreement and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies which they would otherwise have. No failure or delay by the Lenders

in exercising any right shall operate as a waiver of such right. The Lenders expressly reserves the right to require strict compliance with the terms of this Agreement in connection with any funding of the Term Loans. In the event any Lender decides to fund a request for the Term Loans at a time when the Borrower Parties are not in strict compliance with the terms of this Agreement, such decision by a Lender shall not be deemed to constitute an undertaking by such Lender to fund any further requests or preclude any Lender from exercising any rights available to the Lenders under the Loan Documents or at law or equity. Any waiver or indulgence granted by the Lenders shall not constitute a modification of this Agreement, except to the extent expressly provided in such waiver or indulgence, or constitute a course of dealing by the Lenders at variance with the terms of the Agreement such as to require further notice by the Lenders of the Lenders' intent to require strict adherence to the terms of the Agreement in the future. Any such actions shall not in any way affect the ability of the Lenders, in its discretion, to exercise any rights available to them under this Agreement or under any other agreement, whether or not any Lender is party, relating to the Borrower.

Section 10.4 Set-Off. In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, except to the extent limited by Applicable Law or any DIP Order, at any time that an Event of Default exists, the Lenders and each subsequent holder of the Obligations is hereby authorized by the Borrower Parties at any time or from time to time, without notice to the Borrower Parties or to any other Person, any such notice being hereby expressly waived, to set-off and to appropriate and apply any and all deposits (general or special, time or demand, including, but not limited to, Funded Debt evidenced by certificates of deposit, in each case whether matured or unmatured, but not including any amounts held by the Lenders or any of its Affiliates in any escrow account) and any other Funded Debt at any time held or owing by the Lenders or any such holder to or for the credit or the account of any Borrower Party, against and on account of the obligations and liabilities of the Borrower Parties, to the Lenders or any such holder under this Agreement and any other Loan Document, including, but not limited to, all claims of any nature or description arising out of or connected with this Agreement or any other Loan Document, irrespective of whether or not (a) the Lenders shall have made any demand hereunder or (b) the Lenders shall have declared the principal of and interest on the Term Loans and other amounts due hereunder to be due and payable as permitted by Section 9.2 and although said obligations and liabilities, or any of them, shall be contingent or unmatured. Any sums obtained by a Lender or by any subsequent holder of the Obligations shall be subject to the application of payments provisions of Article 2.

Section 10.5 Assignment.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lenders (and any attempted assignment or transfer by any Borrower Party without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their



respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Affiliates of a Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Each Lender may, with the prior written consent of the DIP Agent and the Borrower (not to be unreasonably withheld or delayed), assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments (provided such Lender's obligations under this Agreement with respect to any such Commitment shall remain unchanged and such Lender shall remain responsible to the other parties hereto for the funding of such Commitment until the earlier of the funding thereof and the expiration of such Commitment) and the Term Loans at the time owing to it); provided, however, that (A) the consent of the Borrower shall not be required to any such assignment (x) in connection with the initial post-closing assignments of the Term Loans and Commitments pursuant to the DIP Order, (y) made to another Lender or an Affiliate or an Approved Fund of a Lender or (z) after the occurrence and during the continuance of any Event of Default and (B) the Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the DIP Agent within 5 Business Days after having received written notice thereof from the DIP Agent. From and after the effective date specified in each such assignment, the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned, have the rights and obligations of a Lender under this Agreement, and the assigning Lender shall, to the extent of the interest assigned, be released from its obligations under this Agreement (and, in the case of an assignment covering all of a Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.8(b), 6.18, 11.3 and 11.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by a Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section 10.5. Concurrently with the first assignment of any of the initial Lenders' rights and obligations under this Agreement, the Borrower Parties and the Lenders (which shall include all Persons who are assignees of such assigning Lender), shall execute a supplement to this Agreement and an assignment agreement, each in form and substance satisfactory to the Borrower and the Lenders, with respect to the respective rights of assignees under the Loan Documents.

(c) Each Lender may, without the consent of, or notice to, the Borrower, sell participations to one or more banks or other entities (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 portion of the Commitments and/or the Term Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with such Lender's rights and obligations under this Agreement, (iv) any agreement or instrument pursuant to which a Lender sells such a participation shall provide that the Lender shall retain the sole

right to enforce this Agreement and the other Loan Documents in respect thereof and to approve any amendment, modification or waiver of any provision of this Agreement and the Loan Documents (except with respect to (A) any sale or release of, or the subordination of the DIP Agent's security interest in, any material Collateral except in conjunction with sales or transfers of Collateral permitted hereunder, (B) except in conjunction with transactions permitted hereunder, any release of any guarantor of the Obligations, (C) any extensions, postponements or delays of the Maturity Date or the scheduled date of payment of interest or principal (other than payments of principal required to be made pursuant to Section 2.6(c)) or fees, or any reduction of principal (without a corresponding payment with respect thereto), or reduction in the rate of interest or fees due to such Lender hereunder or under any other Loan Documents, (D) any amendment of this Section 10.5 or any other provision of the Loan Documents specifying the parties required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; (E) any amendment increasing such Lender's Commitments (it being understood and agreed that a waiver of any Default or Event of Default or modification of any of the defined terms contained herein (other than those defined terms specifically addressed in this Section 10.5) shall not constitute a change in the terms of the Commitments); and (F) any amendment to Section 2.10). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.8(b), 6.18 and 11.3 as if it were a Lender, to the extent of its participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.8(b) as though it were a Lender.

(d) A Participant shall not be entitled to receive any greater payment under Section 2.8(b) or Section 11.3 than the relevant Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(e) Each Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment of a security interest shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

Section 10.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same agreement. In proving this Agreement or any other Loan Document in any judicial proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Any signatures hereto delivered by Electronic Transmission shall be deemed an original signature hereto. The foregoing shall apply to each other Loan Document mutatis mutandis.

Section 10.7 Governing Law. This Agreement and the other Loan Documents are intended to be, and shall be, construed in accordance with and governed by the laws of the State of New York.

Section 10.8 Severability. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 10.9 Headings. Headings used in this Agreement are for convenience only and shall affect the interpretation of any provision hereof.

Section 10.10 Appointment of Collateral Agent. Each Lender, by signing or otherwise becoming a party hereto, hereby appoints the Collateral Agent or any of its successors) to act as collateral agent on behalf of the Lenders under the Loan Documents.

Section 10.11 Entire Agreement. **THIS WRITTEN AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES** Each Borrower Party represents and warrants to the Lenders that it has read the provisions of this Section 10.11 and discussed the provisions of this Section 10.11 and the rest of this Agreement with counsel for such Borrower Party, and such Borrower Party acknowledges and agrees that the Lenders are expressly relying upon such representations and warranties of such Borrower Party (as well as the other representations and warranties of such Borrower Party set forth in this Agreement and the other Loan Documents) in entering into this Agreement.

Section 10.12 Amendments and Waivers. Subject to the last sentence of Section 10.5(b), neither this Agreement, any other Loan Document nor any term hereof or thereof may be amended orally, nor may any provision hereof be waived orally but only by an instrument in writing signed by each Lender and the Borrower Parties.

Section 10.13 Other Relationships. No relationship created hereunder or under any other Loan Document shall in any way affect the ability of the Lenders to enter into or maintain business relationships with the Borrower, or any of its Affiliates, beyond the relationships specifically contemplated by this Agreement and the other Loan Documents.

Section 10.14 Pronouns. The pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto.

Section 10.15 Disclosure. The Borrower Parties consent to the Lenders' issuance of press releases and preparation and distribution of other marketing materials regarding the Commitments hereunder and the making of the Term Loans pursuant to the

terms of this Agreement and the disclosure of such information in the Lenders' sole discretion, subject to Section 10.16.

Section 10.16 Confidentiality. No Lender shall disclose any material non-public confidential information received from or on behalf of the Borrower Parties in connection herewith regarding the Borrower Parties ("Confidential Information") to any other Person without the consent of the Borrower, other than (i) to a Lender's Representatives and to actual or prospective assignees and participants, and then only on a confidential basis, (ii) as required by any law, rule or regulation or judicial process, (iii) to any rating agency when required by it, provided that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Confidential Information relating to the Borrower Parties received by it from the Lender, (iv) as requested or required by any state, federal or foreign authority or examiner regulating banks or banking and (v) in connection with the exercise of any remedy hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. The term "Confidential Information" shall be deemed to exclude information customarily placed on 'tombstones' or similar marketing materials and does not include any information that (i) was or becomes generally available to the public, other than as a result of a disclosure by a Lender or its Representative in breach of this Agreement, (ii) was or becomes available to the Lender on a non-confidential basis from a source other than a Borrower Party or its Representatives, provided that such source was not known by such Recipient or its Representatives to be bound by any agreement with a Borrower Party to keep such information confidential, (iii) was in a Lender's or its Representatives' possession prior to disclosure by a Borrower Party or its Representatives, or (iv) was or is independently developed by a Lender or its Representative without use of or reference to the Confidential Information.

Section 10.17 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by the Borrower or any Guarantor, or the transfer to any Lender of any property, should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, 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 any Lender 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 any Lender is required or elects to repay or restore, and as to all costs, expenses and attorneys' fees of the Lender related thereto, the liability of the Borrower or such Guarantor, as applicable, automatically shall be revived, reinstated and restored and shall exist as though such Voidable Transfer had never been made.

Section 10.18 Electronic Transmission.

(a) Authorization. Subject to the provisions of this Section 10.18(a), the Lenders, the Borrower Parties and each of their Affiliates are authorized (but not required) to transmit, post or otherwise make or communicate, in



its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. The Borrower and each of the other Borrower Parties hereby acknowledges and agrees, and the Borrower and each of the other Borrower Parties shall cause each of their Restricted Subsidiaries to acknowledge and agree, that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to the terms and conditions of this Agreement, separate terms and conditions posted or referenced in such E-System and related contractual obligations executed by Borrower Parties or the Lenders in connection with the use of such E-System.

(c) Limitation of Liability. All E-Systems and Electronic Transmissions shall be provided "as is" and "as available". None of the Lender or any of its Affiliates warrants the accuracy, adequacy or completeness of any E-Systems or Electronic Transmission, and each disclaims all liability for errors or omissions therein. No warranty of any kind is made by the Lenders or any of their Affiliates in connection with any E Systems or Electronic Transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. Each of Borrower Party agrees that no Lender or any of its Affiliates has any responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

Section 10.19 Conflicts with DIP Orders. To the extent one or more Loan Document are inconsistent with any DIP Order, the terms of the most recently entered DIP Order shall supersede the terms of such Loan Documentss.

Section 10.20 Contribution.

(a) [Reserved]

(b) In the event any Borrower Party (a "Funding Borrower Party") shall make any payment or payments under this Agreement or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations hereunder, such Funding Borrower Party shall have the right to seek contribution payments from each other Borrower Party (each, a "Contributing Borrower Party") to the extent permitted by Applicable Law. Nothing in this Section 10.20(b) shall affect any Borrower Party's joint and several liability to the Lenders for the entire amount of its Obligations. Each Borrower Party covenants and agrees that (i) its right to receive any contribution hereunder from a Contributing Borrower Party shall be subordinate and junior in right of payment to all obligations of the Borrower Parties to the Lenders hereunder and (ii) it shall not exercise any such contribution rights unless and until the Obligations shall have been paid in full in cash.



(c) Nothing in this Section 10.20 shall affect the Borrower's joint and several liability to the Lenders for the entire amount of its Obligations. Each Borrower Party covenants and agrees that its right to receive any contribution hereunder from a contributing Borrower Party shall be subordinate and junior in right of payment to all Obligations of the Borrower to the Lenders hereunder. No Borrower Party will exercise any rights that it may acquire by way of subrogation hereunder or under any other Loan Document or at law by any payment made hereunder or otherwise, nor shall any Borrower Party seek or be entitled to seek any contribution or reimbursement from any other Borrower Party in respect of payments made by such Borrower Party hereunder or under any other Loan Document, until all amounts owing to the Lenders on account of the Obligations are paid in full in cash. If any amounts shall be paid to any Borrower Party on account of such subrogation or contribution rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Borrower Party in trust for the Lender segregated from other funds of such Borrower Party, and shall, forthwith upon receipt by such Borrower Party, be turned over to the Lender in the exact form received by such Borrower Party (duly endorsed by such Borrower Party to the Lenders, if required), to be applied against the Obligations, whether matured or unmatured, as provided for herein.

## ARTICLE 11

### YIELD PROTECTION

#### Section 11.1 Reserved.

Section 11.2 Illegality. If any change in Applicable Law, any change in the interpretation or administration of any Applicable Law by any Governmental Authority, central bank, or comparable agency charged with the interpretation or administration thereof, or any change in compliance with Applicable Law as a result of any request or directive (whether or not having the force of law) of any such authority, central bank, or comparable agency after the Agreement Date, shall make it unlawful for any Lender to make, maintain, or fund a Term Loan, such Lender shall so notify the Borrower. Before giving any notice pursuant to this Section 11.2, such Lender shall designate a different lending office if such designation will avoid the need for giving such notice and will not, in the judgment of the Lender, be otherwise disadvantageous to the Lender. Upon receipt of such notice, notwithstanding anything contained in Article 2, the Borrower shall repay in full (without prepayment premium) the then outstanding principal amount of each affected Term Loan, together with accrued interest thereon, either (a) on the last day of the then current calendar quarter if the relevant Lender may lawfully continue to maintain and fund such Term Loan to such day or (b) immediately if the relevant Lender may not lawfully continue to fund and maintain such Term Loan to such day.

Section 11.3 Increased Costs.

(a) If any change in Applicable Law, any change in the interpretation or administration of any Applicable Law by any Governmental Authority, central bank, or comparable agency charged with the interpretation or administration thereof or any change in compliance with Applicable Law as a result of any request or directive (whether or not having the force of law) of such Governmental Authority, central bank, or comparable agency after the Agreement Date (and, for purposes of this Section 11.3, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (including regulations promulgated with respect thereto), and all requests, guidelines or directives in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case in respect of this clause (ii), pursuant to Basel III, are, in the case of each of clauses (i) and (ii), deemed to have gone into effect and been adopted after the Agreement Date):

(i) Shall subject a Lender to any tax, duty, or other charge with respect to its obligation to make the Term Loans, or shall change the basis of taxation of payments to such Lender of the principal of or interest on the Term Loans or in respect of any other amounts due under this Agreement in respect of the Term Loans or its obligation to make Term Loans (except for changes in the rate of tax on the overall net income of the Lender);

(ii) Shall impose, modify, or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit, assessment, or other requirement or condition against assets of, deposits (other than as described in Section 11.5) with or for the account of, or commitments or credit extended by a Lender, or shall impose on a Lender any other condition affecting its obligation to make such Term Loans; and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any such Term Loans, or to reduce the amount of any sum received or receivable by the Lender under this Agreement with respect thereto, and such increase is not given effect in the determination of the Applicable Rate; or

(iii) Shall impose, modify, or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit, assessment, or other requirement or condition against assets of, deposits (other than as described in Section 11.5) with or for the account of, or commitments or credit extended by a Lender,

then promptly upon demand by the affected Lender, each Borrower agrees, jointly and severally, to pay, without duplication of amounts due under Section 2.8(b), to such Lender such Additional Amount or amounts as will compensate the Lender for such increased costs. The affected Lender will promptly notify the Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle the Lender to compensation pursuant to this Section 11.3 and will designate a different lending office if

such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the reasonable judgment of the Lender, be otherwise disadvantageous to the Lender. Failure or delay on the part of the Lender to demand compensation pursuant to this Section 11.3 shall not constitute a waiver of such Lender's right to demand such compensation

(b) A certificate of the affected Lender claiming compensation under this Section 11.3 and setting forth the Additional Amount or amounts to be paid to it hereunder and calculations therefor shall be conclusive in the absence of manifest error. In determining such amount, the Lender may use any averaging and attribution methods. If the Lender demands compensation under this Section 11.3, the Borrower may at any time, upon at least five (5) Business Days' prior notice to such Lender, prepay in full the then outstanding affected Term Loans, together with accrued interest thereon to the date of prepayment.

#### Section 11.4 Reserved.

Section 11.5 Capital Adequacy. If after the Agreement Date, a Lender (or any Affiliate of the Lender) shall have determined that the adoption of any Applicable Law, governmental rule, regulation or order regarding the capital adequacy of banks or bank holding companies, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Lender (or any Affiliate of such Lender) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency (but only if such adoption, change, request or directive occurs after the Agreement Date), has or would have the effect of reducing the rate of return on such Lender's (or any Affiliate of such Lender) capital as a consequence of the Commitment or obligations hereunder to a level below that which it could have achieved but for such adoption, change or compliance (taking into consideration such Lender's (or any Affiliate of such Lender) policies with respect to capital adequacy immediately before such adoption, change or compliance and assuming that such Lender's (or any Affiliate of such Lender) capital was fully utilized prior to such adoption, change or compliance), then, promptly upon demand by the affected Lender, the Borrower shall immediately pay to such Lender such Additional Amount or amounts as shall be sufficient to compensate such Lender for any such reduction actually suffered; provided, however, that there shall be no duplication of amounts paid to such Lender pursuant to this sentence and Section 11.3. A certificate of the affected Lender setting forth the amount to be paid to such Lender by the Borrower as a result of any event referred to in this paragraph shall, absent manifest error, be conclusive. For purposes of this Section 11.5, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (including regulations promulgated with respect thereto), and all requests, guidelines or directives in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case in respect of this clause (ii), pursuant to

Basel III, are, in the case of each of clauses (i) and (ii), deemed to have gone into effect and been adopted after the Agreement Date.

## ARTICLE 12

### JURISDICTION, VENUE AND WAIVER OF JURY TRIAL

Section 12.1 Jurisdiction and Service of Process. CONSENT TO JURISDICTION, SERVICE OF PROCESS AND VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, IN THE COURTS OF THE STATE OF NEW YORK IN THE BOROUGH OF MANHATTAN, COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE CREDIT PARTIES HEREBY IRREVOCABLY ACCEPT IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE CREDIT PARTIES FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE CREDIT PARTIES AT THEIR ADDRESS FOR NOTICES SET FORTH ABOVE, SUCH SERVICE TO BECOME EFFECTIVE FIVE (5) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE LENDERS OR THE AGENTS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE CREDIT PARTIES IN ANY OTHER JURISDICTION. THE CREDIT PARTIES HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 12.2 Consent to Venue. EACH BORROWER PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION IT WOULD MAKE NOW OR HEREAFTER FOR THE LAYING OF VENUE OF ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN THE BANKRUPTCY COURT OR IF THE BANKRUPTCY COURT ABSTAINS, FEDERAL COURTS OF THE UNITED STATES SITTING IN NEW YORK COUNTY, NEW YORK, AND HEREBY IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 12.3 Waiver of Jury Trial. EACH BORROWER PARTY AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE



LAW, WAIVES, AND OTHERWISE AGREES NOT TO REQUEST, A TRIAL BY JURY IN ANY COURT AND IN ANY ACTION, PROCEEDING OR COUNTERCLAIM OF ANY TYPE IN WHICH ANY BORROWER PARTY, ANY LENDER OR ANY OF THEIR RESPECTIVE SUCCESSORS OR ASSIGNS IS A PARTY, AS TO ALL MATTERS AND THINGS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, AND THE RELATIONS AMONG THE PARTIES LISTED IN THIS ARTICLE 12.

## ARTICLE 13

### DIP AGENT

Section 13.1 Authorization and Action. Each Lender hereby irrevocably appoints WBOX 2014-4 Ltd. as DIP Agent hereunder and authorizes the DIP Agent to take such action on its behalf, including execution of the Loan Documents, as applicable, and to exercise such powers under this Agreement and the other Loan Documents as agreed by Majority Lenders, together with such actions and powers as are reasonably incidental thereto. Each Lender hereby acknowledges that the DIP Agent shall not have by reason of this Agreement assumed a fiduciary relationship in respect of any Lender, regardless of whether an Event of Default has occurred or is continuing. Without limiting the generality of the foregoing, the DIP Agent shall, at the direction of Majority Lenders, have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents, (b) execute and deliver as DIP Agent each Loan Document, including any intercreditor or subordination agreements, and accept delivery of each Loan Document from any Obligor or other Person and to perform all of its undertakings and obligations thereunder, (c) act as DIP Agent for the Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein, (d) manage, supervise or otherwise deal with Collateral, and (e) take any action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, requirements of Applicable Law or otherwise. In performing its functions and duties under this Agreement, the DIP Agent shall act solely as agent of Lenders, and shall not assume, or be deemed to have assumed, any obligation toward, or relationship of agency or trust with or for, Obligors. As to any matters not expressly provided for by this Agreement and the other Loan Documents, the DIP Agent shall act or refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of Majority Lenders (accompanied by indemnity satisfactory to the DIP Agent and subject to the indemnification set forth in Section 13.5), whenever such instruction shall be requested by the DIP Agent or required hereunder, or a greater or lesser number of Lenders if so required hereunder or under any other Loan Document, and such instructions shall be binding upon all Lenders; provided, that the DIP Agent shall be fully justified in failing or refusing to take any action which exposes the DIP Agent to any liability or which is contrary to this Agreement, the other Loan Documents or applicable law, unless the DIP Agent is indemnified to its satisfaction by the other Lenders against any and all liability and expense which it may incur by reason of taking or continuing to take any such action. When the DIP Agent seeks the consent or approval of Majority Lenders (or a greater or lesser number of Lenders as required in this



Agreement or any other Loan Document), with respect to any action hereunder, the DIP Agent shall send notice thereof to each Lender and shall notify each Lender at any time that Majority Lenders (or such greater or lesser number of Lenders) have instructed the DIP Agent to act or refrain from acting pursuant hereto.

Section 13.2 DIP Agent's Reliance, Etc. Neither the DIP Agent, any Affiliate of the DIP Agent, nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for its or their own gross negligence or willful misconduct, as determined by a final non-appealable order of a court of competent jurisdiction. Without limitation of the generality of the foregoing, the DIP Agent: (i) may treat each Lender party hereto as the holder of Obligations until the DIP Agent receives an executed assignment and acceptance agreement from such Lender; (ii) may consult with legal counsel (who may be counsel for the Obligors), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (iii) makes no warranties or representations to any Lender and shall not be responsible to any Lender for any recitals, statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents; (iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (v) shall not be liable to any Lender for any action taken, or inaction, by the DIP Agent pursuant to the terms hereof upon the instructions of Majority Lenders (or a greater or lesser number of Lenders if so required hereunder or under any other Loan Document) or refraining to take any action pending such instructions; (vi) shall not be liable for any apportionment or distributions of payments made by it in good faith pursuant to this Agreement; (vii) shall incur no liability under or in respect of this Agreement or the other Loan Documents by acting upon any notice, consent, certificate, message or other instrument or writing (which may be by telephone, facsimile, telegram, cable, e-mail or other electronic transmission) believed in good faith by it to be genuine and signed or sent by the proper party or parties; and (viii) may assume that no Default or Event of Default has occurred and is continuing, unless the DIP Agent has actual knowledge of the Default or Event of Default, has received notice from any Obligor or Parent's independent certified public accountants stating the nature of the Default or Event of Default, or has received notice from a Lender stating the nature of the Default or Event of Default and that such Lender considers the Default or Event of Default to have occurred and to be continuing. In the event any apportionment or distribution described in clause (vi) above is determined to have been made in error, the sole recourse of any Person to whom payment was due but not made shall be to recover from the recipients of such payments any payment in excess of the amount to which they are determined to have been entitled. The DIP Agent shall not be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the DIP Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. In no event shall the DIP Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or

indirectly, forces beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, future changes in applicable law or regulation, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; *it being understood* that the DIP Agent shall use reasonable efforts consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 13.3 Rights of the DIP Agent as a Lender. The Person serving as the DIP Agent hereunder shall have the same rights and powers under this Agreement and the other Loan Documents in its capacity as a Lender, if any, as any other Lender and may exercise the same as though it were not the DIP Agent; and the terms “Lender,” “Lenders,” and “Majority Lenders” shall, unless otherwise expressly indicated, include such Person in its individual capacity as a Lender. The Person serving as the DIP Agent hereunder may accept deposits from, lend money to, and generally engage in any kind of business with, Obligors or any Subsidiary of an Obligor or other Affiliate thereof, all as if it were not the DIP Agent and without any duty to account therefor to any other Lender.

Section 13.4 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the DIP Agent or any other Lender and based on the financial statements referred to herein and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the DIP 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 this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder. The DIP Agent shall not have any duty or responsibility, either initially or on an ongoing basis, to provide any Lender with any credit or other similar information regarding Obligors.

Section 13.5 Indemnification. Lenders agree to indemnify the DIP Agent (to the extent not reimbursed by Obligors), in accordance with their respective Term Loan Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by the DIP Agent under this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the DIP Agent’s gross negligence or willful misconduct, as determined by a final non-appealable order of a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the DIP Agent promptly upon demand for its ratable share, as set forth above, of any out-of-pocket expenses (including attorneys’ fees) incurred by the DIP Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiation, legal proceedings or otherwise) of, or legal

advice in respect of rights or responsibilities under, this Agreement and each other Loan Document, to the extent that the DIP Agent is not reimbursed for such expenses by Obligors. The obligations of Lenders under this Section 13.5 shall survive the Payment in Full and the termination of this Agreement. If after payment and distribution of any amount by the DIP Agent to Lenders, any Lender or any other Person, including Obligors, any creditor of any Obligor, a liquidator, administrator or trustee in bankruptcy, recovers from the DIP Agent any amount found to have been wrongfully paid to the DIP Agent or disbursed by the DIP Agent to Lenders, then each Lender shall reimburse the DIP Agent any amount received by such Lender.

Section 13.6 Rights and Remedies to Be Exercised by the DIP Agent Only. Each Lender agrees that, except as set forth in Section 10.4, no Lender shall have any right individually (i) to realize upon the security created by this Agreement or any other Loan Document, (ii) to enforce any provision of this Agreement or any other Loan Document, or (iii) to make demand under this Agreement or any other Loan Document.

Section 13.7 Agency Provisions Relating to Collateral; Release of Liens and Guaranties. Each Lender hereby irrevocably authorizes and ratifies the DIP Agent's entry into this Agreement and the Loan Documents for the benefit of the Secured Parties. Each Lender hereby irrevocably agrees that any action taken by the DIP Agent with respect to the Collateral in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the DIP Agent of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized by and binding upon all Lenders. The DIP Agent is hereby irrevocably authorized on behalf of all Lenders, without the necessity of any notice to or further consent from any Lender to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the DIP Agent's Liens upon the Collateral, for its benefit and the ratable benefit of Lenders. Lenders hereby irrevocably agree that the Liens granted to or held by the DIP Agent upon any Collateral shall be automatically released (i) upon Payment in Full; or (ii) if such Collateral constitutes property being sold or disposed of and Borrower certifies to the DIP Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the DIP Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interest of a Subsidiary, the DIP Agent is authorized and directed to release any Guaranty Agreement provided by such Subsidiary; or (iii) if such Collateral constitutes leased property in which no Obligor owned any interest at the time the Lien was granted or at any time thereafter and such lease has expired or been terminated in a transaction not prohibited by this Agreement; or (iv) in connection with any foreclosure sale or other disposition of Collateral and the exercise of remedies pursuant to Section 9.2 after the occurrence and during the continuation of an Event of Default. Except as provided in the preceding sentence, the DIP Agent will not release any Liens on Collateral without the prior written authorization of Majority Lenders. Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Obligors in respect of) all interests retained by the Obligors, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Upon request by the DIP Agent at any time, Lenders

will confirm in writing the DIP Agent's authority to release particular types or items of Collateral pursuant hereto. The DIP Agent shall have no obligation whatsoever to any Lender or to any other Person to assure that the Collateral exists or is owned by any Obligor or is cared for, protected or insured or has been encumbered or that the Liens granted to the DIP Agent by a DIP Order, herein or pursuant to the Loan Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of its rights, authorities and powers granted or available to Agent in this Section 13.7 or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the DIP Agent may act in any manner it may deem appropriate, in its reasonable discretion, but consistent with the provisions of this Agreement and the other Loan Documents, including given the DIP Agent's own interest in the Collateral as a Lender, if any, and that the DIP Agent shall have no duty or liability whatsoever to any Lender. The Obligors and Lenders hereby irrevocably authorize the DIP Agent, based upon the instruction of Majority Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) or to sell or otherwise dispose of (or to consent to any such sale or other disposition of) all or any portion of the Collateral at any sale thereof conducted by the DIP Agent under the provisions of the Code or the PPSA], including pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or pursuant to a plan of reorganization, or at any sale or foreclosure conducted by the DIP Agent (whether by judicial action or otherwise) in accordance with applicable law.

Section 13.8 DIP Agent's Right to Purchase Commitments. The DIP Agent shall have the right, but shall not be obligated, at any time upon written notice to any Lender and with the consent of such Lender, which may be granted or withheld in such Lender's reasonable discretion, to purchase for the DIP Agent's own account all of such Lender's interests in this Agreement, the other Loan Documents and the Obligations, for the face amount of the outstanding Obligations owed to such Lender, including all accrued and unpaid interest and fees.

Section 13.9 Resignation of the DIP Agent; Appointment of Successor. The DIP Agent may resign as DIP Agent at any time by notifying the Lenders and the Borrower. If the DIP Agent shall resign under this Agreement, then, (i) Majority Lenders shall have the right to appoint a successor agent or (ii) if a successor agent shall not be so appointed and approved within the fifteen (15) day period following the retiring the DIP Agent's notice to Lenders and Borrower of its resignation, then the retiring DIP Agent may, on behalf of the Lenders appoint a successor agent who shall serve as the DIP Agent until such time as Majority Lenders appoint a successor agent or ratify the retiring DIP Agent's appointment of a successor agent. Upon its appointment, such successor agent shall succeed to the rights, powers and duties of the DIP Agent and the term "DIP Agent" shall mean such successor effective upon its appointment, and the retiring DIP Agent's rights, powers and duties as DIP Agent shall be terminated without any other or further act or deed on the part of such retiring DIP Agent or any of the other parties to this Agreement. After the resignation of the DIP Agent hereunder, the provisions of this



Article 13, Section 6.18 and Section 10.2 shall inure to the benefit of the former DIP Agent and its sub-agents and the former DIP Agent shall not by reason of such resignation be deemed to be released from liability for any actions taken or not taken by it while it was the DIP Agent under this Agreement. The fees paid by Borrower to any successor DIP Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor DIP Agent.

#### ARTICLE 14

##### COLLATERAL

Section 14.1 Grant of Security Interest. To secure payment and performance of all Obligations, each Borrower Party hereby grants to the DIP Agent, for itself and the benefit of the Secured Parties, a continuing security interest in, a Lien upon, and a right of set-off against, and hereby assigns to the DIP Agent, for itself and the benefit of the Secured Parties, as security for the Obligations, all tangible and intangible property of such Borrower Party, whether now owned or hereafter acquired or existing and wherever located, including, without limitation (collectively, the “Collateral”):

- (a) all Accounts,
- (b) all Books and Records,
- (c) all Chattel Paper,
- (d) all Commercial Tort Claims,
- (e) all Contracts,
- (f) all Deposit Accounts and money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein, (y) Securities Accounts and Security Entitlements (as defined in the UCC) and securities credited thereto and, in each case, all cash, checks and other property held therein or credited thereto
- (g) all Documents,
- (h) all Equipment,
- (i) all Equity Interests,
- (j) all Fixtures,
- (k) all General Intangibles (or “intangibles” under any applicable Canadian PPSL),
- (l) all Inventory,



(m) all Goods (including, without limitation, Inventory, Equipment and As-Extracted Collateral),

(n) all Insurance,

(o) all intellectual property,

(p) all Instruments,

(q) all Investment Property,

(r) all Letter-of-Credit Rights,

(s) all machinery,

(t) all Money,

(u) all owned real estate,

(v) all Payment Intangibles,

(w) all real property leaseholds,

(x) all Receivables and Receivables Records,

(y) all Securities Accounts,

(z) all Securities,

(aa) all Vehicles,

(bb) to the extent not otherwise included in the foregoing, all coal and other minerals severed or extracted from the ground (including all severed or extracted coal purchased, acquired or obtained from other Persons), and all Accounts, General Intangibles and Products and Proceeds thereof or related thereto, regardless of whether any such coal or other minerals are in raw form or processed for sale and regardless of whether or not the Borrower Party or any Obligor had an interest in the coal or other minerals before extraction or severance;

(cc) to the extent not otherwise included above, all other personal property of any kind and all Collateral Records and Collateral Support relating to any of the foregoing; and

(dd) to the extent not covered by clauses (a) through (cc) of this sentence, all other personal property and interest in property of such Borrower Party whether or not subject to the UCC, whether tangible or intangible, and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, including any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to

such Borrower Party from time to time with respect to any of the foregoing; provided, that upon entry of the Final Order to the extent approved by the Bankruptcy Court, "Collateral" shall include and a Lien shall attach to any Avoidance Proceeds.

Anything herein to the contrary notwithstanding, in no event shall the security interest granted under this Section 14.1 attach to (a) any Excluded Assets, (b) any properties and assets in which the DIP Agent is required to release its Liens pursuant to the provisions hereof on and after such release and (c) any properties and assets that no longer secure the Term Loans or any Obligations in respect thereof pursuant to the provisions hereof on and after such release, provided that, in the case of clauses (b) and (c), if such Liens are required to be released as a result of the sale, transfer or other disposition of any properties or assets of any Borrower Party, such assets or properties will cease to be excluded from the Collateral if the Borrower Party thereafter acquires or reacquires such assets or properties. As of the Agreement Date, the Collateral includes, but is not limited to, the assets set forth in Schedule 14.1.

Section 14.2 Lien Perfection; Further Assurances. Obligors shall deliver (a) such UCC-1 financing statements as are required by the UCC and (b) such other instruments, assignments or documents as are necessary to perfect DIP Agent's Lien upon any of the Collateral and shall take such other action as may be required to perfect or to continue the perfection of DIP Agent's Lien upon the Collateral. Each Obligor hereby authorizes DIP Agent to file (but DIP Agent shall not be obligated to so file) any such financing statement in any filing office in any UCC jurisdiction, including financing statements that (A) indicate the Collateral by any description which reasonably approximates the description contained in Section 14.1 and (B) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Obligor is an organization, the type of organization and any organization identification number issued to such Obligor. At DIP Agent's request, each Obligor shall also promptly execute or cause to be executed and shall deliver to Agent any information, and all documents, instruments and agreements as are necessary or as reasonably requested by Agent, to give effect to or carry out the terms or intent of this Article 14.

[remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, all as of the day and year first above written.

BORROWER:

XINERGY CORP.

By: \_\_\_\_\_

Name:

Title:

PARENT:

XINERGY LTD.

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, all as of the day and year first above written.

SUBSIDIARY GUARANTORS: XINERGY FINANCE (US) INC.

By: \_\_\_\_\_

Name:

Title:

XINERGY STRAIGHT CREEK, INC.  
XINERGY SALES, INC.  
XINERGY LAND, INC.  
MIDDLE FORK MINING, INC.  
BIG RUN MINING, INC.  
XINERGY OF WEST VIRGINIA, INC.  
SHENANDOAH ENERGY, LLC  
RAVEN CREST MINERALS, LLC  
RAVEN CREST LEASING, LLC  
RAVEN CREST MINING, LLC  
RAVEN CREST CONTRACTING, LLC  
SOUTH FORK COAL COMPANY, LLC  
PINNACLE INSURANCE GROUP LLC  
BRIER CREEK COAL COMPANY, LLC  
BULL CREEK PROCESSING  
COMPANY, LLC  
XINERGY OF VIRGINIA, INC.  
HIGH MAF, LLC  
WISE LOADING SERVICES, LLC  
STRATA FUELS, LLC  
TRUE ENERGY, LLC  
WHITEWATER RESOURCES, LLC  
WHITEWATER CONTRACTING, LLC  
SEWELL MOUNTAIN COAL CO., LLC

By: \_\_\_\_\_

Name:

Title:

LENDERS:

WBOX 2014-4 LTD.

By:

By: \_\_\_\_\_



Highbridge International LLC

By: Highbridge Capital Management, LLC,  
as trading manager

By: \_\_\_\_\_  
Name:  
Title:

Highbridge Tactical Credit & Convertibles  
Master Fund, L.P.

By: Highbridge Capital Management, LLC,  
as trading manager

By: \_\_\_\_\_  
Name:  
Title:

DIP Agent:

WBOX 2014-4 LTD.

By: \_\_\_\_\_  
Name:  
Title:

**Annex I**

**COMMITMENTS**

<b>Lender</b>	<b>Initial Term Loan Commitment</b>	<b>Delayed Draw Term Loan Commitment</b>
WBOX 2014-4 Ltd.	\$	\$
Highbridge International LLC,	\$	\$
Highbridge Tactical Credit & Convertibles Master Fund, L.P.	\$	\$
<b>Total</b>	\$ 1 <sup>2</sup>	\$ 1 <sup>3</sup>

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<sup>2</sup> To equal \$7,500,000 plus the payoff amount for the Prepetition Loan Facility.

<sup>3</sup> To equal \$40,000,000 minus the aggregate Initial Term Loan Commitment.

**Annex II**

**ADDRESSES**

### **ANNEX III**

#### **Initial Budget**



**ANNEX IV**

**Form of Interim Order**

**Exhibit C**

Combined Project Ace Information

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## Situation Overview

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- **Appalachian producer of high-quality Metallurgical and Thermal Coal.** Xinergy Ltd. (“Xinergy” or the “Company”) is a nonunion Central Appalachian producer of high quality (high-BTU and low Sulfur) metallurgical and thermal coal. The Company controls 60 - 70 million proven & probable tons with a high permitted position, and an estimated 40 million additional tons of similar high quality coal not yet reflected in a reserves report.
- **Two Active Properties.** The Company has five mining properties, two of which are currently active:
  - South Fork, which sells mid-volatile metallurgical coal to steel producers, commodities brokers, and industrial customers throughout North America, Europe, and South America; and
  - Raven Crest, which sells thermal coal to utilities and industrial companies in the Eastern US and Europe
- **Tough Coal Environment.** Xinergy was founded in 2008 and operated profitably for four years. With the precipitous decline in the coal markets beginning in 2012, Xinergy made significant cost cuts and sold or idled assets, thereby establishing a low cost position and returning to EBITDA-positive operation as of mid-2Q14. At the same time, Xinergy invested in operations and reserves, enabling a continuing ramp in production and growing profitability even in the current coal pricing environment.
- **Strong Cost Structure, Wrong Balance Sheet.** Xinergy believes that it has now achieved a strong production cost position and is poised for a potential recovery in the coal markets. However, for near term liquidity reasons, the Company may be forced to seek interim protection under Chapter 11 bankruptcy.

## DIP Collateral

(\$ in millions)

- **Proposed DIP Collateral package to include:** First priority liens on substantially all assets of the issuer and the guarantors, including, without limitation: all capital stock, intellectual property, accounts receivable, equipment, inventory, cash, real estate (including all real property interests related to mining operations), as-extracted collateral, general intangibles, securities, and commodities accounts, and any proceeds and products. Certain assets are excluded.

### From PRELIMINARY Balance Sheet

#### Asset Summary 1/31/2015

Cash and cash equivalents	\$1.8
Restricted cash	0.0
Accounts receivable	0.6
Inventory	3.3
Prepaid and other current assets	0.9
<b>Total Current Assets</b>	<b>\$6.7</b>

Land & Improvements	\$8.5
Plant & Improvements	33.5
Mining Equipment	6.6
Autos & Trucks	0.1
Other Equipment	0.0
<b>Total PP&amp;E, net</b>	<b>\$48.7</b>

Restricted cash	\$4.5
Recoverable Royalties	1.8
Exploration / Evaluation assets - Mine Development	10.0
Mineral Properties	35.4
Deferred financing Costs	4.9
Other non-current assets	0.0
<b>Total Other Non-Current Assets</b>	<b>\$56.7</b>

<b>TOTAL BOOK ASSETS</b>	<b>\$112.1</b>
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### "Additional" Value

For some assets, the Book Value of Xinergy's assets is understated on the Balance Sheet, as compared to Fair Market Value

- Mining equipment
- Reserves

#### Equipment (MMT) FMV Study \* Book Value

\* June 2014 FMV analysis; No Debt on this Equipment

South Fork	\$15.8
Raven Crest	17.2
<b>Total</b>	<b>\$33.0</b>
	\$6.6

	MM Tons	
<b>Reserves</b>	<b>Total</b>	<b>Proved</b>

Proven & Probable - Metallurgical	22.9	7.9
Proven & Probable - Thermal	44.3	44.3
<b>Proven &amp; Probable - TOTAL</b>	<b>67.2</b>	<b>52.2</b>
Potential Additional Metallurgical (no reserves report)	40.0	

## Company History

- Xinerger was founded in 2008 and listed on the TSX in Dec 2009.
- Xinerger **operated profitably for four years** (2008-2011) with EBITDA as high as \$30 million in 2011.
- Xinerger acquired several properties in 2010-2011 (and sold a few as well).
- Xinerger levered up in 2011 to fund development capex, with a \$200 million HY offering.
- Starting in 2012, the coal **markets fell apart**. Xinerger saw 10 consecutive quarters of negative EBITDA.
- Starting in mid-2Q14, Xinerger has been narrowing EBITDA losses, until mid-1Q15 when thermal prices plummeted and weather significantly reduced trucked coal out of South Fork
- Today, Xinerger operates two mining complexes in West Virginia:
  - specialty metallurgical (South Fork)
  - high-quality thermal (Raven Crest)

TIMELINE	
EBITDA-positive	<b>2008</b> Acquires 1 <sup>st</sup> & 2 <sup>nd</sup> thermal properties (Kentucky & Alabama)
	<b>2009</b> Reverse merger & TSX listing
	<b>2010</b> Growth via Acquisitions in West Virginia Sold Alabama assets
	<b>2011</b> Growth via further Acquisitions in West Virginia \$200 million High Yield offering funds development of the new West Virginia properties
EBITDA-negative	<b>2012</b> Capex to develop West Virginia properties Coal market falls → Liquidity Issues → forced to monetize above-market contracts and idle certain mines
	<b>2013</b> Waiting out the storm Sold Kentucky thermal assets Completed Capex on recently-acquired WV properties
Approaching Break-even	<b>2014+</b> Restart; Production ramp-up Two remaining complexes resume operations and achieve record low production costs Announces it is exploring financial and strategic alternatives to address Balance Sheet



## Xinergy's Mining Assets Today

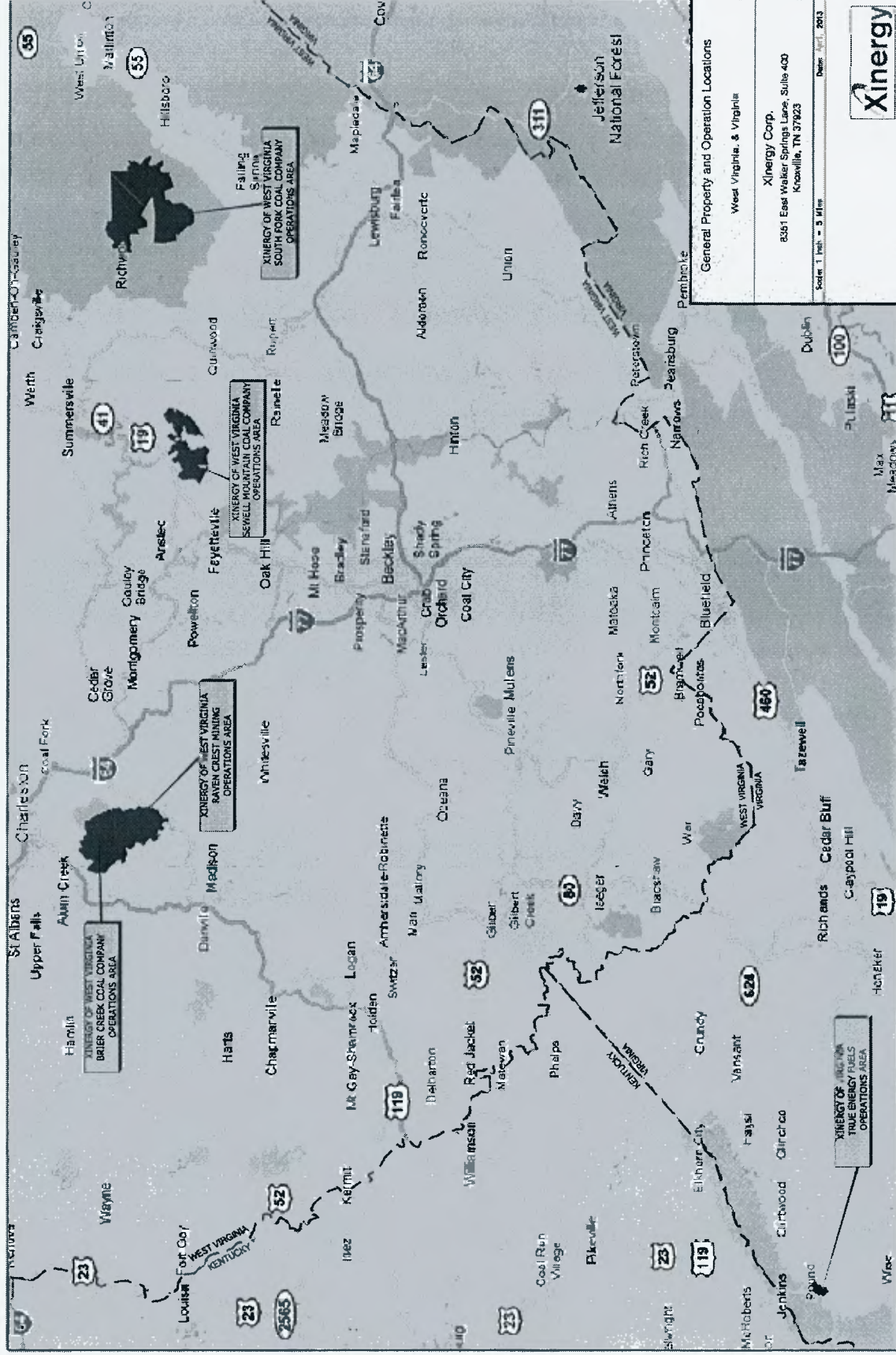
- Xinergy is a Central Appalachian producer of high quality (high-BTU and low Sulfur) thermal and metallurgical coal. Xinergy operates primarily in West Virginia, and also holds reserves in Virginia.
- The Company has five mining properties, two of which are currently active:
  - South Fork, which sells mid-volatile metallurgical coal to steel producers, commodities brokers, and industrial customers throughout North America, Europe, and South America; and
  - Raven Crest, which sells thermal coal to utilities and industrial companies in the Eastern US and Europe

*NOTE: all reserve tons are reported on a saleable basis*

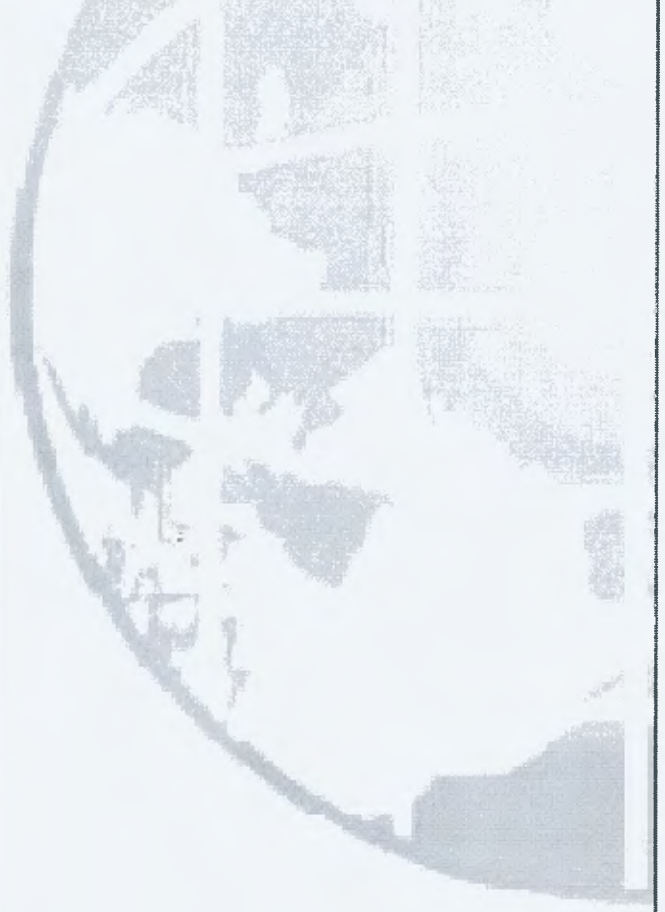
MET	Status	State (County)	Type	Coal Quality	Annual Capacity	Ops Cost cost/ton	Total Proven & Probable Mineral Reserves
South Fork	Active	West Virginia (Greenbrier)	Surface & UG	Mid-Vol: 26% Low-Sulfur<1% Avg. BTU: 14,500	0.54mt current 0.90mt w/ addtl equip	Mid \$80's/ton pre-HWM Mid \$70's/ton post-HWM	20.7 mt (excl growth oppty)
Sewell Mtn.	Permitted	West Virginia (Fayette, Greenbrier, & Nicholas)	Underground	Mid-Vol: 25% Ultra-low Sulfur	0.96mt (Estimated)	\$85-\$95/ton	42.0 mt following additional process (Estimated)
True Energy	Idle	Virginia (Wise)	Surface	High-Vol: 32%	0.48mt	\$75-\$80/ton	2.2 mt + 4.8 mt subsequent to 43-101

THERMAL	Status	State (County)	Type	Coal Quality	Annual Capacity	Ops Cost cost/ton	Total Proven & Probable Mineral Reserves
Raven Crest	Active	West Virginia (Boone)	Surface & HWM	Avg. BTU: 12,300-12,500 Avg. Sulfur: 1.25-1.5%AR	0.90mt	Low \$50s/ton	15.4 mt
Brier Creek	Idle	West Virginia (Boone & Kanawha)	Underground	Avg. BTU: 12,500-12,800 Avg. Sulfur: 1.25-1.5%AR	1.20mt	\$62-\$65/ton (Projected)	27.0 mt

## Map of Current Assets



## Financial Information





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## 25 Week Forecast

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- The 25-Week forecast reflects the following assumptions:
  - \$2 million capex outlay in April / May will be sufficient to increase equipment utilization at South Fork, resulting in lower cash costs
  - 18,000 tons per month additional South Fork sales
    - 9,000 tons per month to a U.S. industrial customer at \$98/ton FOB South Fork
    - 9,000 tons per month to a U.S. specialty customer with terms similar to a current contracted specialty customer with pricing of \$145/ton
  - High wall mining contractor will be in place and operating at South Fork at production levels that result in overall reduction in cash costs at South Fork
  - No disruptions in anticipated shipping schedules with CSX
  - Current specialty contract customer taking contracted tons per month
  - No disruption regarding critical vendors on a go forward basis
  - No further reductions in spot market pricing
  - Xinerger is able to retain key employees

## 25 Week Forecast (Continued)

25-Week Forecast (\$ in 000s)																
-13																
Week Ending	7/10	7/17	7/24	7/31	8/7	8/14	8/21	8/28	9/4	9/11	9/18	9/25	Total			
Accounts Receivables - Trade	\$1,325	\$1,507	\$1,507	\$960	\$1,422	\$1,293	\$1,475	\$1,475	\$2,098	\$1,599	\$1,599	\$500	\$434			
Other Receipts	0	0	0	0	0	0	0	0	0	0	0	0	0			
<b>Total Cash Sources</b>	<b>\$1,325</b>	<b>\$1,507</b>	<b>\$1,507</b>	<b>\$960</b>	<b>\$1,422</b>	<b>\$1,293</b>	<b>\$1,475</b>	<b>\$1,475</b>	<b>\$2,098</b>	<b>\$1,599</b>	<b>\$1,599</b>	<b>\$500</b>	<b>\$434</b>			
A/P	(\$5,208)	(\$472)	(\$585)	(\$5,182)	(\$728)	(\$472)	(\$585)	(\$432)	(\$1,100)	(\$844)	(\$390)	(\$667)	(\$1,300)			
Royalties	0	(621)	0	0	0	0	(746)	0	0	0	(621)	0	0			
Coal Taxes	(1,868)	0	(22)	0	0	0	(23)	(\$25)	0	0	0	(560)	0			
Insurance	0	0	0	(49)	(9)	0	0	(29)	0	0	0	0	(29)			
Professional Fees	0	0	0	0	0	0	0	0	(367)	0	0	0	0			
Payroll & Benefits	(82)	(476)	(10)	(697)	(10)	(547)	(10)	(697)	(10)	(547)	(10)	(547)	(160)			
Purchased Coal	0	0	0	0	0	0	0	0	0	0	0	0	0			
Debt Payments	(20,957)	0	(50)	0	0	0	0	0	0	0	0	0	0			
<b>Total Cash Uses</b>	<b>(\$28,116)</b>	<b>(\$1,568)</b>	<b>(\$667)</b>	<b>(\$4,295)</b>	<b>(\$747)</b>	<b>(\$1,019)</b>	<b>(\$1,364)</b>	<b>(\$1,653)</b>	<b>(\$1,486)</b>	<b>(\$1,392)</b>	<b>(\$1,021)</b>	<b>(\$1,774)</b>	<b>(\$1,856)</b>			
<b>Beginning Cash Balance</b>	<b>\$0</b>	<b>(\$26,794)</b>	<b>(\$26,853)</b>	<b>(\$26,012)</b>	<b>(\$29,347)</b>	<b>(\$28,672)</b>	<b>(\$28,398)</b>	<b>(\$28,287)</b>	<b>(\$28,494)</b>	<b>(\$27,882)</b>	<b>(\$27,675)</b>	<b>(\$27,097)</b>	<b>(\$28,371)</b>			
<b>Less: Net Cash Flow</b>	<b>(26,794)</b>	<b>(161)</b>	<b>840</b>	<b>(3,334)</b>	<b>675</b>	<b>274</b>	<b>111</b>	<b>(208)</b>	<b>612</b>	<b>207</b>	<b>578</b>	<b>(1,274)</b>	<b>(1,422)</b>			
<b>Ending Cash Balance</b>	<b>(\$26,794)</b>	<b>(\$36,853)</b>	<b>(\$26,012)</b>	<b>(\$29,347)</b>	<b>(\$28,672)</b>	<b>(\$28,398)</b>	<b>(\$28,287)</b>	<b>(\$28,494)</b>	<b>(\$27,882)</b>	<b>(\$27,675)</b>	<b>(\$27,097)</b>	<b>(\$28,371)</b>	<b>(\$29,794)</b>			
Week Ending	7/10	7/17	7/24	7/31	8/7	8/14	8/21	8/28	9/4	9/11	9/18	9/25	Total			
Accounts Receivables - Trade	\$1,439	\$2,321	\$1,074	\$2,926	\$1,621	\$2,039	\$1,074	\$2,926	\$2,221	\$1,439	\$1,840	\$1,621	\$39,734			
Other Receipts	0	0	0	0	0	0	0	0	0	0	0	0	0			
<b>Total Cash Sources</b>	<b>\$1,439</b>	<b>\$2,321</b>	<b>\$1,074</b>	<b>\$2,926</b>	<b>\$1,621</b>	<b>\$2,039</b>	<b>\$1,074</b>	<b>\$2,926</b>	<b>\$2,221</b>	<b>\$1,439</b>	<b>\$1,840</b>	<b>\$1,621</b>	<b>\$39,734</b>			
A/P	(\$1,099)	(\$356)	(\$661)	(\$611)	(\$1,588)	(\$656)	(\$655)	(\$616)	(\$1,210)	(\$1,609)	(\$426)	(\$851)	(\$25,721)			
Royalties	0	(608)	0	0	0	0	(1,014)	0	0	0	(780)	0	(4,390)			
Coal Taxes	0	0	(490)	(105)	0	0	0	(801)	0	0	0	1737	(5,132)			
Insurance	(9)	0	0	(29)	(367)	0	0	0	(49)	(9)	0	0	(251)			
Professional Fees	0	0	0	0	0	0	0	0	(367)	0	0	0	(1,833)			
Payroll & Benefits	(476)	(82)	(476)	(231)	(476)	(82)	(476)	(82)	(625)	(82)	(476)	(10)	(7,374)			
Purchased Coal	0	0	0	0	0	0	0	0	0	0	0	0	0			
Debt Payments	0	(50)	(32)	0	0	0	(32)	0	0	0	0	(32)	(21,154)			
<b>Total Cash Uses</b>	<b>(\$1,583)</b>	<b>(\$1,095)</b>	<b>(\$1,659)</b>	<b>(\$976)</b>	<b>(\$2,459)</b>	<b>(\$738)</b>	<b>(\$1,777)</b>	<b>(\$1,899)</b>	<b>(\$2,251)</b>	<b>(\$1,119)</b>	<b>(\$1,681)</b>	<b>(\$1,630)</b>	<b>(\$65,856)</b>			
<b>Beginning Cash Balance</b>	<b>(\$29,794)</b>	<b>(\$29,938)</b>	<b>(\$28,712)</b>	<b>(\$29,297)</b>	<b>(\$27,347)</b>	<b>(\$28,186)</b>	<b>(\$26,885)</b>	<b>(\$27,988)</b>	<b>(\$26,561)</b>	<b>(\$26,591)</b>	<b>(\$26,272)</b>	<b>(\$26,113)</b>	<b>\$0</b>			
<b>Less: Net Cash Flow</b>	<b>(145)</b>	<b>1,226</b>	<b>(584)</b>	<b>1,950</b>	<b>(838)</b>	<b>1,301</b>	<b>(1,103)</b>	<b>1,427</b>	<b>(30)</b>	<b>319</b>	<b>159</b>	<b>(9)</b>	<b>(26,122)</b>			
<b>Ending Cash Balance</b>	<b>(\$29,938)</b>	<b>(\$28,712)</b>	<b>(\$29,297)</b>	<b>(\$27,347)</b>	<b>(\$28,186)</b>	<b>(\$26,885)</b>	<b>(\$27,988)</b>	<b>(\$26,561)</b>	<b>(\$26,591)</b>	<b>(\$26,272)</b>	<b>(\$26,113)</b>	<b>(\$26,122)</b>	<b>(\$26,122)</b>			

Note: Projections as of March 26, 2015



## Long Term Forecast\*

Long Term Forecast - (\$ in 000s)												
	2015E		2016E		2017E		2018E		2019E		2020E	
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
<b>Raven Crest</b>												
Total Sales ('000s tons)	180	180	180	180	180	180	180	180	180	180	180	180
\$ / ton	\$50	\$50	\$52	\$52	\$55	\$55	\$55	\$55	\$60	\$60	\$60	\$60
Total Revenue	\$9,000	\$9,000	\$9,360	\$9,360	\$9,900	\$9,900	\$9,900	\$9,900	\$10,800	\$10,800	\$10,800	\$10,800
Total Costs	(9,220)	(9,220)	(9,256)	(9,256)	(9,310)	(9,310)	(9,310)	(9,310)	(9,491)	(9,491)	(9,491)	(9,491)
Raven Crest EBITDA	(\$220)	(\$220)	\$104	\$104	\$590	\$590	\$590	\$590	\$1,309	\$1,309	\$1,309	\$1,309
<b>South Fork</b>												
Total Sales ('000s tons) <sup>(1)</sup>	135	135	141	141	141	141	141	141	177	177	177	177
\$ / ton (blended price)	\$101	\$103	\$104	\$104	\$106	\$106	\$106	\$106	\$103	\$103	\$103	\$103
Total Revenue	\$13,635	\$13,894	\$14,678	\$14,678	\$14,925	\$14,925	\$14,925	\$14,925	\$18,193	\$18,193	\$18,193	\$18,193
Total Costs	(10,185)	(10,185)	(10,617)	(10,617)	(10,633)	(10,633)	(10,633)	(10,633)	(12,942)	(12,942)	(12,942)	(12,942)
South Fork EBITDA	\$3,474	\$3,709	\$4,060	\$4,060	\$4,292	\$4,292	\$4,292	\$4,292	\$5,251	\$5,251	\$5,251	\$5,251
<b>Corporate &amp; Other</b>												
Rebate Revenue	\$205	\$205	\$215	\$215	\$215	\$215	\$215	\$215	\$278	\$278	\$278	\$278
Corporate & Other Costs	(1,456)	(1,456)	(1,506)	(1,506)	(1,506)	(1,506)	(1,506)	(1,506)	(1,581)	(1,581)	(1,581)	(1,581)
Corporate & Other EBITDA	(\$1,251)	(\$1,251)	(\$1,290)	(\$1,290)	(\$1,290)	(\$1,290)	(\$1,290)	(\$1,290)	(\$1,302)	(\$1,302)	(\$1,302)	(\$1,302)
<b>Total EBITDA</b>	\$2,003	\$2,238	\$2,874	\$2,874	\$3,592	\$3,592	\$3,592	\$3,592	\$5,258	\$5,258	\$5,258	\$5,258
Less: Raven Crest Capex	(450)	(450)	(450)	(450)	(450)	(450)	(450)	(450)	(450)	(450)	(450)	(450)
Less: South Fork Capex	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)
Free Cash Flow	\$953	\$1,188	\$1,824	\$1,824	\$2,542	\$2,542	\$2,542	\$2,542	\$4,208	\$4,208	\$4,208	\$4,208

Note: Projections as of March 26, 2015  
 Benchmark coal pricing used in long term forecast: \$117 / ton in Q3 2015, \$119 / ton in Q4 2015, \$121 / ton in H1 2016, \$123 / ton in H2 2016 and \$124 / ton in 2017

## 2014 Financial Results

2014 Financial Results (\$ in 000s)					
	Q1 2014	Q2 2014	Q3 2014	Q4 2014	FY 2014
Revenue	\$11,710	\$20,117	\$19,020	\$20,830	\$71,677
Cost of sales	(14,063)	(18,939)	(16,972)	(20,454)	(70,428)
Gross Profit	\$2,353	\$1,178	\$2,048	\$377	\$1,249
Depreciation, Depletion & Amortization	(2,504)	(2,904)	(2,878)	(2,962)	(11,249)
General & Administrative	(1,925)	(1,742)	(1,166)	(2,142)	(6,975)
Operating Loss	(\$6,782)	(\$3,468)	(\$1,997)	(\$4,727)	(\$16,974)
Net Interest	(5,299)	(5,407)	(5,381)	(5,516)	(21,604)
Accretion	(128)	(128)	(128)	(128)	(513)
Rail Rebate Income	315	146	110	173	745
Gain / (Loss) on Sale of Straight Creek Assets	0	(496)	(5)	(0)	(501)
Gain / (Loss) on Sale of Fixed Assets	(45)	(41)	66	639	619
Gain / (Loss) on Derivative Financial Liabilities	(198)	253	(43)	0	11
Other Net Income (Expense)	317	35	5	(524)	(166)
Net Income / (Loss)	(\$11,820)	(\$9,106)	(\$7,374)	(\$10,083)	(\$38,383)
Plus: Net Interest	5,299	5,407	5,381	5,516	21,604
Plus: Depreciation, Depletion & Amortization	2,504	2,904	2,878	2,962	11,249
Plus: Gain / (Loss) on Derivative Financial Liabilities	198	(253)	43	0	(11)
Plus: Accretion	128	128	128	128	513
Plus: Stock Compensation Expense	167	57	58	58	340
EBITDA	(\$3,523)	(\$861)	\$1,115	(\$1,419)	(\$4,688)
Less: Gain on Sale of Whitewater	0	0	0	(639)	(639)
Plus: Loss on Sale of Straight Creek	0	496	5	2	502
Adjusted EBITDA	(\$3,523)	(\$366)	\$1,121	(\$2,057)	(\$4,825)
Capex	(\$2,112)	(\$1,164)	(\$1,239)	(\$816)	(\$5,331)
Cash Interest Paid	(5,307)	(5,411)	(5,383)	(5,520)	(21,620)
Proceeds From Sale of Whitewater	0	0	0	2,050	2,050
Unrestricted Cash Balance	\$10,436	\$2,060	\$1,782	\$3,742	\$3,742

## 2014 Financial Result (Continued)

2014 Financial Results by Mine (\$ in 000s)					
	Raven Crest	South Fork	Whitewater	True Energy	Corporate
Revenue	\$37,341	\$34,336	\$0	\$0	\$0
Cost of sales	(36,181)	(33,619)	0	(628)	0
Gross Profit	\$1,160	\$717	\$0	(\$628)	\$0
Depreciation, Depletion & Amortization	(5,174)	(5,808)	(113)	(128)	(25)
General & Administrative	(496)	(129)	(136)	(30)	(6,183)
Operating Loss	(\$4,511)	(\$5,219)	(\$249)	(\$787)	(\$6,208)
Net Interest	0	(37)	0	(69)	(21,498)
Accretion	(345)	(84)	0	(84)	0
Rail Rebate Income	0	745	0	0	0
Gain / (Loss) on Sale of Straight Creek Assets	0	0	0	0	(501)
Gain / (Loss) on Sale of Fixed Assets	22	(42)	639	0	0
Gain / (Loss) on Derivative Financial Liabilities	0	0	0	0	11
Other Net Income (Expense)	(263)	382	(100)	0	(185)
Net Income / (Loss)	(\$5,097)	(\$4,256)	\$290	(\$939)	(\$28,381)
Plus: Net Interest	(0)	37	0	69	21,498
Plus: Depreciation, Depletion & Amortization	5,174	5,808	113	128	25
Plus: Gain / (Loss) on Derivative Financial Liabilities	0	0	0	0	(11)
Plus: Accretion	345	84	0	84	0
Plus: Stock Compensation Expense	0	0	0	0	340
EBITDA	\$422	\$1,673	\$404	(\$658)	(\$4,888)
Less: Gain on Sale of Whitewater	0	0	(639)	0	(639)
Plus: Loss on Sale of Straight Creek	0	0	0	0	502
Adjusted EBITDA	\$422	\$1,673	(\$236)	(\$658)	(\$4,825)
Capex	(\$3,317)	(\$1,862)	(\$151)	\$0	\$0
Cash Interest Paid	0	(37)	0	(69)	(21,620)
Proceeds From Sale of Whitewater	0	0	2,050	0	0
Unrestricted Cash Balance	(\$1,583)	(\$2,164)	\$1,206	(\$564)	\$3,742



2015 to Date

YTD 2015 Financial Results (\$ in 000s)

	Monthly		YTD	Consolidating					
	January	February		Raven Crest	South Fork	Whitewater	True Energy	Corporate	Consolidated
Revenue	\$4,430	\$3,216	\$7,646	\$3,657	\$3,989	\$0	\$0	\$0	\$7,646
Cost of sales	(4,510)	(3,722)	(8,232)	(3,705)	(4,431)	0	(96)	0	(8,232)
Gross Profit	(\$80)	(\$507)	(\$586)	(\$48)	(\$442)	\$0	(\$96)	\$0	(\$586)
Depreciation, Depletion & Amortization	(783)	(772)	(1,555)	(750)	(799)	(5)	(0)	(1)	(1,555)
General & Administrative	(424)	(434)	(859)	(84)	(29)	(29)	(8)	(709)	(859)
Operating Loss	(\$1,287)	(\$1,713)	(\$3,000)	(\$883)	(\$1,270)	(\$33)	(\$104)	(\$710)	(\$3,000)
Net Interest	(1,865)	(1,680)	(3,545)	0	(18)	0	(9)	(3,518)	(3,545)
Accretion	(43)	(49)	(91)	(58)	(20)	0	(14)	0	(91)
Rail Rebate Income	31	31	62	0	62	0	0	0	62
Gain / (Loss) on Contract Termination	(1,291)	0	(1,291)	0	0	0	0	(1,291)	(1,291)
Other Net Income (Expense)	1	9	10	2	0	0	0	8	10
Net Income / (Loss)	(\$4,454)	(\$3,402)	(\$7,856)	(\$939)	(\$1,245)	(\$33)	(\$127)	(\$5,512)	(\$7,856)
Plus: Net Interest	1,865	1,680	3,545	(0)	18	0	9	3,518	3,545
Plus: Depreciation, Depletion & Amortization	783	772	1,555	750	799	5	0	1	1,555
Plus: Accretion	43	49	91	58	20	0	14	0	91
Plus: Stock Compensation Expense	19	21	40	0	0	0	0	40	40
EBITDA	(\$1,745)	(\$880)	(\$2,625)	(\$131)	(\$409)	(\$29)	(\$104)	(\$1,952)	(\$2,625)
Plus: Loss on Contract Termination	1,291	0	1,291	0	0	0	0	1,291	1,291
Adjusted EBITDA	(\$454)	(\$880)	(\$1,334)	(\$131)	(\$409)	(\$29)	(\$104)	(\$661)	(\$1,334)

## Working Capital

### Accounts Payable and Accrued Expenses (\$ in 000s)

Vendor	Days Outstanding					Total
	Current	Over 30	Over 45	Over 60	Over 90	
Vendor A	\$544	\$928	\$0	\$768	\$910	\$3,150
Vendor B	56	18	111	178	2,118	2,481
Other - Raven Crest	754	216	333	340	763	2,406
Other - South Fork	582	149	474	201	661	2,067
Other - Corporate	326	21	68	248	908	1,570
<b>Total Accounts Payable</b>	<b>\$2,262</b>	<b>\$1,331</b>	<b>\$987</b>	<b>\$1,735</b>	<b>\$5,359</b>	<b>\$11,674</b>
Plus: Accrued Expenses						2,124
<b>Total Accounts Payable and Accrued Expenses<sup>(1)</sup></b>						<b>\$13,798</b>

(1) Excludes \$501k of open purchase orders

### Accounts Receivable (\$ in 000s)

Customer	Days Outstanding					Total
	Current	Over 30	Over 60	Over 90		
Customer A	\$398	\$289	\$0	\$0		\$687
Customer B	73	0	0	0		73
Customer C	0	0	0	10		10
Customer D	5	0	0	0		5
<b>Total Accounts Receivable</b>	<b>\$476</b>	<b>\$289</b>	<b>\$0</b>	<b>\$10</b>		<b>\$775</b>

### Inventory (\$ in 000s)

<b>Raven Crest</b>	
Thermal Coal Tons (000s)	36
Value / Ton <sup>(1)</sup>	\$36.77
<b>Total Raven Crest Inventory</b>	<b>\$1,337</b>
<b>South Fork</b>	
Metallurgical Coal Tons (000s)	21
Value / Ton <sup>(1)</sup>	\$72.22
<b>Total South Fork Inventory</b>	<b>\$1,535</b>
<b>Total Raven Crest &amp; South Fork Inventory</b>	<b>\$2,871</b>

(1) Reflects Company's January 31, 2015 price per ton applied to tons as of March 10, 2015



## Balance Sheet

Balance Sheet as of December 31, 2014 (\$ in 000s)	
Assets	
Current Assets:	
Cash	\$2,463
Restricted Cash	2
Trade Accounts Receivable	3,089
Coal Inventories	2,748
Other Current Assets	973
Total Current Assets	\$9,275
Restricted Cash	
Recoverable Royalties	\$5,940
Property, Plant & Equipment	1,818
Mine Development Costs	49,062
Mineral Rights	10,063
Deferred Financing Costs	35,599
Other Noncurrent Assets	4,815
Total Assets	6
Liabilities & Shareholders' Equity	
Current Liabilities:	
Accounts Payable	\$12,081
Accrued Expenses	2,816
Accrued Interest Payable	2,305
Other Current Liabilities	1,832
Current Portion of Asset Retirement Obligations	24
Current Portion of Other Notes Payable	495
Total Current Liabilities	\$19,553
Notes Payable - Other, Less Current Portion	
Asset Retirement Obligations, Less Current Portion	\$828
Senior Secured Notes Payable	13,278
Derivative Financial Liabilities - Warrants	215,000
	343
Total Liabilities	\$249,003
Shareholders' Equity:	
Share Capital	\$59,788
Contributed Surplus	1,648
Warrants	312
Stock Options	6,666
Accumulated Deficit	(200,837)
Net Shareholders' Equity	(\$132,424)
Total Liabilities & Shareholders' Equity	\$116,579

## Operations



## Cost Performance is Competitive

(\$ in millions, except where indicated otherwise)

South Fork	1Q13	2Q13	3Q13	4Q13	1Q14	2Q14	3Q14	4Q14 <sup>(1)</sup>	Post-HWM
Total Cash Costs	\$1.60	\$4.85	\$4.60	\$5.17	\$7.78	\$9.04	\$9.62	\$7.90	
Tons Produced	22,663	52,289	57,641	55,816	81,460	96,200	115,095	82,796	
Cost / Ton (\$/ton)	\$70.63	\$92.72	\$79.78	\$92.54	\$95.45	\$93.94	\$83.61	\$84.38	\$ 73.00 - \$ 78.00

Raven Crest	1Q14	2Q14	3Q14	4Q14 <sup>(1)</sup>	Due to market conditions, Raven Crest operations were idled from mid-2012 through the end of 2013.				
Total Cash Costs	\$6.54	\$8.90	\$8.59	\$8.05					
Tons Produced	95,917	156,096	171,620	150,516					

Cost / Ton (\$/ton)	\$68.20	\$57.04	\$50.06	\$53.46
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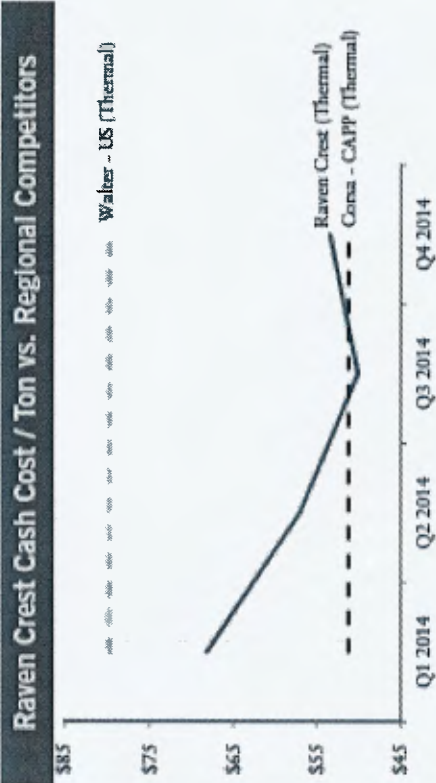
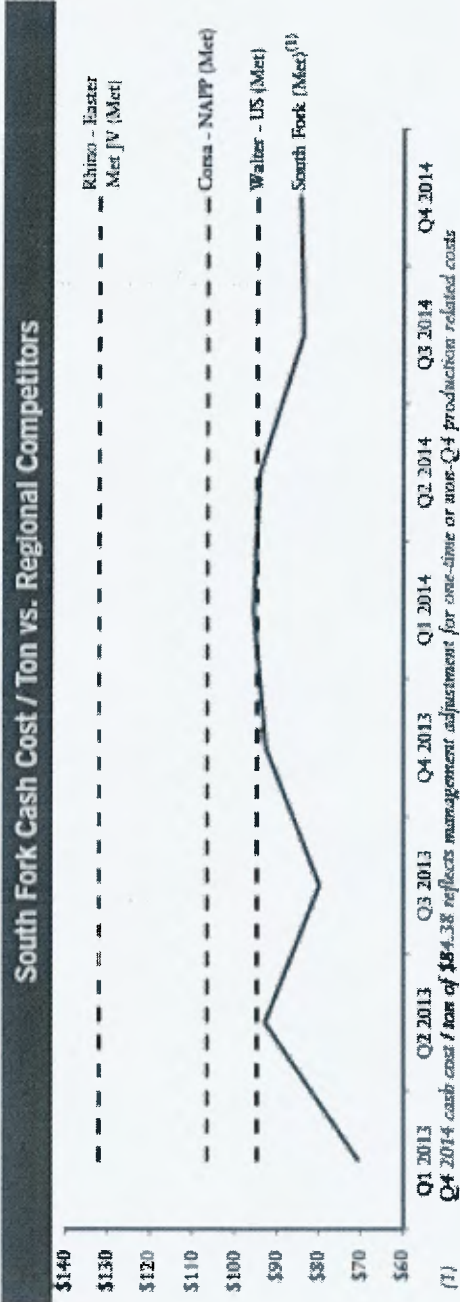
## Select Regional Competitors Cash Costs of Sales <sup>(2)</sup>

Metallurgical	Thermal	
Walter - US	\$94.56	Walter - US \$79.76
Corsa - NAPP	\$106.33	Corsa - CAPP \$51.18
Rhino - Easter Met JV	\$132.06	

(1) 4Q14 is shown on a preliminary basis; South Fork is presented on an adjusted basis for one-time items

(2) Xinergy costs shown here reflect all production, selling and mine operating costs including hauling, permits, royalties, taxes, commissions, and all other selling-related costs. It is not clear that the other producers are reflecting the same costs in this number.

Q4 2014 Cost Performance



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## Coal Prices (Update)

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### 2015 to Date

- CAPP thermal pricing has continued to deteriorate (10-15% in the past 8-12 weeks)
- Regional weather (snowstorms) have severely impeded truck-based shipments for Xinergy, which is the method of delivery for one of its more lucrative offtake arrangements.
- On January 19, 2015, Xinergy's specialty metallurgical competitor, Corsa Coal, announced it eliminated 25% of its NAPP workforce, and idled two metallurgical mines, due to market weakness in global metallurgical coals.
- On January 30, 2015, Xinergy's metallurgical and thermal competitor, Alpha Natural Resources, announced it was idling three surface mines in Central Appalachia, and reducing its workforce at two additional surface mines.

### Xinergy's Market Position

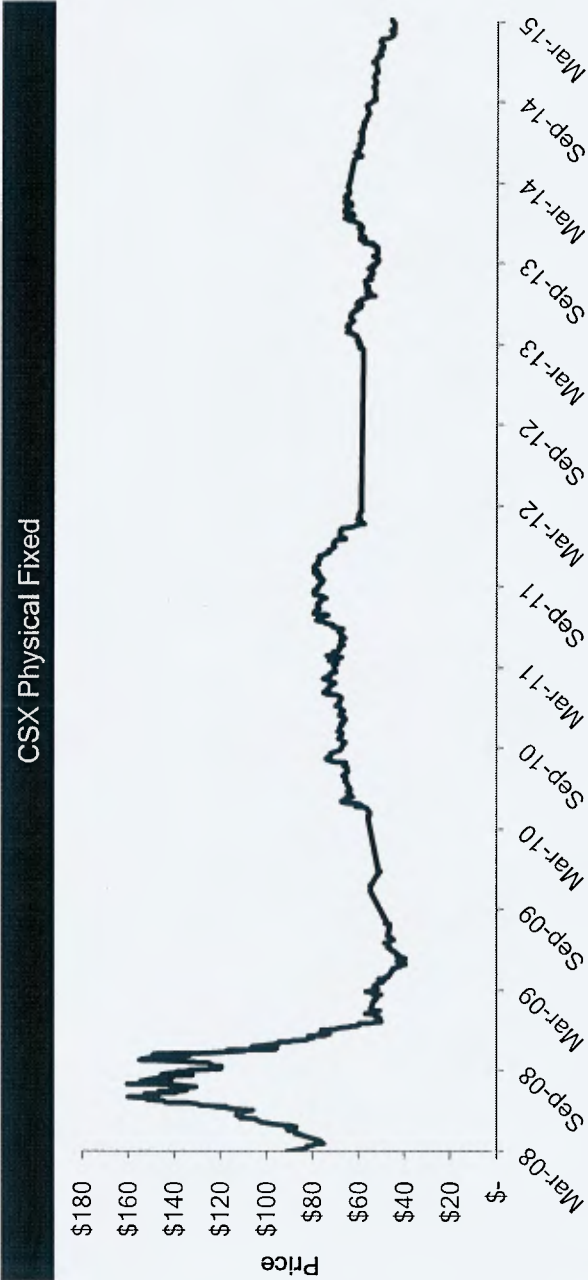
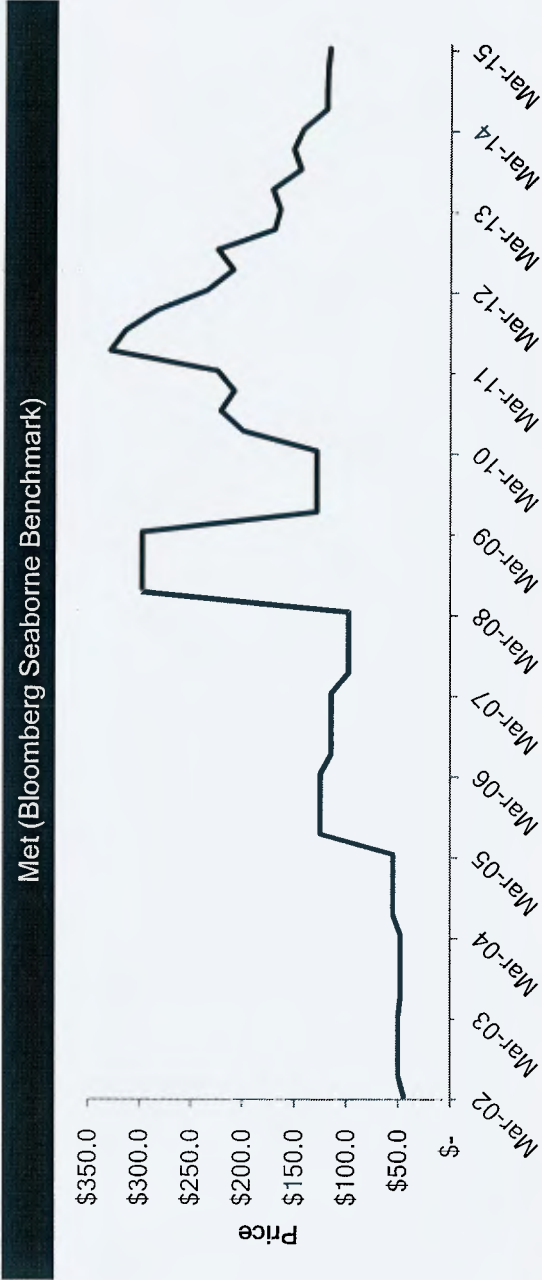
- Management understands from its offtake partners that South Fork single-source mid-vol is getting at least a \$6 premium over other producers' mid-vol blends
- The launch of the high wall miner at South Fork in 2015 will be an important event, as it should save roughly \$5 - \$10 per ton on costs (that amount will vary with the mine plan, due to recovery and high wall mining mix)
- Repaired credit and counterparty perception is crucial to enabling Xinergy to get additional contracts - particularly from parties who pay a premium for certain coal qualities that South Fork can fulfill
  - Management believes, via conversations with sales agents, that it was poised to win RFPs on at least two entities, but was not approved in final committee process.



## Coal Prices (Outlook)

HCC		Current		2015e	2016e	2017e	2018e
Average of estimates past 45 days							
Source	Date						
Credit Suisse	3/11/2015			\$ 115.83	\$ 135.80	\$ 126.50	\$ 118.00
RBC	3/8/2015						
JP Morgan	3/4/2015			\$ 120.00	\$ 128.00	\$ 133.00	\$ 135.00
UBS	2/26/2015			\$ 117.00	\$ 118.00	\$ 122.50	
BB&T	2/17/2015			\$ 118.00	\$ 120.00	\$ 125.00	
				\$ 110.00	\$ 121.00		
				\$ 120.00	\$ 130.00		
Brean Capital	1/21/2015						
Morgan Stanley	1/20/2015			\$ 122.00	\$ 140.00		
Barclays	1/14/2015			\$ 122.00	\$ 119.00	\$ 118.00	\$ 118.00
Stern Agee	1/9/2015			\$ 119.00	\$ 130.00	\$ 135.00	
				\$ 145.00	\$ 160.00		
Citigroup	12/1/2014						
Doyle	11/7/2014			\$ 122.00	\$ 140.00	\$ 150.00	\$ 145.00
BMO	11/17/2014			\$ 120.00	\$ 124.00	\$ 128.00	\$ 140.00
Imperial (Credit)	10/30/2014			\$ 122.00	\$ 139.00	\$ 155.00	
				\$ 120.00	\$ 12.00	\$ 120.00	\$ 120.00
Newcastle		Current		2015e	2016e	2017e	2018e
Average of estimates past 45 days							
Source	Date						
BAML	3/11/2015			\$ 68.42	\$ 64.55	\$ 71.46	\$ 76.00
Credit Suisse	3/11/2015						
RBC	3/8/2015			\$ 57.00	\$ 52.00		
JP Morgan	3/4/2015			\$ 78.00	\$ 69.00	\$ 71.00	\$ 76.00
UBS	2/26/2015			\$ 80.10	\$ 77.73	\$ 79.38	
Brean Capital	1/21/2015			\$ 62.00	\$ 60.00	\$ 64.00	
BAML	1/20/2015			\$ 65.00	\$ 64.00		
Imperial	1/20/2015			\$ 63.00	\$ 68.00	\$ 75.00	
Barclays	1/14/2015			\$ 65.00	\$ 72.00	\$ 82.00	\$ 86.80
				\$ 60.10	\$ 60.10	\$ 60.10	
				\$ 60.00	\$ 65.00	\$ 65.00	

Coal Prices (Historical)



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## Management Team

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### **Gregory "Bernie" Mason, CEO & President**

Bernie joined as President of Xinergy in October of 2009 with over 30 years of experience in the coal industry. Previously at Appalachian Fuels, LLC as COO. Extensive M&A experience.

### **Michael R. Castle, CFO**

Mike joined Xinergy in January 2010 as Chief Financial Officer with over 20 years experience in the coal industry. Prior to Xinergy, he worked with a NASDAQ traded coal company. Strong coal operations background.

### **Robert L. Gaylor, SVP, Investor Relations**

Bobby joined Xinergy in April of 2013. Previously, Bobby was SVP of A&D/M&A at a NYSE company, Miller Energy Resources. Bobby also spent three years as Miller's SVP of Investor Relations.

## South Fork (Summary)

(\$ in millions, except where indicated otherwise)

- Property
  - Single seam Sewell
  - 35,000 acres in Greenbrier County, West Virginia
  - 20.7 million proven and probable tons (reported on a clean ton basis after preparation)
- Operations:
  - Surface and Underground Operations
  - Mid-\$80s cost per ton currently, and mid-\$70s expected following March 2015 high wall miner deployment
- Infrastructure: Clearco Plant & CSX Rail Loadout Facility
  - 300 tons per hour with fine-coal recovery and froth flotation
  - Over 1.0 million tons annual capacity
  - Completed Q3 2013 and started shipping trains on a regular schedule Q4 2013

South Fork	1Q13	2Q13	3Q13	4Q13	1Q14	2Q14	3Q14	4Q14 <sup>(1)</sup>	Post-HWM
Total Cash Costs	\$1.60	\$4.85	\$4.60	\$5.17	\$7.78	\$9.04	\$9.62	\$7.90	
Tons Produced	22,663	52,289	57,641	55,816	81,460	96,200	115,095	82,796	
Cost / Ton (\$/ton)	\$70.63	\$92.72	\$79.78	\$92.54	\$95.45	\$93.94	\$83.61	\$84.38	\$ 73.00 - \$ 78.00

(1) 4Q14 is shown on a preliminary basis; South Fork is presented on an adjusted basis for one-time items

South Fork (Property Details)

In US tons

Property	Area	rf	% of	Highwall	% of T	UG	% of	Total
Controlled Property		8,391,200	54%	2,322,720	15%	4,771,090	31%	15,485,010
Uncontrolled Property		2,235,900	43%	1,787,790	34%	1,220,570	23%	5,244,260
Totals:		10,627,100	51%	4,110,510	20%	5,991,660	29%	20,729,270

Total Surface & Highwall
14,737,610
71%

Total Underground
5,991,660
29%

	Controlled		Uncontrolled		Total	
	S	c	Surface	UG & HWM	Tot	%
Sewell C	704,100				704,100	3%
Sewell B	1,190,700	1,104,020	115,400		2,410,120	12%
Sewell A Rider	229,700		2,700		232,400	1%
Sewell A	5,673,600	5,476,220	2,117,800	3,008,360	16,275,980	79%
Beckley	593,100	513,570			1,106,670	5%
	8,391,200	7,093,810	2,235,900	3,008,360	20,729,270	100%
	15,485,010		5,244,260			
			20,729,270			



South Fork (Reserve Quality)

Parameter	Typical	(Min) / Max	Reject
Ash	6.50%	7.00%	7.50%
Moisture	8.00%	8.50%	9.00%
Vol Matter	27	(26) 28	-
FC	70.00%	(65) 75	-
Sulfur	0.95%	1.00%	1.05%
Fluidity	4,000	(3,000)	-
ARNU	240	(220)	-
Reflection	1.20	(1.15)	-
Oxidation	96%	(90)	90%
Vitrinite	74%	(70)	-
V9-V14	72%	(70)	-
Phos.	0.33%	-	-
FSI	9.0	(8.0)	-
HGI	80.00%	-	-
CSR	62	(60)	-

## South Fork

### Asset Description

- The Company's Long Term Forecast projects South Fork coal sales of 270,000 tons in 2H 2015, 564,000 tons in 2016 and 708,000 tons in 2017
- South Fork's total equipment was appraised at approximately \$15.8 million as of June 2014
- South Fork contains approximately 20.7 million tons of proven and probable coal reserves

### Estimated Reserves & Resources (000s tons)

Seam	Controlled		Total	Uncontrolled		Total
	Surface	UG & HW		Surface	UG & HW	
Sewell C	704	0	704	0	0	704
Sewell B	1,191	1,104	2,295	115	0	2,410
Sewell A Rider	230	0	230	3	0	232
Sewell A Rider	5,674	5,476	11,150	2,118	3,008	16,276
Beckley	593	514	1,107	0	0	1,107
Estimated Reserves (as of 1/1)	8,391	7,094	15,485	2,236	3,008	20,729

## South Fork (Continued)

Historical and Projected Performance (\$ in 000s)									
	2014A				2015E		2H 2015	2016E	2017E
	Q1	Q2	Q3	Q4	Q3	Q4			
Revenue									
Total Sales (000s tons)	77	96	89	106	135	135	270	564	708
Tons Produced (000s tons)	81	96	115	83	135	135	270	564	708
\$ / ton (blended price)	\$88.05	\$97.20	\$95.94	\$91.15	\$101.18	\$102.92	\$102.05	\$104.98	\$102.78
Total Revenues	\$6,791	\$9,306	\$8,576	\$9,663	\$13,659	\$13,894	\$27,554	\$59,206	\$72,771
Cash Costs									
Direct Costs									
Labor	(1,185)	(1,398)	(1,498)	(1,417)	(1,022)	(1,022)	(2,044)	(4,200)	(5,376)
Repair & Maintenance	(642)	(597)	(626)	(311)	(274)	(274)	(548)	(1,125)	(1,440)
High Wall Miner	0	0	0	0	(1,952)	(1,952)	(3,905)	(7,839)	(9,270)
Other Direct Costs	(3,549)	(4,154)	(4,493)	(3,186)	(2,596)	(2,596)	(5,192)	(10,669)	(13,656)
Total Direct Cash Costs	(\$5,376)	(\$6,149)	(\$6,616)	(\$4,914)	(\$5,844)	(\$5,844)	(\$11,689)	(\$23,833)	(\$29,743)
Indirect Costs									
Prep Plant	(\$563)	(\$592)	(\$600)	(\$535)	(\$689)	(\$689)	(\$1,377)	(\$2,876)	(\$3,611)
Hauling to Wash Plant	(462)	(537)	(723)	(539)	(879)	(879)	(1,758)	(3,672)	(4,539)
Sales Tax	(435)	(578)	(561)	(586)	(969)	(969)	(1,937)	(4,237)	(4,877)
Other Indirect Costs	(940)	(1,181)	(1,122)	(1,323)	(1,762)	(1,762)	(3,524)	(7,691)	(8,807)
Total Indirect Cash Costs	(\$2,400)	(\$2,888)	(\$3,006)	(\$2,984)	(\$4,298)	(\$4,298)	(\$8,597)	(\$18,476)	(\$21,834)
Total Cash Costs	(\$7,776)	(\$9,037)	(\$9,623)	(\$7,897)	(\$10,143)	(\$10,143)	(\$20,285)	(\$42,309)	(\$51,577)
Cash Costs / Ton Produced	(\$95.45)	(\$93.94)	(\$83.61)	(\$95.38)	(\$75.13)	(\$75.13)	(\$75.13)	(\$75.02)	(\$72.85)
Gross Margin	(\$984)	\$269	(\$1,046)	\$1,766	\$3,517	\$3,752	\$7,268	\$16,897	\$21,194
Memo:									
Direct Cash Costs / Ton Produced	(\$65.99)	(\$63.92)	(\$57.49)	(\$59.35)	(\$43.29)	(\$43.29)	(\$43.29)	(\$42.26)	(\$42.01)

Note: Projections as of March 26, 2015

## South Fork (Continued)

- South Fork's Clearco Prep Plant was completed in Q3 2013 and began shipping trains regularly in Q4 2013
- The Prep Plant has a throughput rate of 300 tons per hour and over 1.0 million tons of annual capacity

Clearco Prep Plant Cost Summary (In 000s)						
	Q1 2014	Q2 2014	Q3 2014	Q4 2014	2014	
Raw Tons Processed	94	105	120	125	444	
Clean Tons Processed	84	91	94	95	364	
<u>Cash Costs</u>						
<u>Direct Costs</u>						
Chemicals	(\$36)	(\$61)	(\$50)	(\$55)	(\$202)	
Refuse Handling	(34)	(38)	(64)	(53)	(189)	
Repairs & Maintenance	(137)	(69)	(92)	(37)	(336)	
Utilities	(112)	(89)	(68)	(89)	(357)	
Labor	(139)	(202)	(194)	(196)	(731)	
Other	(67)	(89)	(100)	(74)	(330)	
<b>Total Direct Cash Costs</b>	<b>(\$525)</b>	<b>(\$548)</b>	<b>(\$569)</b>	<b>(\$503)</b>	<b>(\$2,145)</b>	
<u>Indirect Costs</u>						
Insurance	(\$6)	(\$6)	(\$7)	(\$7)	(\$26)	
Security	(28)	(22)	(22)	(19)	(91)	
Other	(4)	(16)	(3)	(6)	(29)	
<b>Total Indirect Cash Costs</b>	<b>(\$38)</b>	<b>(\$44)</b>	<b>(\$32)</b>	<b>(\$32)</b>	<b>(\$146)</b>	
<b>Total Cash Costs</b>	<b>(\$563)</b>	<b>(\$592)</b>	<b>(\$600)</b>	<b>(\$535)</b>	<b>(\$2,291)</b>	
<i>Cash Costs / Raw Ton</i>	<i>(\$5.97)</i>	<i>(\$5.63)</i>	<i>(\$5.00)</i>	<i>(\$4.29)</i>	<i>(\$5.16)</i>	
<i>Cash Costs / Clean Ton</i>	<i>(\$6.74)</i>	<i>(\$6.54)</i>	<i>(\$6.36)</i>	<i>(\$5.61)</i>	<i>(\$6.30)</i>	

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## Sewell Mountain

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- Property
  - Single seam Sewell (ultra-low Sulfur)
  - 10,000 acres in Fayette County, West Virginia currently under control or able to be brought under control
  - Estimated reserves of 24.5 MT Sewell / 15.3 MT Fire Creek
- Operations:
  - Pre-development
  - Underground
  - Estimated production costs per ton: \$85 - \$95
- Infrastructure:
  - CSX line to be rehabbed (20 miles)
  - Ability to truck to the Kanawha River (30 miles)
- Summary of Coal Quality:
  - Vol: 27% Sulfur: 0.65% Ash: 5.0% BTU: 14,600



Sewell Mountain

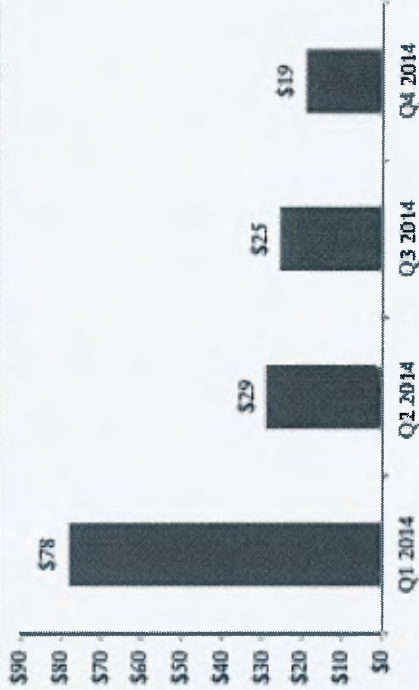
Asset Description

- Sewell Mountain's operations have a projected cost per ton of \$85 - \$95

Reserves & Resources

	(000's tons)
Est. Sewell Reserves	24,500
Est. Fire Creek Reserves	15,300
Total Reserves	39,800

Historical Capital Expenditures (\$ in 000s)



## True Energy

- Property
  - Just over 1,000 acres in Wise County, Virginia
  - 2.2 million proven and probable tons reflected in the reserve report; an additional 4.8 million were added subsequent to the report and are now permitted.
- Operations:
  - Surface Operations; idled since 2012
  - Production costs per ton: \$75 - \$80
- Infrastructure:
  - Norfolk Southern rail access (third party) within a short trucking distance
- Summary of Coal Quality:
  - Vol: 32% Sulfur: 1.4% Ash: 12% BTU: 12,800

EXCLUDES reserves acquired after the 43-101

Segment	Mineral Reserve		Tons		Mineral Reserve Tons	
	Measured	Ind	Inferred	P	Prob bl	
Clintwood	66,061	21,278	-	56,152	8,086	
Lower Bolling	670,266	52,516	-	569,726	44,639	
Upper Bolling	1,134,241	368,099	-	964,105	312,884	
Kelly	280,404	94,526	-	238,343	80,347	
Sub-Totals	2,150,972	536,419	-	1,828,326	455,956	
Total		2,687,391		2,284,282		
Less: Appx production since Jan 2010 (through 3Q14)						
				(103,765)		
Estimated Proven & Probable at 3Q14				2,180,517		

Segment	BTU/lb	Sulfur	VM	Reflectance	Geisler Plasto	FSI
Clintwood	13,506	1.69%	33.80%	-	28,000	7.2
Lower Bolling	14,331	1.87%	36.20%	0.9	28,540	7.5
Upper Bolling	11,794	0.81%	30.70%	0.95	6,004	8.3
Kelly	13,700	2.79%	36.30%	-	9,355	8.5
Weighted Avg	12,798	1.40%	33.10%	0.93	13,248	8.1

## True Energy

### Asset Description

- Production costs at True Energy are approximately \$75 - \$80 per ton

### Estimated Reserves & Resources (000s tons)

Seam	Mineral Reserves			Mineral Resources		
	Proven	Probable	Total	Measured	Indicated	Inferred
Clintwood	56	18	74	66	21	0
Lower Bolling	570	45	614	670	53	0
Upper Bolling	964	313	1,277	1,134	368	0
Kelly	238	80	319	280	95	0
Total (as of Jan. 2010)	1,828	456	2,284	2,151	536	0
Less: Production Through Sept. 2014			(104)			
Estimated Reserves (as of Sept. 2014)			2,181			

## Raven Crest (Summary)

(\$ in millions, except where indicated otherwise)

- Property
  - 12,000 acres in Boone County, West Virginia
  - 15.4 million proven and probable tons (surface tons are shipped run of mine and are reported as such)
- Operations:
  - Surface and High Wall Operations
  - Low-\$50's production cost per ton
  - Capacity to produce 65,000 - 75,000 tons per month
- Infrastructure:
  - New (commissioned Jan 2014) Bull Creek preparation plant and loadout
    - » 300 tph heavy media
    - » Refuse capacity for the life of the reserve (slurry cells)
  - 150 car CSX rail siding adjacent to the preparation plant (Kanawha Freight District)

Raven Crest	1Q14	2Q14	3Q14	4Q14 <sup>(1)</sup>
Total Cash Costs	\$6.54	\$8.90	\$8.59	\$8.05
Tons Produced	95,917	156,096	171,620	150,516
Cost / Ton (\$/ton)	\$68.20	\$57.04	\$50.06	\$53.46

Due to market conditions, Raven Crest operations were idled from mid-2012 through the end of 2013.

(1) 4Q14 is shown on a preliminary basis; Raven Crest is unadjusted

## Raven Crest (Property Details)

Seam	Mineral Resource Tons			Mineral Reserve Tons	
	Measured	Indicated	Inferred	Proven	Probable
L. Winifrede Rider	3,600	-	-	3,300	-
Winifrede	39,600	-	-	35,500	-
M. Hernshaw	87,300	62,800	7,800	78,100	56,200
Hernshaw	1,836,600	521,400	1,857,800	1,150,000	351,600
U. Cedar Grove	237,600	126,200	-	212,600	113,100
M. Cedar Grove	86,100	-	-	77,100	-
Cedar Grove	4,459,900	3,324,700	123,500	2,663,200	1,888,100
L. Cedar Grobe	2,223,700	536,900	17,100	1,149,600	405,600
No 2 Gas	8,880,800	6,466,700	4,985,200	4,432,300	3,251,200
L No. 2 Gas	729,000	870,200	-	648,200	769,900
Sub Total	18,584,200	11,908,900	6,991,400	10,449,900	6,835,700
Totals	37,484,500			17,285,600	
Less: Appx production since Jan 2010 (through 3Q14)				(1,839,373)	
Estimated Proven & Probable at 3Q14				15,446,227	



## Raven Crest (Reserve Quality)

Seam	Area	Raw Quality, Dry Basis			Washed, Dry Basis (1.60 Float)		
		BTU	Sulfur	Ash	BTU	Sulfur	Ash
Middle Hershaw	BN #5	13,489	1.36	10.25			
Hershaw	BN #2, BN #5	13,901	2.31	8.03	14,296	1.79	5.7
Cedar Grove	BN #5	12,883	0.91	12.49	14,520	0.74	4.52
Lower Cedar Grove	Bull Creek	13,326	0.94	7.31	14,163	1.13	5.26
Cedar & L. Cedar Combined	Foster Hollow	10,749	0.68	26.24	14,119	0.81	6.18
No. 2 Gas	BN #2, BN #5	13,201	1.14	15.12	14,526	0.9	4.33
No. 2 Gas	BN #3	12,205	1.36	13.29	13,964	1.49	6.71
Lower No. 2 Gas	BN #2, BN #5	13,776	0.94	8.28	14,391	0.62	5.25
Lower Winifrede Rider	BN #3	13,269	0.71	10.74			

2014 shipments totaled 637,730 tons at

Seam	Area	Sulfur	Ash	BTU
Lower No. 2 Gas	BN #2	0.96	13.97	12,010
No. 2 Gas	BN #2	1.82	13.5	12,251
Cedar Grove	BN #2	1.09	9.68	12,736
Lower Cedar Grove	BN #2	0.87	6.79	13,098
Middle Hershaw	BN #2	1.73	19.11	11,335
Hershaw	BN #2	1.43	13.74	11,895
Winifrede Upper Rider	BN #3	0.68	29.74	9,382
Winifrede Lower Rider	BN #3	0.72	10.94	12,492
Winifrede	BN #3	0.76	20.97	10,602

- 6.26% moisture
- 11.18% ash
- 0.95% sulfur
- 12,401 Btu

Note: The top table is from 12/31/06 - MMA Study. The bottom table is from 1/1/2009 thru 1/31/2010 - SGS Mineral Labs, Inc.

## Raven Crest

### Asset Description

- The Company's long term forecast projects go-forward coal sales of 180,000 tons per quarter
  - Raven Crest has contracted sales linked to spot prices of 30,000 tons per month beginning in January 2014 and extending through the end of 2015
- Raven Crest's cost per ton produced was approximately \$53.46 during Q4 2014
- Raven Crest's total equipment was appraised at approximately \$17.2 million as of June 2014
- As of September 2014, Raven Crest had approximately 15.4 million tons of proven and probable coal reserves

### Estimated Reserves & Resources (000s tons)

Scam	Mineral Reserves			Mineral Resources		
	Proven	Probable	Total	Measured	Indicated	Inferred
L. Winifrede Rider	3	0	3	4	0	0
Winifrede	36	0	36	40	0	0
M. Hershaw	78	56	134	87	63	8
Hershaw	1,150	352	1,502	1,837	521	1,858
U. Cedar Grove	213	113	326	238	126	0
M. Cedar Grove	77	0	77	86	0	0
Cedar Grove	2,663	1,888	4,551	4,460	3,325	124
L. Cedar Grove	1,150	406	1,555	2,224	537	17
No. 2 Gas	4,432	3,251	7,684	8,881	6,467	4,985
L. No. 2 Gas	648	770	1,418	729	870	0
<b>Total (as of Jan. 2010)</b>	<b>10,450</b>	<b>6,836</b>	<b>17,286</b>	<b>18,584</b>	<b>11,909</b>	<b>6,991</b>
Less: Production Through Sept. 2014			(1,839)			
<b>Estimated Reserves (as of Sept. 2014)</b>			<b>15,446</b>			
						<b>37,485</b>

## Raven Crest (Continued)

Historical and Projected Performance (\$ in 000s)							
	2014A			2015E		2016E	2017E
	Q1	Q2	Q3	Q4	Q3	2H 2015	
<b>Revenue</b>							
Total Sales (000s tons)	88	195	189	209	180	360	720
Tons Produced (000s tons)	96	156	172	151	180	360	720
\$ / ton	\$55.93	\$55.56	\$55.16	\$53.40	\$50.00	\$50.00	\$60.00
<b>Total Revenues</b>	<b>\$4,918</b>	<b>\$10,811</b>	<b>\$10,444</b>	<b>\$11,167</b>	<b>\$9,000</b>	<b>\$18,000</b>	<b>\$43,200</b>
<b>Cash Costs</b>							
<b>Direct Costs</b>							
Labor	(1,070)	(1,298)	(1,384)	(1,413)	(1,690)	(3,380)	(6,760)
Repair & Maintenance	(231)	(909)	(591)	(522)	(624)	(1,249)	(2,497)
Other Direct Costs	(2,133)	(2,262)	(2,077)	(1,989)	(2,362)	(4,724)	(9,449)
<b>Total Direct Costs</b>	<b>(\$3,434)</b>	<b>(\$4,468)</b>	<b>(\$4,052)</b>	<b>(\$3,924)</b>	<b>(\$4,676)</b>	<b>(\$9,353)</b>	<b>(\$18,706)</b>
<b>Indirect Costs</b>							
Loadout	(\$1,061)	(\$1,320)	(\$1,283)	(\$1,139)	(\$1,363)	(\$2,725)	(\$5,450)
Hauling to Wash Plant	(463)	(858)	(978)	(738)	(882)	(1,765)	(3,530)
Sales Tax	(408)	(810)	(795)	(833)	(996)	(1,992)	(3,984)
Other Indirect Costs	(1,155)	(1,447)	(1,483)	(1,412)	(1,255)	(2,511)	(5,274)
<b>Total Indirect Costs</b>	<b>(\$3,107)</b>	<b>(\$4,435)</b>	<b>(\$4,539)</b>	<b>(\$4,122)</b>	<b>(\$4,497)</b>	<b>(\$8,993)</b>	<b>(\$18,707)</b>
<b>Total Cash Costs</b>	<b>(\$6,541)</b>	<b>(\$8,903)</b>	<b>(\$8,591)</b>	<b>(\$8,047)</b>	<b>(\$9,173)</b>	<b>(\$18,346)</b>	<b>(\$37,776)</b>
<b>Cash Cost / Ton Produced</b>	<b>(\$68.20)</b>	<b>(\$57.04)</b>	<b>(\$50.06)</b>	<b>(\$53.46)</b>	<b>(\$50.96)</b>	<b>(\$50.96)</b>	<b>(\$52.47)</b>
<b>Gross Margin</b>	<b>(\$1,623)</b>	<b>\$1,908</b>	<b>\$1,852</b>	<b>\$3,121</b>	<b>(\$173)</b>	<b>(\$346)</b>	<b>\$5,424</b>
<b>Memo:</b>							
<b>Direct Cash Costs / Ton Produced</b>	<b>(\$35.80)</b>	<b>(\$28.63)</b>	<b>(\$23.61)</b>	<b>(\$26.07)</b>	<b>(\$25.98)</b>	<b>(\$25.98)</b>	<b>(\$26.48)</b>

Note: Projections as of March 26, 2015

**Brier Creek**

- Property
  - 13,000 acres in Boone County, West Virginia (adjacent to Raven Crest)
  - 27 million proven and probable tons
- Operations:
  - Underground Operations
  - Cost per ton projected to be \$62 - \$65
- Infrastructure:
  - Shares the Bull Creek preparation plant and loadout at Raven Crest

Seam	Mineral Resources Tons			Mineral Reserve Tons	
	Measured	Inferred	Probable	Proven	Probable
No. 2 Gas	22,999,600	18,187,300	3,390,900	10,247,100	8,103,200
Lower Cedar Grove	8,864,300	9,360,600	12,474,100	4,213,500	4,449,400
Hernshaw	-	-	8930400	-	-
Sub-Totals	31,863,900	27,547,900	24,795,400	14,460,600	12,552,600
Total	59,411,800			27,013,200	

Less: Appx production since Jan 2010 (through 3Q14)

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Estimated Proven & Probable at 3Q14

27,013,200

Seam	Raw Quality, Dry Basis			Washed, Dry Basis (1.60 Float)		
	BTU	Sulfur	As	BTU	Sulfur	Ash
No. 2 Gas	9,886	0.83	25.06	13,181	1.13	11.17
Lower Cedar Grove	12,875	1.29	9.83	14,233	1.18	5.7
Hernshaw	11,591	1.05	13.84	13,912	0.95	6.67



## Brier Creek

### Asset Description

- Brier Creek's operations have a projected cost per ton of \$62 - \$65

### Estimated Reserves & Resources (000s tons)

Scam	Mineral Reserves			Mineral Resources		
	Proven	Probable	Total	Measured	Indicated	Inferred
No. 2 Gas	10,247	8,103	18,350	23,000	18,187	3,391
Lower Cedar Grove	4,214	4,449	8,663	8,864	9,361	12,474
Hernshaw	0	0	0	0	0	8,930
Total (as of Jan. 2010)	14,461	12,553	27,013	31,864	27,548	24,795
Less: Production Through Sept. 2014			0			
<b>Estimated Reserves (as of Sept. 2014)</b>			<b>27,013</b>			<b>84,207</b>